



Guide to
Jersey
Trusts

TABLE OF CONTENTS

Preface.....	2
1. What is a Trust?	3
2. Benefits of a Trust.....	3
3. Establishing a Trust in Jersey	4
4. Types of Trust.....	5
5. Private Trust Companies	6
6. Foundations.....	6
7. Conclusion.....	6

PREFACE

Many people feel intimidated by the complicated nature of trusts and as a result may fail to discover the many advantages which they can offer. The benefits can be considerable and often unobtainable in any other way. The purpose of this short guide is to describe the essential elements of trusts and to outline some of the advantages of establishing a trust in Jersey.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have. It is intended to provide a sketch of the subject matter covered. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive discussion of the issues.

Appleby
St Helier, Jersey
March 2010

1. WHAT IS A TRUST?

Essentially a trust is an arrangement whereby one person, known as the settlor, transfers money or other assets to another person, known as the trustee, to hold for the benefit of others, who are known as the beneficiaries. Often the beneficiaries will be members of the settlor's family but the settlor can name anyone (including himself) as a beneficiary. The terms of a written trust are set out in a document called the trust deed. This ensures that the settlor, the trustee and the beneficiaries all know exactly what their respective rights and duties are.

It is important to understand that once the trust assets are transferred to the trustee, the settlor loses all ownership rights to those assets. The trustee is not the agent of the settlor and cannot be compelled to act in accordance with his wishes (except as provided by the terms of the trust). Indeed, although the trustee will usually attach much importance to the settlor's wishes (which may be recorded in a written letter or memorandum of wishes), the trustee of a Jersey trust is under an obligation to exercise independent judgement in deciding what is in the best interest of the beneficiaries when administering the trust. The trustee must of course act in accordance with the terms of the trust deed and under Jersey law is obliged to act with the utmost good faith and to preserve and enhance the value of the trust assets so far as is reasonable. A trustee who commits a breach of trust may be personally liable to the beneficiaries of the trust for any resulting loss and, if the trustee is a company, its directors may also incur personal liability. A trustee must keep trust assets separate from his own and, should the trustee become bankrupt, Jersey law provides that the trust assets will not be available to the trustee's creditors and so are not affected by his insolvency.

Many prospective settlors find it difficult to accept the fact that they will lose control of their assets on establishment of the trust, but it is the very fact that the trust assets no longer belong to the settlor which gives rise to the benefits outlined below. As the trust assets cease to be the property of the settlor, he may not be liable to pay tax on them and they may not be available to his creditors. Furthermore on his death they will not form part of his estate and so will not be governed by his Will nor subject to probate.

2. BENEFITS OF A TRUST

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:

- anonymity - a trust is not a public document and does not need to be registered with the Jersey authorities. Furthermore, neither the settlor nor the beneficiaries will be the registered owner of any trust assets. As a result, a trust arrangement can be regarded as highly confidential.
- asset protection – a trust is an effective way to protect assets from creditors, as the settlor ceases to own the assets, but also from foreign claims based on, firstly, a lack of recognition of the trust, secondly, infringement of forced heirship rules (below) and thirdly, a personal relationship with the settlor, for instance such as husband and wife.
- taxation - a trust can be of assistance in planning for the legitimate avoidance of taxation, particularly for those with international wealth.
- estate planning - a trust is a flexible way to provide for the succession of family wealth and, as mentioned, unlike a Will it is not a public document.
- freedom of choice - a trust can provide for the transmission of wealth in a manner which may not be allowed, and to persons who may not be entitled, in some countries.

- reduced political risk – if the trustee and the assets are in a stable jurisdiction, a trust can provide protection against the nationalisation or seizure of assets.

3. ESTABLISHING A TRUST IN JERSEY

Jersey is an ideal location for the establishment of an international asset-holding trust. It is politically and economically stable, has a well-developed legal system which understands and recognises trusts and provides the highest standards of protection for beneficiaries. For example, all professional trustees must be regulated and licensed by the Jersey Financial Services Commission. Furthermore, communications and local infrastructure are excellent and the authorities jealously guard Jersey's reputation for security and financial probity.

A trust is a Jersey trust where the trust deed states that the trust is to be governed by Jersey law. 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 income and capital becoming liable to tax in another jurisdiction). There is also no requirement that any government fees or duty be paid either on the creation of a trust or while it continues in existence.

Jersey law contains specific provisions enabling wealth to be passed on in a manner which does not comply with so-called "forced heirship laws". These are laws of particular countries which require specific portions of a person's estate to be left to specified persons (usually, close family members regarded as dependants of a deceased person during his lifetime). Where a settlor transfers assets to a Jersey trust during his lifetime, Jersey law will not give effect to any rule of any other jurisdiction relating to inheritance or succession which says that such a transfer is not allowed. In this way, assets can be left to whomever the settlor chooses, not just to the people (and to the extent) specified by the law of another country.

Article 9 of the Trusts Law provides 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. Article 9(2) provides that any foreign claim based on a lack of recognition of the trust machinery will be ignored by the court.

The new Article 9A of the Law provides that settlors may reserve for themselves certain powers. Perhaps the most important of these being that the settlor may restrict the exercise of any powers or discretions of a trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust. Other powers which can be reserved include the power to revoke, vary or amend the terms of a trust or any trusts or powers arising wholly or partly under it; to advance, appoint, pay or apply income or capital of the trust property or to give directions for the making of the same; to appoint or remove any trustee, enforcer, protector, beneficiary, investment manager or adviser; and to change the proper law of the trust.

The only significant form of taxation in Jersey is income tax; Jersey has no capital taxes, inheritance taxes, gift taxes or wealth taxes. However, the trustees of a Jersey trust will not be liable to income tax on the income from trust assets where none of the beneficiaries is Jersey resident. Capital transferred to a Jersey trust can therefore grow and accumulate tax-free within the trust. (It should be noted, however, that although there are few taxes in Jersey, a settlor and/or the beneficiaries of a trust may have tax obligations in their own countries. In addition, Jersey has entered into double-taxation agreements with the United Kingdom and Guernsey and has signed an agreement with the United States of America in relation to sharing certain tax information. Jersey has also committed itself to entering into similar agreements with other countries in the next few years, although the format of any agreements to be implemented has not yet been decided.)

4. TYPES OF TRUST

(a) Accumulation and maintenance trusts

An accumulation and maintenance trust is generally used by a settlor for the purpose of providing for his children, grandchildren and further generations. As the name suggests, it is a trust which 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). Under Jersey law, it is possible for a trustee to accumulate income for up to one hundred years. The benefits of the trust can therefore be enjoyed by a number of generations although, at some point, the descendants of the settlor will have to receive the capital of the trust property.

(b) Fixed interest trusts

A fixed interest trust is a trust where the interests created are readily identifiable from the terms of the trust and will give rise to a particular beneficiary having a fixed entitlement to the income and/or capital of the trust property. The interests are usually fixed by time (for example, a beneficiary may be paid income between the ages of eighteen and twenty-five, until he marries, or until he dies) and by amount (for example, a beneficiary may be limited to 25%, 50% or any proportion of the trust assets). The specific interests can be tailored to meet virtually any requirements (provided that the trust must end within one hundred years of its creation).

(c) Discretionary trusts

A discretionary trust is one where, unlike a fixed trust, the trustee has discretion to decide the share of trust capital and income which each beneficiary will receive. As a result, it can provide more flexibility than a fixed trust and the trustees can respond to future circumstances as and when they arise. In administering a discretionary trust, the trustee normally requires guidance from the settlor as to the distribution of capital and income and this is often given in the form of a letter of intent. This letter may be amended from time to time or totally revoked but, whilst it is a good guide to the trustee, it is not legally binding.

(d) Reserved powers trusts

A reserved powers trust allows a third party to the trust (usually but not necessarily the settlor or other instigator of the trust) to retain certain powers in respect of the trust. These powers may deal with any aspect of the trust, ranging from how the trusts’ assets are invested through to who may benefit from the trust and in what circumstances. Trusts of this type offer a flexibility which appeals to many prospective settlors, although in each case care will need to be taken to ensure that the reservation of any particular power or powers does not give rise to any adverse tax consequences.

(e) Purpose trust

Until recently, Jersey followed English law in recognising only trusts in favour of beneficiaries or established for charitable purposes. It is now possible to set up trusts which are neither charitable nor for obvious 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. The only major limiting factors are that the purpose must be clear and cannot be immoral, illegal or contrary to public policy. Additionally, a person known as an “enforcer” must be appointed to enforce the terms of the trust. This can become quite a technical area and further advice is available on request.

5. PRIVATE TRUST COMPANIES

Private Trust Companies (PTCs) are allowed to carry on business in Jersey without registering under the Financial Services (Jersey) Law 1998 pursuant to an exemption under the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000. Although there is no registration requirement, the JFSC is able to exercise a supervisory role in relation to those PTCs which operate under the exemption.

In order to qualify for the exemption, the PTC must provide trust company business services in respect of one or more trusts and must not solicit from or provide trust company business services to the public. The intention underlying this requirement is that the PTC will be acting as trustee in relation to one or more trusts established for a particular family and will not be providing or marketing its services to third parties.

6. FOUNDATIONS

The Foundation is an important new type of legal entity that is a hybrid of a trust and a company. It is similar to a company in that it is governed by a council in accordance with its charter and regulations and is a body corporate, but is also like a trust in that a foundation must have one or more objects which may be a purpose (charitable or non-charitable) and/or be for the benefit of one or more beneficiaries.

A foundation must at all times have a valid charter. Once the foundation has been incorporated, the charter is filed with the Registrar and available for public inspection at the JFSC. The charter must state: the name of the foundation; the objects of the foundation; information regarding winding, dissolution and the term of the foundation; and details of the initial endowment. In addition to the charter, every foundation must have regulations, unless all of its governing provisions are contained within the charter.

The council of the foundation administers its affairs and carries out its objects. There must always be a Qualified Member on the council. The Law imposes on the council members duties to act honestly and in good faith and to exercise due care.

A foundation need not have beneficiaries, and may be established solely for a particular purpose. Where there are beneficiaries, they have no interest in the assets of the foundation and are not owed a fiduciary or analogous duty by the foundation or by the members of the council, the guardian or any other person appointed under the regulations. Moreover, unless required by the charter or regulations, a foundation is not obliged to provide any beneficiary with information relating to the administration, assets or carrying out of the objects of the foundation. In this last respect, foundations differ from trusts manifestly.

7. CONCLUSION

The wide variety of circumstances to which trusts can be applied make them uniquely valuable instruments and well worth considering in the context of an individual's overall financial planning. Of course the particular circumstances of a prospective settlor will vary widely as will his motives for establishing a trust. Anyone considering setting up a trust should therefore obtain expert advice on the tax and legal implications at an early stage.

For more specific advice on Jersey Trusts, we invite you to contact one of the following:

Naomi Rive
Local Practice Group Head: Private Client & Trusts - Jersey
nrive@applebyglobal.com

Marc Guillaume
Advocate: Private Client & Trusts - Jersey
mguillaume@applebyglobal.com

Appleby is the leading provider of offshore legal, fiduciary and administration services. With an unparalleled presence in the key offshore jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, Mauritius and the Seychelles, the group offers advice on offshore law. We also have offices in the international financial centres of London, Hong Kong, Zurich and Bahrain.

Over 800 lawyers and professional specialists deliver sophisticated, specialised services, primarily in the areas of Corporate and Commercial; Litigation and Insolvency; Private Client and Trusts; and Property. We advise global public and private companies, financial institutions, and high net worth individuals, working with them and their advisers to achieve practical solutions, whether in a single location or across multiple jurisdictions.

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice.

If this guide has been sent to you, and you would like to update your details or be removed from our marketing database, please contact the marketing department at Appleby or email info@applebyglobal.com

Bahrain
Bermuda
British Virgin Islands

Cayman Islands
Guernsey
Hong Kong

Isle of Man
Jersey
London

Mauritius
Seychelles
Zurich