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JERSEY TRUSTS

A "trust" is a legal arrangement which exists in many jurisdictions when one person (a "trustee") owns assets not for his own use and benefit but for the benefit of others (the "beneficiaries"). It is normal, but not essential, for a trust to be constituted in writing in the form of a or "trust instrument" which will set out the manner in which the beneficiaries can benefit from the trust, as well as the powers and duties which the trustees will have in administering the trust and its assets.

Reasons for using a Jersey Trust

Many of the purposes to which a trust can be put, take advantage of the essential feature of a trust that, by transferring assets to trustees a settlor loses control or ownership over those assets, while still being able to procure that the assets are able to benefit himself or his family. A company cannot fulfil this purpose: although title to assets can be transferred to a company, the shares in the company will remain part of the settlor's estate for all purposes.

The use of trusts in private wealth management can offer a wide range of benefits depending on the circumstances of the parties involved. As stand-alone arrangements and in conjunction with underlying companies, trusts can provide flexible and effective mechanisms to pursue the following objectives:

Avoidance of forced heirship requirements - many systems of law impose upon individuals a requirement that on their death they must leave a proportion of their assets to certain heirs. A trust can avoid this and, in the case of a Jersey trust, the Jersey courts will not entertain a claim to set aside any trust which is based upon forced heirship rights of a foreign jurisdiction.

Protection against high taxation - a trust may often be an effective tool in limiting or postponing the incidence of taxation upon the assets placed in trust.

Protection against exchange control or sequestration - many settlors resident in politically sensitive jurisdictions find that a trust, by removing assets from their ownership, can protect against the risk of assets being seized by political means or against restrictions imposed upon the transferability of assets.

Continuity of ownership - often a settlor will wish to ensure that a particular asset will remain in the same ownership for the foreseeable future. Examples include shares in a family company or a valued heirloom.

Protection against profligacy - similarly, a settlor may be concerned that assets should not be released to his children until they have demonstrated a responsible and mature attitude. A trust can achieve this.

There are particular reasons for choosing a Jersey trust:

Confidentiality - there is no register of Jersey trusts, or any requirement whatsoever that the existence of a Jersey trust be made known to any person other than those involved in its establishment.

Political stability - Jersey is effectively self-governed, with the security of a long tradition of political stability and close links with the United Kingdom and Europe.

Strong professional services - the finance industry in Jersey is widely acknowledged as being among the most capable of all offshore jurisdictions. There is a high quality of services available both to act as trustee and to enable a trustee to seek financial, investment and legal advice.

Strong legal foundations - the Trust Law has been used as a model for similar laws in other jurisdictions. There is an increasing body of judicial authority interpreting the Law. The legal profession in Jersey is well experienced in advising in relation to trusts.

Absence of local taxation - as mentioned above, a Jersey trust with no Jersey resident beneficiaries will suffer no Jersey taxation whatever.

Frequently Used Terms

"settlement" - this term is synonymous with "trust". It can also be used to refer to the form of trust instrument where both the settlor and the trustee are signatories. In this context it is to be distinguished from the term "declaration of trust" which signifies a trust deed to which only the trustee is a party and which can therefore create an additional safeguard against disclosure of the identity of the settlor, where there is a concern, or can be used where it is inconvenient to require the settlor to sign the trust deed.

"trust fund" - means simply the assets held by the trustee from time to time. Generally speaking, assets can be added to a trust fund at any time, including by a person who was not the original settlor. Any form of asset (other than Jersey land) can be held as part of the trust fund of a trust. Often, however, the "real" assets will be held in a private investment company the shares of which are held by the trustee and form the trust fund.

"Jersey trust" - this term is defined in the Trusts (Jersey) Law 1984 (the "Trust Law") as a trust governed by Jersey law, and this is the sense in which the term is used in this memorandum. Every trust must be governed by a particular system of law (known as the "proper law") since it gives rise to legally enforceable rights and duties which will be determined by the governing law.

"trustee" - this may be an individual or a company. A settlor must choose a trustee with care, to ensure as far as possible that the trustee will carry out the terms of the trust competently.

"settlor" - this is the person who causes the trust to be established by transferring the initial assets of the trust fund to the trustee. He, or others, may subsequently transfer further assets. Usually, but not necessarily, the transfer is by way of absolute gift. Unless the trust instrument reserves powers to the settlor, he has no subsequent right to interfere in the running of the trust or to enforce the terms of the trust - these rights are vested solely in the beneficiaries and the courts. A settlor may, however, be a beneficiary of a trust.

"beneficiaries" - there will usually be a "class" of beneficiaries who are eligible to benefit from a trust. The nature of their interest (whether they are entitled to benefit in a certain way, or must rely upon the trustee deciding to provide some benefit) will depend upon the nature of the trust and its terms. The beneficiaries are however entitled to expect the trustee to administer the trust for their benefit in accordance with the terms of the trust and the duties of trustees laid down by the Trust Law. For this reason, beneficiaries are entitled (if they so request) to copies of certain trust documents (including the trust instrument) and the accounts of the trust.

"protector" - this is a person who can act as a fetter upon the way in which the trustees can exercise certain powers. Most commonly, a protector is given a power of veto over the exercise of particular powers contained in the trust instrument. As such, the protector is not a trustee, but he does have duties of a fiduciary nature. A protector is often a trusted personal adviser of the settlor, and this is one means by which a settlor may retain some assurance that a trust will be administered as he had intended.

"discretionary trust" - this is a form of trust where the interests of the beneficiaries are not fixed, but depend upon the exercise by the trustee of some discretion or power in their favour. As such, it is the most flexible of all trusts and the most common form of Jersey trust. The advantage is that the individual circumstances and needs of each beneficiary can be considered at any time. A trust where the interests of beneficiaries are fixed is a "fixed" or "strict" trust.

"life interest trust" or **"interest in possession trust"** - these terms both indicate a trust where a particular beneficiary (the "life tenant") has a right to receive all the income arising from the trust fund during his lifetime. The trustee will usually also have a power to apply capital to the life tenant. Often there are successive life interests, in favour of an individual and his spouse. After the end of the life interest(s), the trust fund will be held upon fixed or discretionary trusts for other beneficiaries, perhaps the children of the life tenant. In such circumstances the trustee must in investing the trust fund balance the competing interests of life tenants and capital beneficiaries.

"protective trust" - although rarely used, this term applies to a trust where the interest of a beneficiary will be reduced or terminated if the beneficiary attempts to assign his rights as a beneficiary or becomes subject to some form of compulsory assignment (such as a bankruptcy order). A more restricted regime of benefits, confined to essential maintenance of the beneficiary, then applies. The term must be distinguished from "asset protection trust", which refers to a trust established with a view to protecting trust assets from a future bankruptcy or legal liability of the settlor.

This information is intended to provide a brief guide on the subject of Jersey trusts. It is not to be regarded as giving legal or financial advice that may be acted or relied upon. For further information in relation to the above or in relation to any specific circumstances please contact:

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