

Trusts in Guernsey



Guernsey as a Trust Jurisdiction

Guernsey is a premier international fiduciary centre with a wealth of experience in the provision of trust services. Whilst there are examples of Guernsey's recognition of the trust concept dating from the eighteenth century, Guernsey's trusts services industry as we know it today, was born in the 1960's/1970's, as a result of United Kingdom exchange controls, tax planning and the migration of wealthy residents.

Guernsey plays host to some 150 licensed fiduciaries, approximately 80 of which are active trust companies, ranging from large international organisation to independent boutique operations. The value of assets held in trust in Guernsey is probably in excess of £300 billion worth of assets.

Guernsey has an excellent reputation, acknowledged by the OECD in its inclusion of Guernsey on its 'White List', published at the conclusion of the G20 summit in London in April 2009.

Guernsey is a tried and tested jurisdiction with an accumulated wealth of expertise that is being continuously enhanced. As well as being mature, Guernsey's trust services industry is also dynamic, forward-thinking and innovative as evidenced by its state-of-the-art trusts law, The Trusts (Guernsey) Law, 2007. Some of the key features of this law include:-

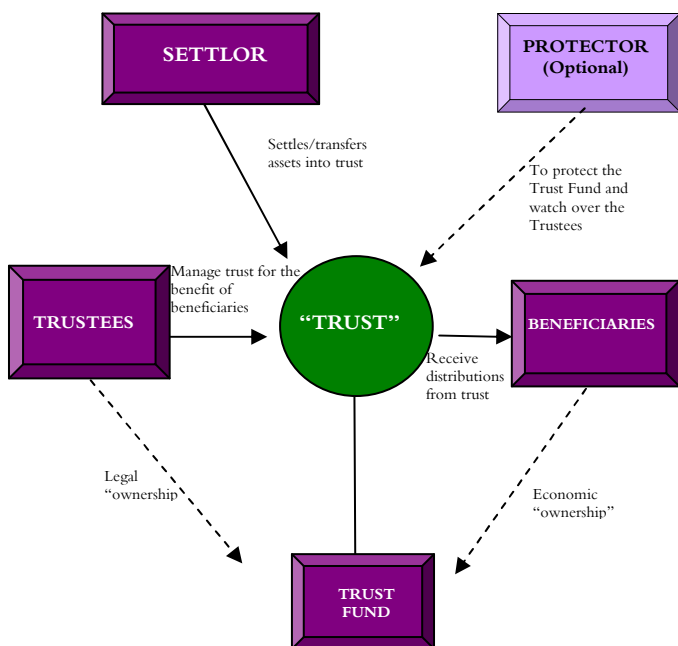
- Guernsey trusts being able to last for an unlimited duration;

- The ability to create Guernsey law trusts for non-charitable purposes as well as for individual beneficiaries, charities or any combination of these;
- The requirement that Guernsey law applies to questions relating to the validity of any Guernsey law trust or its variation, specific reference being made in this section of the law to the non-recognition of non-Guernsey forced heirship provisions and control over orders of non-Guernsey courts in matrimonial and other matters;
- The ability for settlors to reserve trust powers or grant them to third parties, including: - power to revoke or vary a trust, appoint trust assets, appoint/remove beneficiaries or control trust assets. Great care should be taken when considering which powers are to be reserved/granted to someone other than the trustee so as to avoid adverse tax or other unwanted consequences.

What is a Trust?

A trust is a legally binding relationship between one person ("the settlor") who transfers assets ("the trust fund") to a person or groups of persons ("the trustees") who then hold the assets for the benefit of others ("the beneficiaries") named by the settlor.

A typical Trust Structure:



The "trust" is a concept in common law that dates back to the time of the crusades, although the origin of the modern trust is subject to debate.

A trust can be established during your lifetime ("inter vivos trust") or upon your death under the terms of your will ("testamentary trust").

Types of Trust commonly used in Guernsey

Discretionary Trust

Probably the most widely used type of offshore trust. A trust where the trustees decide, using their 'discretion', how to apply income and capital of the trust assets for the benefit of the beneficiaries. Whilst the trustees have discretion, they are subject to obligations as to how they exercise it and must do so for the benefit of the beneficiaries. It is important to note that the beneficiaries have no right to either income or capital of the trust, merely a hope that the trustees will exercise their discretion for their benefit. The settlor can give guidance to the trustees, normally in the form of a "letter/memorandum of wishes", as to as to how they would like the trustees to exercise their discretion, but ultimately cannot control them.

Life Interest or Interest in Possession Trust

A trust where one or more specific beneficiaries (the "Life Tenant") have a right to the present enjoyment of trust income in specified shares, with the capital being held either on fixed interest or at the discretion of the trustees for specified beneficiaries to benefit after the life tenant's death. While the trustees can deduct their administrative expenses and liabilities from the income, the balance belongs to the beneficiaries as specified. The trustees may be given discretionary powers to apply capital for the benefit of beneficiaries.

Purpose Trust

A trust which, unlike conventional trusts, does not need to transfer a benefit to an object and will be valid provided the purpose is valid, for example, to hold shares in a company. The purpose must be certain, reasonably possible and not contrary to law, morals or public policy. An independent "enforcer" must be appointed to ensure that the trustees fulfil their duties. Purpose Trusts are currently used, among other things, in conjunction with asset financing transactions, securitisations and private trust company structures.

Charitable Trust

A trust set up for charitable purposes, which has certain tax benefits.

Employee Benefit Trusts and Pension Trusts

A trust to motivate employees by providing performance related benefits settled in trust by an employer or to house pensions funds (individual and occupational).

Uses of a Guernsey Trust

Trusts can be extremely useful structures for dealing with a variety of issues including:

- Privacy
Assets are held in the name of the trustees keeping the identity and interests of the beneficiaries confidential until the trust terminates.

- Tax Planning

A trust may be used to reduce tax liabilities. Assets owned by a trust will not be dealt with in the estate of a deceased settlor and therefore estate or inheritance tax may be minimised or eliminated.

- Asset Protection

A trust may protect assets from claims of future creditors to the extent permitted by law.

- Succession Planning

Trusts are effective tools for succession planning. They enable you to make provision for family members, relatives and friends, charities and other organisations in the way you desire (bearing in mind they cannot be used locally to defeat local forced heirship rules). They also enable efficient distribution of trust assets to beneficiaries, without consuming the time and money associated with lengthy and complicated procedures and formalities required for probate.

- Asset Consolidation and Management

Trusts are a convenient means of placing your worldwide assets in one holding vehicle, simplifying both asset management and centralised financial reporting. A family office (a private company that manages investments and trusts for a single wealthy family) could be utilised to achieve critical goals and address the concerns that matter most to a family. In addition to establishing holding structures for wealth protection, growth and transition, the family office can be a tool to implement broader succession, leadership and governance plans. For some, the family office also acts as a forum to ensure that family values, traditions and legacy endure. As needs change, it is important that the family office structure and functions evolve with them.

Taxation in Guernsey

Guernsey income tax is the only local tax that may be applicable to trust structures. Trustees may be Guernsey income tax payers and may be obliged to file tax returns when resident in Guernsey.

To establish if Guernsey income is payable, one must first distinguish between income from a trust and income of a trust:-

Income of a trust:- The settlor will be liable to pay tax on the entire income arising to the trust only where the settlor is liable for Guernsey income tax and they and/or their spouse can or may benefit under the trust or in any circumstances control the trust property.

Income from the trust:- The position depends on the tax position of the beneficiaries:-

- (i) Where the settlor and beneficiaries are non-Guernsey resident, Guernsey tax is payable on Guernsey source income (other than bank interest, although this may be subject to a retention tax under the EU Savings Tax Directive).
- (ii) Where the settlor is Guernsey resident but excluded, Guernsey tax is payable in the hands of Guernsey resident trustees – unless income is paid from a non-Guernsey company. No tax is payable where the trustees are not Guernsey resident.
- (iii) Where the beneficiaries are Guernsey resident, Guernsey tax is payable by them on what they receive, and the trustees may be taxed on that amount on the beneficiary's behalf.

Regulation of Guernsey Trustees

Guernsey is renowned for its robust yet pragmatic regulation of professional trustees, trust companies and company administrators having been actively and effectively regulated by the local regulator (the Guernsey Financial Services Commission) since April 2001.

Should you have any questions or request for further information please contact:

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