

KEY FACTS TRUSTS

A TRUST IS A LEGALLY BINDING ARRANGEMENT, ESTABLISHED BY A WRITTEN DOCUMENT (TRUST INSTRUMENT)¹, WHEREBY A PERSON (SETTLOR) TRANSFERS LEGAL OWNERSHIP OF ASSETS (TRUST PROPERTY) TO ANOTHER PERSON (TRUSTEE) WHO IS ENTRUSTED WITH THE TRUST PROPERTY, FOR THE BENEFIT OF ONE OR MORE PERSONS (BENEFICIARIES). THE TRUSTEE HAS THE LEGAL OWNERSHIP OF THE TRUST PROPERTY, BUT THE BENEFICIARIES HAVE THE EQUITABLE INTEREST THEREIN.

In circumstances where a professional trustee company acts as Trustee, the role of Trustee is usually classified as an excluded person. This means that, apart from the payment of their professional fees, the Trustee cannot benefit from the Trust.

THE TRUST SYSTEM IN JERSEY

While trusts have been established in Jersey for many decades, their operation is now governed by a modern, comprehensive statute entitled the Trusts (Jersey) Law 1984 ("Trusts Law") recognised internationally as the model for similar laws in competitor trust services jurisdictions.

Complementing this modern and comprehensive statute is a substantial and internationally influential body of judicial authority developed by the Jersey courts, interpreting and applying the Trusts Law. Jersey, including its courts, have been long recognised as having political, legal and regulatory stability.

PARTIES TO AND FEATURES OF A JERSEY TRUST

Settlor

The Settlor may also be a Beneficiary but cannot be the sole Beneficiary of the Trust. Also, when establishing the Trust, the Settlor may retain for himself or in favour of a third party certain powers in order to retain a degree of control over the Trust Property.²

Trustee

The Trustee has the same power as an absolute owner unless those powers are restricted by the terms of the Trust Instrument. The Trustee is required to act with due diligence, as would a prudent person, to the best of its ability and skill, and exercise its powers only in the best interests of the Beneficiaries.

Beneficiaries

There must be sufficient certainty as to the identity of the Beneficiaries, which must be set out in the Trust Instrument, however, additional persons may be added to the Beneficiaries by supplemental Trust Instrument(s).

Protector

The Settlor may wish to appoint a Protector to ensure controls are placed upon certain of the Trustee's powers. This is achieved by specifying within the Trust Instrument those key powers requiring the Trustee to obtain the prior consent of the Protector. Typically, the Protector will be a close friend, relative or trusted adviser of the Settlor, although the Settlor may even be the Protector.

¹ "Trust Instrument" is the appropriate terminology as Jersey law does not have, for example, the English law concept of a "deed", and certainly Jersey Trust Instruments do not require the formalities of an English law deed.

² See section regarding Settlor Reserve Power Trusts.

Letter of Wishes

Subsequent to the creation of the trust, the Settlor may provide the Trustee with a document known as a Letter of Wishes. This document provides helpful guidance to the Trustee detailing the Settlor's wishes in connection with the management of the Trust Property and the benefits to be provided to the Beneficiaries. This is a non-binding document, provided to assist the Trustee in the day-to-day discharge of its duties. Additionally, the Settlor may update this document at any time to reflect changes in circumstances.

FORMS OF TRUST INSTRUMENT

To meet a Settlor's particular circumstances and objectives, including the intended entitlement of Beneficiaries on an equal, unequal or conditional basis, many forms of Jersey law governing Trust Instruments have been developed over the course of Jersey's long standing trusts services history.

Discretionary Trusts

Discretionary trusts are the most common Trust Instrument, entrusting to the Trustee largely unfettered discretion to exercise its own judgement as to timing, manner and amount by which any one or more Beneficiaries might benefit from the Trust Property. The Letter of Wishes helps guide the Trustee.

Settlor Reserved Power Trusts

Settlor reserved power trusts enable the Settlor to retain for himself, or in favour of a third party, certain powers over the Trust Property, including power of investment or to amend terms of the Trust Instrument or remove and appoint Trustees. However, caution must be taken as to the extent to which powers are reserved in order to preserve the integrity of the Trust.

Non-Charitable Purpose Trusts

Non-charitable purpose trusts are commonly used in corporate transactions, to hold underlying assets "off balance sheet". They are also commonly used as part of a Private Trust Company³ structuring.

WHY USE A TRUST AND WHY JERSEY?

Asset Protection and Succession Planning

A trust enables the Trust Property to be segregated from the Settlor's personal affairs with the Settlor ceasing to own them, provided the trust is not established with the intention of defrauding creditors. Equally, it can provide succession of family wealth without onerous and time-consuming probate formalities and costs where the assets were previously owned by the Settlor. Most importantly, it ensures that family wealth is managed and preserved, including controlling how it is spent, for the benefit of future generations.

Premier Trust Services Centre Globally

As well as its internationally recognised secure and stable judicial and political environment, Jersey was the first jurisdiction globally to license and regulate the provision of professional trust services, and as such, has become the leading "go to" jurisdiction for the provision of trust services.

³ See separate Fact Sheet on Private Trust Companies.

Tax

Jersey trusts are tax neutral⁴, and there is no capital gains, inheritance or stamp duty payable by a trust in Jersey. However, several matters, including but not limited to the following, should be considered, and independent legal and tax advice should be sought by the Settlor:

- > Legal and tax implications arising in the Settlor and Beneficiaries' country of residence
- > Beneficiaries' personal tax position
- > Physical location and possible relocation of the assets that will comprise the Trust Property

FIND OUT MORE

If you would like to discuss any aspects of the above in more detail, please contact your usual Trident representative or email Trident Jersey directly at jersey@tridenttrust.com.

⁴ Provided all Beneficiaries and the Settlor are resident outside Jersey and there is no Jersey sourced income.

- ▶ PEOPLE LED
- ▶ TECH ENABLED
- ▶ GLOBAL COVERAGE
- ▶ TAILORED SERVICE

- ▶ 1,100 STAFF
- ▶ 25 JURISDICTIONS
- ▶ 47,000 ENTITIES
- ▶ \$177BN AUA

- ▶ FUNDS
- ▶ PRIVATE CLIENTS
- ▶ CORPORATE CLIENTS
- ▶ MARITIME

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