

Trusts and Trustees

Jersey is a world-leading jurisdiction for the establishment and management of trusts and is an ideal location for international asset holding trusts, their trustees and beneficiaries and settlors. A trust is an arrangement whereby one person (the “settlor”), transfers money or other assets to one or more trustees to hold for the benefit of others (known as the “beneficiaries”). A settlor can name anyone (including themselves) as a beneficiary and retain certain powers.



Jersey: A proven choice for trusts

A number of attractive and flexible structuring options for trusts, including:

- **Discretionary trusts:** A discretionary trust is most common and, unlike a fixed trust, the trustee has discretion to decide the share of capital and income which each beneficiary will receive. It can provide more flexibility than a fixed trust; the trustees can respond to future circumstances as and when they arise and also take into account guidance through letters of wishes from the settlor.
- **Fixed interest trusts/life interest trusts:** The terms of the trust will give rise to a particular beneficiary or beneficiaries having a fixed entitlement to the income and/or capital of the trust property. The interests are often fixed by time and by share. In a life interest trust, a beneficiary would usually be entitled to the income for life but have no entitlement to the capital.
- **Reserved powers trusts:** Allows a third party to the trust (usually but not necessarily the settlor or other instigator of the trust) to retain or hold certain powers in respect of the trust. These powers may deal with any aspect of the trust, ranging from how the trust's assets are invested through to who may benefit from the trust and in what circumstances.
- **Purpose trusts:** Trusts which are neither charitable nor for named/ascertainable beneficiaries, but for a purpose. The possibilities are virtually limitless, ranging from private family trusts at one end of the scale to those used in international financial transactions at the other. An enforcer is required to be appointed to enforce the terms of a trust in relation to its non-charitable purposes. These are often used for philanthropic purposes which are not strictly charitable.
- **Charitable trusts:** A Jersey trust is a vehicle frequently used for charities or to hold ‘orphan’ entities, both as discretionary trusts (see above) with a class of beneficiaries and as trusts having charitable purposes instead of beneficiaries.
- **Protective trusts:** A trust where the interest of a beneficiary will be reduced or terminated if the beneficiary attempts to assign his rights as a beneficiary or becomes subject to some form of compulsory assignment (such as a bankruptcy order)
- **Accumulation and maintenance trusts:** Requires the trustee to accumulate the income of the trust for the future, but gives power for the income to be used in order to benefit (or maintain) any of the beneficiaries should the need arise (for example, to pay school or medical fees).

Commercial uses for Jersey trusts

Jersey trusts are often used for commercial reasons including:

- Employee benefit trusts/schemes;
- Pension funds;
- Investment funds and real estate holding vehicles (e.g. a unit trust);
- To hold security over a borrower's assets for the benefit of lenders under syndicated loans' and
- As an 'orphan' mechanism to hold assets 'off balance sheet'.

Flexible regulatory and legal environment

While all 'professional' trustees (i.e. generally those offering services to the public) must be regulated and licensed by the Jersey Financial Services Commission ("JFSC"), 'private' trust companies can avail themselves of regulatory flexibility such that they need not be individually regulated or licensed if they meet certain criteria. Any person having full capacity to hold and dispose of property may be a settlor or a trustee although typically corporate professional trustees are used by settlors.

A trust is a Jersey trust where the trust deed states that the trust is to be governed by Jersey law. If the trust deed is silent on the governing law then the trust will be a Jersey trust if this is the

jurisdiction with the closest connection. It is not necessary for the trustee of a Jersey trust to be resident in Jersey (although if the trustee is resident elsewhere this may result in trust taxation in another jurisdiction and different regulatory and legal requirements).

Trustees are also protected under the Trusts (Jersey) Law 1984, in that their liability to a third party arising out of any transaction affecting the trust (save for breach in some circumstances) is limited to the trust property (provided the third party was aware the trustee was acting in that capacity).

Benefits of Jersey trusts

The precise benefits of a trust will depend on the residence and domicile of the settlor and the beneficiaries (residence, essentially, means where a person lives, while domicile usually refers to where the person regards as his true home). Common advantages of putting assets into a Jersey trust include:

Privacy and confidentiality

Trusts are generally created by a private document to which the settlor and the trustees are the only parties. The trust instrument does not have to be filed with any public body or registered in Jersey and information relating to the trust is not accessible by the general public. There are however certain exceptions to this, in particular, beneficiaries of a trust may be entitled to financial information relating to the trust. Generally speaking, a trust arrangement can be regarded as highly confidential.

Asset protection

A trust is in many circumstances an effective way to legitimately segregate assets and liabilities, as once the assets are in the trust the settlor ceases to own them. Additionally, it can also provide protection from foreign claims based on, a lack of recognition of the trust, infringement of forced heirship rules (non-Jersey) and personal relationships with the settlor. Trusts can also assist continuity of ownership for family assets, protection against profligacy of beneficiaries or family breakdown between the beneficiaries.

Wealth and succession planning

The Island offers fiscal neutrality for trusts established for non-Jersey resident beneficiaries and a trust can be of assistance in legitimate tax planning, particularly for those with international wealth. There is also no requirement that any Jersey government fees or duty be paid either on the creation of a trust or while it continues in existence. A trust is a flexible way to provide for the succession of family wealth without onerous probate formalities or costs and unlike a Will in certain jurisdictions, it is not a public document. Trusts can also assist with the management of indivisible assets from which a number of beneficiaries benefit.

Judicial, legal and regulatory certainty

Jersey is self-governed with a long tradition of political, legal and regulatory stability as well as close links with the EU and the UK. The Jersey Trust Law has been used as a model for similar laws in other jurisdictions. There is a substantial body of judicial authority interpreting the Trust Law and the legal profession in Jersey is well experienced in advising in relation to trusts. The Jersey Courts are recognised as being of the highest calibre and and influential across trust jurisdictions.



Benefits of Jersey trusts continued



Governance

Trustees are in a fiduciary position and must exercise their powers only in the interests of the beneficiaries. The finance industry in Jersey is widely acknowledged as being capable with an excellent service ethos. There is a high quality of services available both to act as trustee but also to enable a trustee to seek financial, investment, tax and legal advice and provide complementary services such as banking.



Modern transparent jurisdiction

Jersey has a world class tax transparency framework as part of its commitment to combatting financial crime and tax abuse and complies with transparency and reporting standards across the globe. The trust industry is highly regulated to protect against trusts being used for tax abuse and money laundering.



Straightforward tax treatment

Where there are no Jersey resident beneficiaries, the trust is only liable to tax on Jersey source income and by concession, Jersey bank deposit interest is not treated as Jersey source income when received by trustees of such trusts.



Flexibility

There is considerable flexibility when drafting Jersey trusts. There are no forced heirship laws for non-Jersey settlors or rules against perpetuities (i.e. a Jersey trust can exist for an indefinite period). The terms of the trust can include, for example, a protector for additional oversight over the trustee(s), ability to add assets/beneficiaries, retention of benefits/powers by settlor, "flight" causes (i.e. an emergency affecting trustees), provisions making the trust revocable or irrevocable, and an ability to change the governing law of the trust from or to Jersey if it is valid under the relevant foreign law.



Reduced political and instability risk

If the trustee and the assets are in a stable jurisdiction like Jersey, a trust can provide protection for a settlor who is based in a potentially unstable environment or politically uncertain jurisdiction with risks of exchange control or sequestration.



Foreign law protection

The Trusts Law provides that when considering questions relating to the trust or transfers of property to it, the court must apply Jersey law only and that no consideration should be given to any rule of foreign law. Any foreign claim based on a lack of recognition of Jersey trust law will be ignored by the Jersey courts. The Jersey courts can also have jurisdiction over 'foreign trusts' and related issues would be determined in accordance with the relevant foreign law.



Jersey trusts do have a restriction on directly holding immovable property in Jersey (albeit it could through an underlying company potentially). Advice is always recommended before a trust is established, including in relation to tax issues for the settlor and in some cases, the beneficiaries.

Disclaimer: This factsheet is only intended to provide a general overview of the subject matter. It does not constitute, and should not be treated as, legal advice.

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