

# Jersey: Trusts

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Jersey is a leading international finance centre with a well-established trusts industry. Jersey trusts are governed by the Trusts (Jersey) Law 1984 (the **Law**), an advanced and modern piece of legislation which offers both flexibility and a high degree of protection for the parties involved which means that it's a particularly advantageous jurisdiction in which to establish a trust.

## What are trusts used for?

Below are some examples of the purposes for which a Jersey trust may be used:

- estate and succession planning
- philanthropy
- tax planning (for example, protected or excluded property settlements for UK inheritance tax purposes and foreign grantor trusts for US tax purposes)
- asset protection
- privacy, and
- commercial uses, such as employee benefit trusts, pension funds and unit trusts.

## Key parties and documents

A trust involves the separation of the legal title, or ownership, of property from the right to benefit from that property. A trust is normally established by the transfer of legal title to property (known as the trust fund) by a person (known as the settlor) to another (known as the trustee) to be held for the benefit of one or more persons (known as beneficiaries) or for a particular purpose, which can be charitable or non-charitable.

There is flexibility as to how to create a trust, because the Law provides that a trust may be created by oral declaration (unless it is a unit trust), by an instrument in writing (including a will or codicil) or by conduct. However, usually a trust is created using an instrument in writing (known as a trust instrument). This is generally advisable because it provides more clarity as to the terms of the trust.

There must be certainty as to the intention to create a trust, its property and its objects (i.e. beneficiaries and purposes).

## Types of Jersey trust

### Discretionary trusts

Perhaps the most commonly used type of trust, a discretionary trust gives the trustee the discretion as to how, when and how much of the trust fund should be applied for the benefit of the beneficiaries. The beneficiaries have no rights or entitlement as regards the distribution of the trust fund, having merely a hope that the trustee will exercise its discretion for their benefit. The settlor may give guidance, usually in the form of a letter of wishes, as to how the settlor would like the trustee to exercise its discretion, but such guidance is not binding on the trustee.

## Life interest trusts

With a life interest trust, one or more specified persons (known as the life tenant(s)) have a right to receive the income from the trust fund or to use trust property during their lifetime. After the death of the life tenant, the trust will usually revert to being a discretionary trust for the benefit of other beneficiaries.

## Purpose trusts

In Jersey, trusts can be established for both charitable and non-charitable purposes, or a combination of both. Purpose trusts do not have beneficiaries, and instead have a purpose towards which the assets are applied. Where the purpose trust is non-charitable, an enforcer must be appointed. The enforcer has a fiduciary duty to enforce the purposes of the trust, thereby effectively holding the trustee to account. A charitable purpose trust does not require an enforcer as the Jersey Attorney General can enforce the terms of the trust.

Whilst the potential uses of a charitable purpose trust are fairly self-explanatory, non-charitable purpose trusts have a number of potential uses both in a private and commercial context. Such uses include, amongst others:

- in securitisation and finance transactions, to hold the shares in an 'orphan' special purpose vehicle
- to hold shares in a private trust company, and
- philanthropy, where the purposes may not fit squarely within the traditional ambit of charity.

## Hybrid trusts

Jersey law permits the establishment of hybrid trusts, which mix charitable and/or non-charitable purposes and/or trusts for beneficiaries. An enforcer must be appointed to enforce the trust in relation to any non-charitable purposes. The trustee will have a duty to administer the trust in the interests of the beneficiaries and in the furtherance of the purposes of the trust.

## Protective trusts

A protective trust is a particular form of trust whereby the interest of a beneficiary will automatically terminate if that beneficiary attempts to dispose of his rights under the trust or if they become bankrupt. Protective trusts are especially useful where a beneficiary is socially or financially vulnerable.

## Other considerations

### Duration

A Jersey trust can be established for an unlimited duration. This is distinct from many other jurisdictions which impose a maximum trust period at the end of which the trust must terminate. The ability to create trusts of unlimited duration provides settlors with the option of preserving the benefit of their wealth for many generations of descendants.

### Reservation of powers

The settlor of a Jersey trust has the freedom to reserve a number of powers to themselves or to others, often referred to as a protector, without prejudicing the validity of the trust. Examples of powers that may be reserved by a settlor include:

- the power to revoke, vary or amend the terms of the trust in whole or in part
- the power to advance, appoint, pay or apply the income or capital of the trust
- the power to act as, or give directions as to the appointment or removal of, a director of a company wholly or partly owned by the trust
- the power to give binding directions to the trustee to purchase, retain, sell, manage, lend or charge any assets of the trust
- the power to appoint or remove any trustee, enforcer, protector, beneficiary, investment manager, investment adviser or other professional
- the power to change the proper law of the trust, and
- the power to restrict any trustee power by making the consent of the settlor or a third party (such as a protector) a prerequisite to the use of such power.

## Asset protection and firewalls

The Law contains provisions (known as "firewall" provisions) that prevent a Jersey trust from being rendered void by reason that it avoids or defeats a claim under foreign matrimonial, civil partnership or forced heirship laws. These firewall provisions also defend Jersey trusts against attack by courts in foreign jurisdictions by ensuring that (subject to the terms of the trust) all questions arising in relation to a Jersey trust or any disposition of property to or upon such a trust are to be determined in accordance with the law of Jersey, without reference to the law of any other jurisdiction including, for example, questions as to:

- the capacity of the settlor
- the validity, interpretation or effect of the trust or disposition or any variation thereof
- the administration of the trust, including the powers and the appointment and removal of trustees and enforcers, and
- the existence and extent of any powers in respect of the trust, including powers of variation, revocation and appointment, and the validity of the exercise of any such powers.

A foreign judgement which is inconsistent with the Law will not be recognised or enforced by the Jersey courts.

It is however recommended that the trust assets are, so far as possible, located in Jersey, to guard against a foreign court order attaching directly against property in the foreign jurisdiction.

## Trustee's duties

A trustee must observe the utmost good faith and act in accordance with the terms of the trust and in the interests of the beneficiaries or the advancement of the relevant purposes (as applicable).

## Rights of beneficiaries to information

Often, knowledge of entitlement under a trust can be detrimental to beneficiaries. For example, where a beneficiary is in education, knowledge of entitlement to wealth may not serve the best interests of that beneficiary, or in the case of a pension scheme, the entitlement of one member should not be information available to other members. A trustee should therefore consider carefully whether information can and should be disclosed to beneficiaries.

Under the Law, subject to the terms of the trust and to any order of the Jersey court, a trustee is specifically not obliged to disclose to any person information or a document which:

- discloses the trustee's deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty;
- discloses the reason for any particular exercise of a power or discretion or performance of a duty or the material upon which such reason shall or might have been based; or
- relates to the exercise or proposed exercise of a power or discretion, or the performance or proposed performance of a duty.

A beneficiary can apply to the Jersey court for an order requiring the provision of the above information, and a trustee should exercise caution when refusing any such request for information. A beneficiary will also have certain rights to information as a matter of Jersey customary law.

## Limitation periods

The limitation period for bringing actions for breach of trust is three years from the earlier of (i) the date of delivery of the final accounts to the beneficiary, or (ii) the date on which the beneficiary first had knowledge of the breach of trust, provided the claim is not based on fraud or recovery of trust property from the trustee (in which case there is no period of limitation or prescription). In the case of minors and beneficiaries under a legal disability, the period does not begin to run until the beneficiary ceases to be a minor or under a disability. Furthermore, in any event, an action for breach of trust (unless based on fraud or recovery of trust property from the trustee) is barred after 21 years from the date of the breach.

### Assets that may be held in trust

Any type of asset may be held in a Jersey trust except Jersey immovable property (i.e. land or buildings in Jersey).

### Tax and legal advice

Tax and legal advice should be sought on a case by case basis, to ensure that the creation or administration of a new trust does not give rise to adverse tax or legal issues.

### Contacts

A full list of contacts in our International Trusts & Private Client team who specialise in this area can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2024 MOURANT ALL RIGHTS RESERVED