



**Standard
Bank**

FACT SHEET: JERSEY TRUSTS

International Fiduciary Services

INTRODUCTION

Trusts provide a valuable tool for flexible succession planning. Dating back to the 12th century during the crusades when landowners would entrust their property to another person while they were away, trust law acknowledges the split between legal ownership and beneficial ownership.

Through ages of modernisation, professional trustees now offer expert administration of assets and succession planning through trusts for the benefit of the trust beneficiaries.

WHAT IS A TRUST

A trust is a legally binding arrangement whereby a person (the settlor) transfers assets to another person (the trustee), to hold for the benefit of someone else (the beneficiary) or for a specified purpose. The terms upon which the trustee holds the assets are set out in a document known as a trust instrument (sometimes referred to as the trust deed, settlement, or declaration of trust). The trustee is the legal owner of the assets, administering and making decisions for the benefit of the beneficiaries.

The trust instrument sets out the trustee's powers to manage, apply and distribute the assets, and to terminate the trust. The settlor can also record their wishes in a document known as a letter of wishes, which, although not legally binding, can guide the trustee when making decisions. Strict fiduciary duties are imposed on the trustee under Jersey law, which require of the trustee to act with diligence, as would a prudent person, to the best of the trustee's ability and with the utmost good faith.

A protector can be appointed over the trust. This is a person or legal entity which is given certain powers under the trust instrument, with the aim of safeguarding the assets and ensuring that the trustees are acting in accordance with the trust instrument.

Trust instruments can be tailored to the family's bespoke needs as trusts are highly flexible. The settlor can be a beneficiary and may have other roles also, such as the role of the protector.



PRACTICAL APPLICATIONS OF A JERSEY TRUST

SUCCESSION PLANNING

On account of their flexibility, trusts are an invaluable tool for succession planning. A trust can better provide for the uncertainty the future brings, because of the discretion the trustee has when exercising its duties and powers. In contrast to the settlor having to make the final decision during their lifetime as to the devolution of their estate, a trustee can ensure a trust evolves in line with changing circumstances, needs and times. Particularly in the case of blended families, succession planning can become complex and benefit from the flexibility of a trust. In addition, a trust allows the beneficiaries to benefit from a settlor's wealth without having to divide his assets. This is especially helpful where the type of asset is not easily divided or loses value if divided, such as property or a family business.

PRESERVATION OF WEALTH

By allowing the beneficiaries to enjoy the family wealth without dividing the assets or transferring ownership, a trust preserves the wealth, ensuring a lasting legacy for future generations. By settling an asset onto trust with bespoke drafting, ownership of the assets will not become fragmented amongst a large number of second and third generation beneficiaries, there is no risk of the assets devolving to persons outside of the family, and the wealth is protected from spendthrifts in the family.

ASSET PROTECTION

Trusts are often used to protect assets from political and economic risk, and can be structured in such a way as to protect the trust assets from the settlor's or the beneficiaries' future creditors. In addition, beneficiaries may not have the same experience and expertise in managing wealth as the settlor may have. Having a professional trustee managing the wealth in a prudent manner can help to protect it.

PRIVACY, CONFIDENTIALITY, AND ANONYMITY

The trust instrument is a private document to which the settlor and the trustee are the only parties. If a protector or enforcer is named at the onset, they may also be a party to the trust instrument. There is currently no requirement in Jersey to file the trust instrument with a public body and information relating to the trust is not accessible by the general public.

AVOIDANCE OF PROBATE FORMALITIES / NO INTERRUPTION OF ENJOYMENT OF ASSETS

Depending on the terms of the trust and the tax residence of the settlor, the trust assets will not form part of the settlor or the beneficiaries' estate, and therefore are not subject to a probate process upon death. Not only does this avoid the cost and time involved with the administration of an estate, but it ensures that the beneficiaries can have uninterrupted enjoyment of assets. This can be important where the trust assets are used for a beneficiary's maintenance, education, or other essential purposes.

FORCED HEIRSHIP

Certain jurisdictions have forced heirship rules, limiting the settlor's freedom of testacy. In contrast, assets held in a trust can be distributed in any manner that the trustee deems to be in the best interest of the beneficiaries, taking into account the settlor's wishes. Depending on the governing law (i.e., Jersey law), the law will provide protection against forced heirship claims.

COMMERCIAL USES

The commercial use of a trust is not limited in any way. Examples of such uses include employee benefit trusts, administration of international saving and retirement plans, investment vehicles such as unit trusts, and holding security over a borrower's assets for the benefit of lenders under syndicated loans.



BENEFICIARY PROTECTION

In some cases, beneficiaries may be unfit to manage their own affairs, due to age, infirmity or profligacy. Having such a beneficiary's share of the family wealth managed by a trustee so that the beneficiary can have the full advantage and benefit of the wealth without having the responsibility for its management, protects the beneficiary and the family wealth.

In addition, there are instances where a beneficiary may be vulnerable to exploitation should they receive a significant inheritance directly, or they may not be mature enough to make decisions over large sums of money.

FORMS OF TRUSTS

1. Discretionary Trust

With a discretionary trust, the trustee has the discretion as to the timing, manner, and amount by which beneficiaries of the trust might benefit from trust assets. The beneficiaries do not have a vested right to the trust assets or the income. Being the most common form of trust, a discretionary trust can be particularly useful where the needs of the beneficiary or class of beneficiaries may change. This type of trust provides the maximum protection and flexibility to allow the trust to evolve with the family over time.

2. Fixed Interest Trust

The trust instrument may stipulate how, when and to whom (or any combination of these factors) the assets of the trust should be applied or distributed, so that the trustee does not have discretion over such matters. For example, the trust instrument may provide that all the income of the trust must be paid to a specific person during their lifetime.

3. Charitable and Non-charitable Purpose Trust

A purpose trust does not have any beneficiaries, but instead exists to advance some purpose, charitable or non-charitable. Where the purpose is non-charitable, the trust instrument must provide for an enforcer, whose duty it is to enforce the trust in relation to its purpose. The enforcer cannot also be the trustee.

4. Settlor-directed / Reserved Powers Trust

The settlor can reserve certain powers for himself (or another person) in the trust instrument. Such reserved powers may relate to the investment of the trust assets, the addition or removal of beneficiaries, the appointment or removal of trustees, or how the trust assets are to be distributed. A reserved powers trust may not be appropriate in all circumstances, and when appropriate, it may only be possible to reserve a finite amount of power.



WHO CAN SERVE AS A TRUSTEE?

All Jersey professional trustees must be licenced as a trust company business and are subject to Jersey law as well as the code of practice, guidelines, and policy issued by the Jersey Financial Services Commission.

LEGAL FRAMEWORK

Jersey is not part of the United Kingdom but is a self-governing Crown Dependency. Situated in the channel between England and France, the island has its own financial, legal, and judicial systems. Trusts that are subject to Jersey law are governed by the Trusts (Jersey) Law 1984 (as amended), supported by strong judicial precedent. The law imposes certain duties on the trustee, regulates the administration of trusts, and provides rights to beneficiaries.

The trustee's duties can be enforced by the Royal Court of Jersey, if necessary. Settlers and beneficiaries can be assured by the quality of the legal system in Jersey as well as the high level of regulation in the financial sector in Jersey by the Jersey Financial Services Commission. Jersey has an impressive financial centre, ensuring a variety of support services (such as legal) are available.

Jersey is a party to the International Hague Convention on the Law Applicable to Trusts and on their Recognition.

WHY JERSEY?



JUDICIAL, LEGAL, AND REGULATORY CERTAINTY

Jersey has legal autonomy with a long record of judicial, legal, and regulatory stability, with close ties to the EU and the UK. Other jurisdictions have used the Jersey trust legislation as a model for similar legislation, and the body of trust case law in Jersey is substantial. The legal sector in Jersey is robust with legal professionals who are experienced in advising in relation to trusts, as well as liability arising from fraud, wilful misconduct, and gross negligence.

REDUCED POLITICAL AND INSTABILITY RISK

Jersey provides reduced political and instability risk and is often used to safeguard assets from potentially unstable or uncertain environments.

STRAIGHTFORWARD TAX TREATMENT

Where the trust is tax resident in Jersey and there are no Jersey resident beneficiaries, the trust will only be subject to tax on Jersey source income. By concession, Jersey bank deposit interest does not attract tax when received by a trust with no Jersey resident beneficiaries. It is always important to consider the tax implications for the settlor and the beneficiaries before establishing a trust, and independent legal and tax advice should always be sought.



GOVERNANCE

Jersey is widely acknowledged as being capable with an excellent service ethos. The depth and strength of Jersey's financial centre result in high standards of governance.

FLEXIBILITY

The trust law in Jersey is very flexible, with the ability to appoint protectors or reserve powers, no rules against perpetuity, no forced heirship, etc.

MODERN TRANSPARENT JURISDICTION

Jersey has a world-class tax transparency framework and is committed to combatting financial crime and tax abuse. Jersey complies with various global transparency and reporting standards.

FOREIGN LAW PROTECTION

Only Jersey law applies on questions relating to the trust's validity and the transfer of property to the trust.

SUMMARY

Trusts are versatile and can serve several purposes. It is important that the trustee provides bespoke services, planning for your family's unique needs and circumstances. As a jurisdiction, Jersey offers an attractive proposition with its established trust law, stability, strong regulation, and wide financial sector.

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