An introduction to the law of trusts in Jersey

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The Jersey law of trusts is contained principally in the Trusts (Jersey) Law 1984, as amended (the TJL) which is mainly the embodiment of traditional trust principles as evolved under English law. Where the TJL is silent, and there is no Jersey judicial authority on point, the Jersey court often has regard to English case law for guidance.

Under the TJL:

• there are no particular formalities required for the creation of a trust (except for unit trusts);
• the beneficiaries have proprietary rights in the trust property;
• the trust property is treated as entirely separate from the trustee’s personal assets. Therefore, on insolvency of the trustee, the trustee’s creditors have no claim against the trust property except to the extent that the trustee is also a beneficiary of the trust;
• any person having full capacity to hold and dispose of property may be a settlor or a trustee;
• the trustee has all the administrative powers of an absolute beneficial owner unless those powers are restricted by the terms of the trust; and
• trustees are in a fiduciary position and must exercise their powers only in the best interests of the beneficiaries.

Features available in Jersey trusts

The flexibility allowed by the TJL means that an infinite variety of Jersey trusts may be created. In particular, it is possible to include the following features in a Jersey trust:

Declaration of trust

As an alternative to a settlement, a trust may be established by a declaration of trust; a document signed only by the trustee.

Discretionary or fixed trusts

The dispositive provisions of a trust may be written in a wide variety of ways which may provide any degree of flexibility, ranging from a completely fixed trust to fully discretionary trusts.

Addition of assets

After provision of the initial trust assets, further assets may be settled into the same trust. The most common arrangement is to start with a purely nominal initial trust fund and subsequently to add the majority of the trust assets.

Addition of beneficiaries

A power may be vested in the trustees for the addition in the future of further persons to the class of beneficiaries entitled to benefit.
Retention of benefits and powers by a settlor

A settlor may be a beneficiary and the settlor may retain substantial powers over the trust including the power to revoke or vary the terms of the trust and to give directions as to investments.

Appointment and removal of trustees

The terms of a trust may provide for the settlor or any other person to have the power to appoint and remove the trustees.

Protector

A protector is commonly appointed where a settlor wishes to give to someone, other than himself, a degree of control and supervision over the trustees.

"Flight" clauses

Provision may be made for the trustees to be removed and foreign trustees to take their place in the event of some political or strategic emergency in the country of residence of the trustees.

Change of proper Law

The trust may include a power to change the proper law from Jersey law to the law of another jurisdiction. Equally, a change of the proper law from a foreign law to Jersey law may be valid under Jersey law if it is valid under the foreign law.

Principal differences between Jersey and English Trust Law

Jersey land excluded

Land and other immovable property situate in Jersey may not be directly held on trust. Holding such property indirectly (for example through a company the shares of which are owned by a trust) is permitted.

Perpetuities

The rule against perpetuities, as known in English law, does not apply in Jersey.

Dealings by trustee with third parties

The liability of a trustee to a third party arising out of any transaction affecting a trust (save for breach of trust) extends only to the trust property provided the third party was aware that the trustee was acting as trustee.

Forced heirship and similar rights

The TJL contains provisions to protect trustees of Jersey trusts against the consequences of non-Jersey forced heirship rules. For a Jersey law trust, various important issues such as any question concerning the validity of a trust, the capacity of the settlor and the administration of the trust are determined only in accordance with Jersey domestic law and this is so whether or not the trust defeats claims arising from a personal relationship or by way of foreign heirship rights.

Purpose trusts

Trusts can be established in Jersey for purposes, whether charitable or otherwise, under which there are no named or ascertainable beneficiaries.

The Hague Convention on trusts

The Hague Convention on the law applicable to Trusts and their recognition was extended to Jersey in 1992. The purpose of the Convention is to lay down simple rules for determining which country’s laws govern a particular trust. The Convention sets out the basic legal consequences of a trust which must be recognised once its proper law has been determined.
Jersey trusts and foreign trusts

Underlying the drafting of the TJL are concepts of the "Jersey trust" (of which the proper law is Jersey law) and of the "foreign trust" (of which the proper law is the law of some jurisdiction other than Jersey, such as English law). The Jersey court has jurisdiction over both types of trust; most issues in relation to foreign trusts will be determined by the Jersey court in accordance with the relevant foreign law.

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