



FORWARD GROUP
Trust & Corporate Services

GUIDANCE NOTE

TRUSTS

Introduction

This Guidance Note is to assist parties to a trust understand how trust arrangements work and explain some of the benefits of Jersey trusts.

This document is not tax advice and should not be relied upon as such.

What is a trust?

A trust is a legally binding arrangement where, typically, one person (known as a “**Settlor**”) transfers legal ownership of certain assets (“**trust property**” or “**trust assets**”) to another person (known as a “**Trustee**”) to hold for the benefit of certain other persons (known as “**Beneficiaries**”) or for a specified purpose. Trusts can also have a “**Protector**” who can have a specific role to advise and ensure the trustee acts as expected for the beneficiaries.

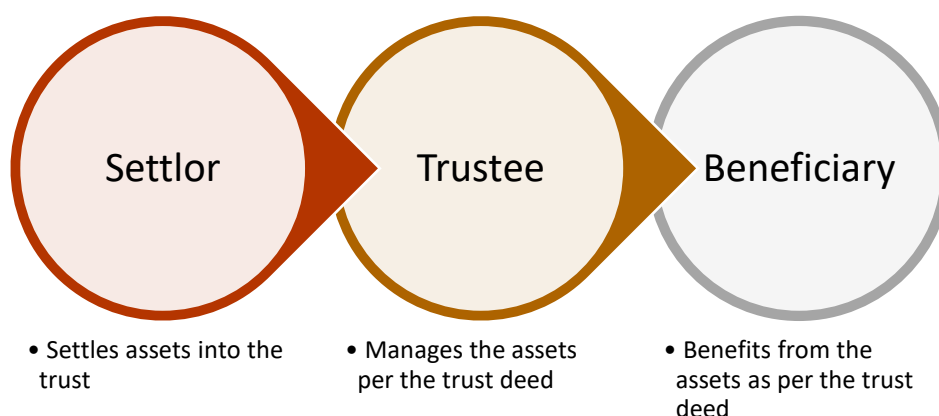
Trusts are highly flexible and can be adapted to the settlor's needs and circumstances. The settlor can number among the beneficiaries or even be one of the trustees.

The terms upon which the trustee holds the assets will be set out in a document known as a **trust instrument** or **trust deed** (the terms “**settlement**” and “**declaration of trust**” are also commonly used).

The trust deed ensures that the settlor, the trustee and the beneficiaries know precisely what their respective rights and duties are. The trust instrument will usually provide that the trustee has the power to manage the trust assets in accordance with the terms of the trust instrument and the strict duties imposed on the trustee by Jersey law.

It is important to know that, when a settlor transfers the legal ownership of the trust assets, they are not only relinquishing ownership but also relinquishing control over those assets to the trustee. This is why it is very important to work with a trustee that you feel comfortable with, and who you trust will do the best for you and your family or any other beneficiaries. The change in ownership of the assets is the main reason why some of the tax and other benefits are so effective but can be a difficult emotional hurdle for some to overcome until they get comfortable with how a trust works in practice.

The key players:



Uses of a trust

Trusts are often used for a wide variety of purposes which include:

- Asset protection (preserving family wealth, including for spendthrift concerns or political risks).
- Tax planning (particularly for Inheritance Tax concerns) – see Taxation of Trusts later in this Guidance Note.
- Succession planning (forced heirship, probate formalities and continuity of ownership).
- Matrimonial proceedings.
- Philanthropic purposes (charitable trusts).
- Non-charitable purposes (within the context of a “private trust company” arrangement).
- Anonymity and confidentiality .

Let’s look at some of these in more detail:

Asset protection – Creditor protection

Jersey law doesn’t enable a debtor to escape his creditors by settling assets into trust if the debtor is insolvent at the time the assets are transferred into trust, however, if a person has no relevant insolvency issues at the time the assets are settled into a Jersey trust, the trust should protect trust assets from claims of subsequent creditors of the settlor (and probably also from creditors of the beneficiaries).

Asset protection – Political risk

Trusts can also be used to provide a different sort of asset protection. If a person is situated in a country suffering from political unrest or instability, he or she can protect his or her assets (for example, against possible seizure by the authorities of that country) by settling them into trust - provided, of course, that the trustees and the trust assets are themselves in a stable jurisdiction such as Jersey.

Succession planning – Forced heirship

A Jersey trust may be used to assist a settlor in choosing the people he or she would like to benefit from his or her assets upon death, notwithstanding any "forced heirship" rules which would otherwise govern how the settlor's estate gets divided up.

These forced heirship rules are common in civil law jurisdictions. A Jersey trust may enable a person to dispose of his or her property freely upon death.

In relation to persons domiciled outside of Jersey, forced heirship or any other similar rule will not affect any transfer or disposition by such persons into a Jersey trust so a settlor can place his or her assets in trust free of any restrictions. Additional practical steps should also be taken to protect the trust from forced heirship rules, for instance by ensuring, so far as is possible, that the trustee and beneficiaries are not resident in countries with such rules and that the trust assets or underlying assets are not situated in such countries either.

Succession planning – Probate formalities

Since assets settled into trust do not form part of the settlor's assets on death, a grant of probate or other similar formalities will not be required in order to deal with the assets held in trust after his or her demise. The trust will continue to be run and the trustee will continue to take into account the remaining beneficiaries when considering how to invest the assets, whether and to whom assets should be distributed and so on.

This can be particularly important where there is a chance that family assets could be tied up in probate for an extended period and there is a surviving relative who is a minor.

Succession planning – Continuity of ownership

Trusts can be used to ensure the continuity of ownership of a particular asset, for example, a family business. If a person has established a successful business there is a possibility that, on his or her death, the ownership of the business may be split between a number of people (possibly even individuals outside of the family) as a result of the rules of succession applying to his or her estate; this could have a detrimental effect on the running of the business.

If the family business is instead settled into a trust, it will not form part of the settlor's estate on his or her death. Instead, the trustee will own the business and will act in the best interests of the beneficiaries of the trust. The trustee is usually relieved of the responsibility to become involved in the management of the company by the terms of the trust.

The settlor can name the persons who are to be beneficiaries at the time the trust is established and the settlor therefore has greater control over who will benefit from the family business. In the case of a fixed trust, as opposed to a discretionary trust, the settlor can set out with complete certainty who will benefit from the family business and in what shares.

Matrimonial proceedings

Jersey trusts can be used to protect family wealth in the event of divorce. Although the matrimonial courts have demonstrated that a husband or wife cannot simply hide assets away in a trust to avoid their obligations to the other spouse, or claim that they have no funds available to meet such obligations because they are in trust, careful planning involving the creation of Jersey trusts can help to preserve the wealth of the family (such as a family business from which the whole family benefit) from attack by the spouse of one beneficiary.

Charitable and non-charitable purpose trusts

Generally, in order for a trust to be valid there must be identifiable beneficiaries, who have a right to enforce the terms of the trust. A long held exception to this general rule has permitted trusts to be established in favour of charitable purposes. In such instances it is the Jersey Attorney General who is tasked with the role of enforcing the trustee's duties and obligations.

Jersey Trust Law also permits the creation and enforcement of non-charitable purpose trusts, ie, trusts in which property is held by the trustee on trust to carry out specific purposes which do not qualify as charitable purposes.

This type of trust is often simply referred to as a "purpose trust". All the usual rules for Jersey trusts apply save in two aspects. First, the trust deed must set out the particular purpose or purposes for which the trust has been established. Second, the trust instrument must provide for a person whose duty it is to enforce the trust in relation to its non-charitable purposes.

This person is called the "enforcer" and must be a person different from the trustee or trustees. Although an enforcer may be likened to a protector, the role of an enforcer is essentially quite different. Non-charitable

purpose trusts enable purposes which are not charitable in the strict sense but are, or may be, philanthropic or beneficial in a wider sense, to be fulfilled.

Anonymity and confidentiality

The separation of legal and beneficial ownership, which is the hallmark of a trust, means that the trustee and not the beneficiaries will be the registered owner of the trust assets. For example, if the trust assets comprise shares in a company, it is the trustee that will be recorded as the owner in the company's share register and the register will not normally indicate the name of the trust, unless this is specifically requested by the trustee. The trustee is indeed the owner of those assets.

The trust instrument itself is not a public document and is not required to be registered in any official or public register maintained by the authorities (except in the case of certain unit trusts used for commercial purposes). This helps offer a level of anonymity and confidentiality that might not be available in other structures.

In order to offer even greater anonymity, at least on the face of the trust instrument, the trustee may execute the trust instrument as a declaration of trust. As a result, the name of the settlor will not appear in the document.

A trust arrangement does remain subject to anti-money laundering legislation. Such legislation requires that the settlor of the trust assets and the significant beneficiaries of the trust provide evidence of their identities to the organisation in question, albeit on a confidential basis.

Governing laws in Jersey

Jersey trusts are governed by The Trusts (Jersey) Law 1984, as amended, which codified trust law largely along the lines of English-based common law, and the Trusts (Amendment) (Jersey) Law 1989. Trust company business is regulated under the provisions of the Financial Services (Jersey) Law 1998.

Appeal against judgements of the Royal Court of Jersey go to the Jersey Court of Appeal and finally to the English Privy Council.

Although Jersey law has its roots in the Norman law (a 'Roman' or 'Civil' law code), the Trusts (Jersey) Law 1984, as amended, codified an entirely 'Anglo-Saxon' body of trust law, resolving many uncertainties and increasing protection for beneficiaries. Subsequent amendments included the recognition of 'purpose' trusts in 1996 (the normal form of Jersey trusts is 'discretionary'). This has led to an increase in corporate use of Jersey trusts.

Why Jersey?

Trusts have long been available around the world, however, advisors and individuals will naturally wish to establish them in a reputable well-regulated jurisdiction such as Jersey.

What sets Jersey apart as an ideal jurisdiction for trusts is an exceptionally robust regulatory framework and political and economic stability.

Jersey's respected trust law, legal framework and trustee regulation is considered to be amongst the best in the world. All trusts must be formed under a Jersey proper law trust with at least one Jersey regulated trustee.

A level of governance and oversight can be assured. As a jurisdiction at the forefront of global finance for more than 50 years, Jersey is ready to service and support the needs of high-net-worth individuals who require bespoke trust solutions.

When you create a trust you are transferring the legal ownership of those assets to a trustee. You need to have confidence that your chosen trustee will look after those assets in the best possible way for the benefit of the beneficiaries.

- Jersey is recognised as a co-operative jurisdiction by the EU (white-listed);
- Award winning jurisdiction and recognised by for its high standards by: OECD, FATF and MONEYVAL;
- Robust legal framework: independent judiciary;
- 800 years of self-government, not part of the UK;
- English speaking and a minimal time difference to Central Europe; and
- Jersey conforms to the latest EU legislation for General Data Protection Regulation (GDPR).

Types of trust

There are various types of trusts, in that they are designed to be operated in different ways. Most commonly these are:

- Discretionary trust
- Fixed interest trust
- Interest in Possession Trust
- Accumulation and maintenance trust
- Purpose trust
- Charitable trusts
- Reserved powers trust

Discretionary trust

The most common form of trust is a discretionary trust.

With a discretionary trust, the trustee has ultimate discretion how the timing, manner and the amount by which beneficiaries of the trust might benefit from the trust.

A discretionary trust is often used where, at the time of the creation of the trust, the needs of an individual beneficiary or class of beneficiaries are not known.

The beneficiaries of a discretionary trust have no legal rights to any particular portion of the trust fund.

With discretionary trusts, in addition to the trust instrument, it is also common for a settlor to indicate to the trustee in a less formal manner the settlor's wishes as to the management and disposition of the trust fund. This is usually by means of a "letter of wishes" which, although not legally binding, will generally be considered by the trustee to be of persuasive effect when performing its duties and, for example, when determining whether to make a distribution out of the trust fund.

A letter of wishes is not legally binding on the trustee as it should not override the trustee's duties under Trust law, although the trustee will generally have regard to it when considering the exercise of discretionary powers. The letter offers guidance to the trustee in respect of its dealings with the trust fund and may be superseded by subsequent letters written by the settlor, as circumstances change.

Fixed interest trust

An alternative to a fully discretionary trust is a fixed interest trust. This varies in form but will generally fix the amounts and timing of the distribution of trust assets to beneficiaries.

The trust deed would specify exactly how and when assets are to be made available to the beneficiaries. Most commonly this takes the form that the trustee would be required to distribute all of the income of the trust fund to a particular individual during that person's lifetime but after they die then the trustee may be required to distribute the capital or income of the trust fund in some proportions to specific beneficiaries.

Trust deeds can be flexible documents so, for example, you could have a combination of fixed and discretionary trusts at different times. A trustee may, therefore, be given discretionary powers regarding distribution for a period of time, after which there is a requirement to distribute the capital of the trust fund in certain fixed proportions.

Interest in Possession trust

This type of trust may be used in circumstances where there is a desire by the settlor to preserve the capital of the trust fund for certain beneficiaries, but to permit other beneficiaries to receive the income arising from the assets. The trustee must distribute the income earned in the trust to those beneficiaries with a specified right to receive it, but it retains discretion over the capital.

A typical example when this type of trust is used is when a settlor wants his spouse to take benefit from the use of the family house for the remainder of her life and for the children to take benefit after she dies.

Accumulation and maintenance trust

An accumulation and maintenance trust may be used where the settlor wants to benefit a specific group of relations, for example his or her grandchildren. This type of trust will often be partly discretionary at the outset and later become one where a fixed interest exists.

The trust deed may afford the trustee a discretionary power to distribute the income and/or capital of the trust amongst the minor beneficiaries (or to their parents on their behalf) for the purpose of their maintenance or education up to a specific age. When that age is reached, each child's specified share of the trust fund will be distributed to him or her, or may be used to form a trust fund for that child.

Purpose trust

A purpose trust is a type of trust which has no beneficiaries, but instead exists for advancing some non-charitable purpose of some kind. In most jurisdictions, such trusts are not enforceable outside of certain limited and anomalous exceptions, but some countries have enacted legislation specifically to promote the use of non-charitable purpose trusts. Trusts for charitable purposes are also technically purpose trusts, but they are usually referred to simply as charitable trusts. People referring to purpose trusts are usually taken to be referring to non-charitable purpose trusts.

Reserved powers trust

Should the settlor wish to reserve certain specified powers in relation to the trust fund, e.g. to give direction to the trustee as to investment of the trust assets, or the power to appoint or remove a trustee or beneficiary, he or she may set up a reserved powers trust. The extent to which powers can be reserved is dependent on the settlor's residence and personal circumstances.

Overview of the taxation of trusts

At the time a trust is created there are several matters to consider:

- Any legal and tax implications arising in the settlor's country of residence, the country of residence of the trustee and the country of residence of the beneficiaries;
- The beneficiaries' personal tax position; and
- The physical location and possible relocation of the assets to be transferred into the trust.

In some circumstances there may be taxes arising in a jurisdiction on the transfer of assets into a trust, or distributions out of it so, where necessary, appropriate tax advice should be sought. Consequently, independent legal and tax advice should be sought by the settlor prior to the formation of a trust.

Jersey taxation

Where a trust is resident in Jersey for tax purposes (where the administration of the trust is carried out in Jersey and a majority of the trustees are resident in Jersey) and none of the beneficiaries are resident in Jersey, the trust will be unlikely to incur any taxation (there are a few exceptions for specific types of Jersey sourced income).

There are no capital gains, inheritance or stamp duty taxes payable by a trust in Jersey.

UK Taxation

Excluded Property Trusts

An excluded property trust is a special type of trust (which may be a discretionary trust or one of the other types) that excludes certain UK assets from forming part of the trust property. Excluded property trusts limit the trustee from investing in UK situs assets, even if that investment is indirect (for example investing in a company that owns a UK property).

Trusts created by non-UK domiciled individuals which hold non-UK assets are generally referred to as excluded property trusts and the assets in a trust are broadly outside the scope of UK Inheritance Tax (IHT) and as such can be useful tools for planning purposes before a UK resident becomes UK tax deemed domiciled.

Your tax advisor will be able to advise if this is an option for you.

Other jurisdictions

Trusts may be used for legitimate tax planning purposes in other jurisdictions. This may apply not just to taxes payable on the death of the settlor or any of the beneficiaries but also to taxes payable during their lifetimes. For example, since assets transferred into a trust do not form part of the settlor's assets, this might mean that the settlor may not be liable to income or capital gains taxes on those assets - potentially reducing the amount of the settlor's tax bill.

Tax advice in the home jurisdictions of the settlor and beneficiaries should always be taken when establishing a trust and the position kept under review from then on.

Key terms and definitions

'Trust' is a legal relationship normally constituted by a written document known as the 'trust deed', which binds the trustee to deal with assets transferred into trust for the benefit of specified beneficiaries. The trust deed does not have to be stamped or registered and is not available for public inspection.

'Settlor' is a person or company who transfers legal title of specific assets to the trustee. This transfer is effected under the terms the settlor and trustee have agreed and which are documented in the trust deed.

'Trustee' is a person or company who becomes the legal owner of the assets transferred into trust without obtaining the right of economic enjoyment of those assets. A trustee is responsible for the administration of the trust in accordance with the terms set out in the trust deed and the law governing the trust. A trustee is under a fiduciary obligation to administer the trust in the best interests of its beneficiaries.

'Beneficiary' is a person or company who has equitable title to the assets held in trust and the right to benefit from them. A settlor may be included among the beneficiaries of a trust.

'Protector' is a person or a company appointed to monitor the activities of the trustee on behalf of the beneficiaries and offer guidance to the trustee as the personal circumstances of beneficiaries evolve. The powers, duties and obligations of the protector are defined in the trust deed and are specific to a particular trust. The protector will normally play a fiduciary role with obligations to the beneficiaries and not the settlor.

Conclusion

Trusts have a long history as a wealth-preservation tool and Jersey's trusts regime in particular is highly flexible and well-regulated. While it is always important to seek local tax and legal advice before establishing any offshore structure, a Jersey trust can serve many useful purposes.



FORWARD GROUP

Trust & Corporate Services

Beauport House
L'Avenue de la Commune
St. Peter Jersey JE3 7BY

enquiries@fw.je

www.forwardjersey.com