Introduction to trusts

What is a trust?

A trust is a legally binding arrangement, whereby a person (the settlor) transfers assets to another person (the trustee), who is entrusted with legal title to the trust assets, for the benefit of other persons (the beneficiaries) or for a specified purpose.

The key feature of a trust is that it distinguishes between legal ownership and beneficial ownership of property. The former vests in the trustees, the latter in the beneficiaries.

A trust is normally documented by a trust instrument, setting out the terms the settlor and the trustees have agreed and outlining how the trustees will administer the trust fund for the beneficiaries.

There is no register of trusts in Jersey and trust arrangements are not open to public view.

A Jersey trust is extremely flexible and able to own any type of movable or immovable property except of Jersey land.

A Jersey law trust may exist for a limited or an unlimited period.

What are the Roles?

Settlor

A settlor is the person who establishes a trust, by transferring the initial assets of the trust fund to the trustee.

Once this happens, the settlor loses all ownership rights. However, this can give rise to several potential benefits including:

- The assets will no longer form part of the settlor's estate and will not be governed by their will, nor subject to probate
- They may not be available to his creditors (providing the assets were not transferred into trust to avoid creditors)
- The settlor may no longer be liable to pay tax on them.

Subject to any tax considerations, the settlor may also be a beneficiary and the protector of the trust. The settlor may also act as trustee although this is rare in the context of Jersey law trusts established for non-Jersey resident beneficiaries.

Trustees

Generally, in Jersey, trusts are administered by professional corporate trustees regulated by the Jersey Financial Services Commission*.*

The trustees must administer the trust under the terms of the trust instrument and the Trusts (Jersey) Law 1984, as amended (the "Trusts Law") and must exercise their powers solely for the benefit of the beneficiaries.

The Trusts Law imposes fiduciary duties on trustees, regulates the administration of trusts and provides rights of beneficiaries. It requires trust assets to be kept completely segregated from the property of the trustees and separately identifiable from any other property of which they are the trustee.

The performance of a trustees’ duties will be enforced by the Royal Court of Jersey, if necessary, thus providing a high degree of protection for both settlor and beneficiaries.

Beneficiaries

The beneficiaries are the persons entitled to benefit from the assets held on trust.

Often the beneficiaries will be members of the settlor’s family, but the settlor can name anyone, including themselves, as a beneficiary.

There must be sufficient certainty as to the identity of the beneficiaries for the trust to be valid.

The trust instrument prescribes how and when a beneficiary may benefit. This may - for example - be contingent on a specified event occurring, or at the trustees’ discretion.

Protector

A settlor may choose to have a protector, however it is not essential for a Jersey trust.

The role of the protector is to oversee the trustees and provide a level of control around the wide discretionary and fiduciary powers conferred on a trustee.

Common powers, which are made subject to protector consent, include the power to appoint new trustees, the addition and removal of beneficiaries, and the distribution of capital from the trust fund.

Often the protector is a close friend, relative or professional adviser of the settlor or the settlor himself, which provides some assurance that a trust will be administered as the settlor intended.

A successor protector may be appointed in the event of the protector’s death, incapacity or resignation.

Trust Instrument

The trust instrument provides the trustee with the power to manage the trust assets in accordance with the terms of the trust instrument and the strict duties imposed on the trustee under Trusts law.

Types of Jersey trust

Discretionary

The most common form of trust, with the flexibility to take account of changes in family circumstances.

The trustee has wide powers to administer the assets and to distribute them at their absolute discretion, under the terms of the trust instrument.

The beneficiaries only have an equitable interest, meaning they have no fixed right to benefit, but may do so only when the trustees exercise their discretion.

Given the trustees’ complete discretion, it is usual for the settlor to provide guidance, about the administration of the trust fund, by way of a letter of wishes.

A letter of wishes is not legally binding, although the trustee will generally have regard to it when considering the exercise of discretionary powers. It can be amended or revoked at any time.

Discretionary trusts often have protectors.

Fixed Interest

A trust whereby a particular beneficiary has a fixed entitlement to the income and/or capital of the trust property, thus removing the trustee's discretionary powers over the distribution of the assets.

A trust deed may specify exactly how and when assets are to be made available to the beneficiaries and interests are usually fixed by time and by amount.

For example, a life interest trust requires the trustee to distribute all of the income generated to a particular beneficiary (the life tenant), during that person's lifetime.

It is possible to have a combination of fixed and discretionary trusts. For example, a deed may provide that a trust fund is held on discretionary terms, on the death of the life tenant.

The trustee must have regard to the competing interests of life tenants and capital beneficiaries when investing the trust fund.

Reserve Powers

Enables the settlor or a third party to retain certain powers in respect of the trust.

These may deal with any aspect of the trust, ranging from how the assets are invested, through to who may benefit and in what circumstances.

Care should be taken to ensure that the reservation of any particular power or powers does not give rise to any adverse tax consequences of the power holder.

Charitable and non-charitable purpose

Charitable trusts or non-charitable purpose trusts may be used for a wide variety of philanthropic purposes.

A purpose trust has no beneficiaries, but instead exists for advancing charitable or non-charitable activities.

The purpose must be clear and cannot be immoral, illegal or contrary to public policy.

An enforcer is appointed to implement the terms of a trust, in line with its charitable or non-charitable purposes.

Affinity's role in a trust

- Provision of professional, regulated, trustee
- Administration services to the trust, including: bookkeeping, statutory records, and financial statements, project management and general administration to ensure that the assets are maintained in accordance with the trust instrument and the trust law
- Regular dialogue with the family, lawyers, accountants and trusted advisers
- Investment oversight

- Wealth reporting service – providing a consolidated picture of assets whether in relation to trust only or for the wider family wealth, if required. This may be tailored to meet the family's needs and can include:
    - Portfolio risks: liquidity, diversification and shortfall
    - Single holding and sector research
    - Forecasts (return, income) and recommendations
    - Ongoing monitoring
- Ensuring compliance and statutory reporting as may be required
- The filing of tax returns for the trust, if required, and in accordance with the relevant advice.

Why establish a trust?

A Jersey trust may be used for a wide range of purposes: personal, commercial and charitable.

Flexibility and confidentiality make it a highly effective vehicle for private wealth structuring.

Benefits will depend on the residence and domicile of the settlor and the beneficiaries.

Professional advice should be sought in each jurisdiction which affects the key parties to the trust fund, ahead of its establishment.

Preservation of wealth

Preserve the continuity of ownership of particular assets, e.g. shares in a family business, which a settlor might not wish to divide between heirs on death. Individuals may benefit from the assets whilst avoiding fragmentation of ownership or ownership ending up outside of the family.

Succession

A flexible mechanism for the succession of family wealth, without the need for expensive and time-consuming probate. Trust assets do not form part of a settlor's estate on death and can continue to be held for the benefit of succeeding generations.

Freedom of choice

A trust may provide for the transmission of wealth in any manner that the settlor desires, which may not be permitted in countries with forced heirship or strict religious inheritance laws. Jersey courts will not entertain a claim to set aside any trust, based upon forced heirship rights of another jurisdiction.

Protection against political risk

A trust in a stable jurisdiction, such as Jersey, can protect against the nationalisation or seizure of assets for those situated in a country suffering from or at risk of political unrest or instability.

Protection of minors or vulnerable individuals

Enables the trustees to control beneficiaries' access to assets and how funds are distributed; effectively protecting in instances where the beneficiaries are unable to manage their own finances due to age, infirmity, or profligacy.

Anonymity and privacy

The trust deed does not have to be registered with the Jersey authorities and information relating to the trust is not accessible by the general public. There is also no requirement to file trust accounts, however, beneficiaries may be entitled to financial information relating to the trust.

Taxation

May be an effective tool in limiting or postponing taxation upon assets settled into a trust, particularly for those with international wealth. Furthermore, a Jersey trust with no Jersey resident beneficiaries is only liable to tax on Jersey source income which excludes Jersey bank interest.

Asset protection

Can protect from creditors, as the settlor ceases to own the assets, as long as the trust is not established with the intention of defrauding creditors.