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Trusts

Did you know Jersey is home to 836 regulated trust company businesses? We are responsible for £400 billion worth of assets for private individuals and families from around the world.

People can set up trusts all over the world. Here you will get an overview of Jersey trusts. This factsheet is about trusts in Jersey; not trusts from anywhere else.

Here you will learn about:

- what a Jersey trust is and how they work;
- who's who when it comes to setting up a trust;
- different types of trust; and
- the reasons why people choose to set up a trust.

What is a trust?

A trust is an arrangement through which property owned by one person (a 'settlor') is transferred to another (a 'trustee') to hold for the benefit of others ('beneficiaries') which may include the settlor.

How do trusts work?

A settlor transfers property to a trustee. The property can include money, a company or physical things like art or houses (but not Jersey real estate).

Once a settlor transfers the property to a trustee, the trustee has legal ownership and control of that property; not the settlor.

Unless the settlor has received certain powers within the trust instrument (see below), it is this loss of control that some settlors struggle with. This is why it is really

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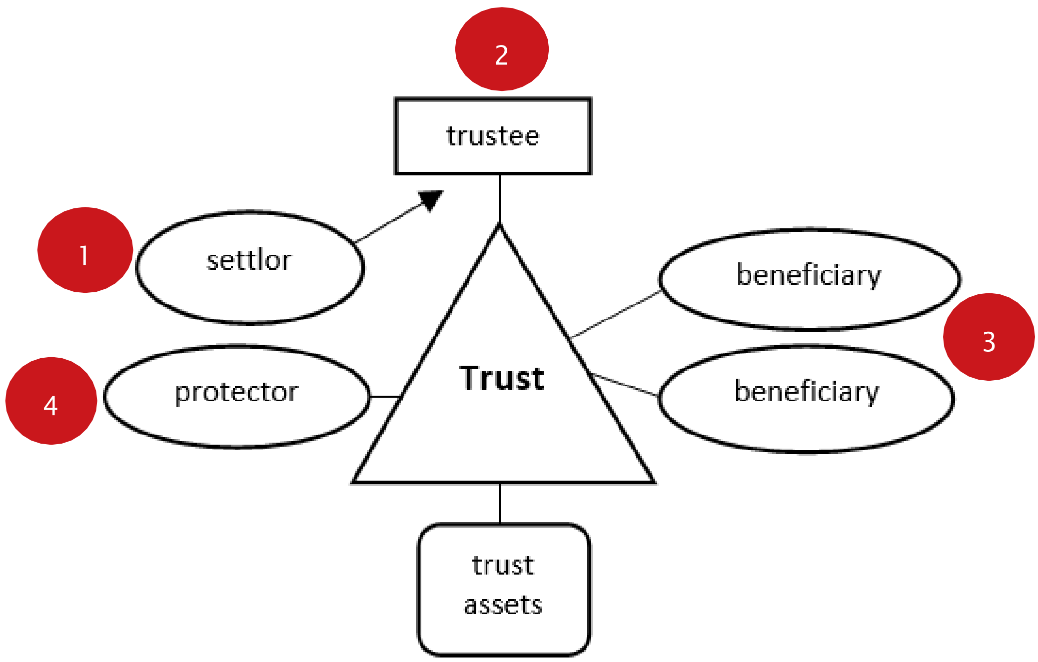
important a settlor understands the consequences of transferring property to a trustee to be held on trust.

From the date of that transfer, the trustee is responsible for administering, managing, investing and distributing the property.

Trustee dos and don'ts

- A trustee must not act as a settlor's agent or puppet.
- A settlor can guide a trustee. A settlor can set out their wishes in a letter to the trustee which explains what they want to happen to the trust throughout its lifetime.
- A trustee must keep any trust property separate from his, her or its own personal property.
- A trustee must act in the interests of the beneficiaries and according to the terms agreed with the settlor and which are usually set out in a document referred to as a 'trust instrument'. Under Jersey law, trusts can be created orally, although this is not advisable and is certainly not common.
- Subject to the terms of the trust instrument, a trustee must preserve and enhance the value of the trust property so far as is reasonable.



Who's who?

1 A settlor: can be an individual or a company and neither need be resident in Jersey.

2 **A trustee:** can be an individual or a company and neither need be resident in Jersey. However, if the Jersey court feels there is reason for a Jersey resident trustee to be appointed then it has the power to appoint one. Where the trustees reside may impact on the trust, so it is crucial to get tax advice before selecting a trustee.

Subject to the terms of the trust instrument, you do not need to have more than one trustee (although whether to have more than one is often led by the circumstances and the assets held by a trust).
If the trustee is a professional trustee, the trustee can be paid for its services out of the trust fund. In contrast, a private trustee is not entitled to be paid for his or her services from the trust fund unless it is authorised by the trust instrument, by the court, or by all beneficiaries in writing.

Determining whether to appoint a professional or private trustee depends on the nature of the structure and the assets in the trust. For a family trust, which requires knowledge of the family dynamics, a private trustee may be more appropriate. A professional trustee is likely to be more appropriate if the trust has a complex commercial structure, has high-value assets or requires expert trust and investment related advice in a secure regulatory environment.

3 **Beneficiaries:** are the people or charities who will benefit from the trust. They may include the settlor and/or the trustee. The terms of a trust instrument can allow for beneficiaries to be added or removed, either temporarily or forever. This is particularly helpful if the settlor has not identified or decided on the beneficiaries when they set up a trust, or if beneficiaries become or are likely to become resident in a less favorable tax jurisdiction.

4 **Protector:** some settlors feel uneasy transferring the legal ownership of their property to a trustee, especially when the settlor or the settlor's family do not know the trustee and perhaps the trustee does not live or work in the same country as the settlor. To overcome these concerns, settlors often decide to appoint a third party, known as a 'protector'. Their role is to hold the trustee to account and ensure the trust is administered in line with the terms of the trust instrument and in the interests of the beneficiaries.

A protector often has the power to appoint and remove trustees and his, her or its consent is often required for certain proposals, for example, to make distributions or to terminate or change the trust.

Enforcer: an enforcer is very similar to a protector, but the enforcer's role is to enforce the purposes of a ‘non-charitable purpose trust’. While the appointment of a protector is discretionary, it is a mandatory legal requirement to have an enforcer for all Jersey purpose trusts set up for non-charitable purposes. An enforcer's role includes ensuring the trustees administer a trust in a way that furthered the purpose for which it was set up, and not for the benefit of some other purpose.

Types of trust

Trusts take a variety of forms and are set up for several reasons.

They can be limited or unlimited in duration, revocable (meaning they are capable of being terminated) or irrevocable (cannot be terminated, save in accordance with the terms of the trust instrument) and can be an active financial tool or activated when a settlor dies to provide for family members. They can also be used as an effective corporate tool to hold property, when creating complex commercial structures.

Discretionary trust

This is the most popular form of trust. As the name suggests, the trustee has the discretion to exercise its powers as it sees fit, including how to distribute the trust's income (money generated from trust property) and the capital.

In a discretionary trust, a beneficiary is not automatically entitled to the trust fund, they only have a right to be considered. It is up to the trustee to decide who receives a benefit from the trust, the value of that benefit and when it is provided.

Discretionary trusts are often supplemented with a letter of wishes. This letter sets out the settlor's wishes for the trust, for the duration of his or her life and what should happen on their death.

> Example: A divorcée set up a trust to protect the wealth generated from her family business in Jersey. The trust was to benefit her, her children, her grandchildren, great-grandchildren and so forth. The trust was supplemented with a letter of wishes which set out the divorcée's wishes for the trust fund during her lifetime and what should happen with it on her death.
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> It also set out her wish that no spouses (of her children or her grandchildren and so on) could be added as beneficiaries to the trust and where possible, the trustees should discuss pre-nuptial agreements with beneficiaries before getting married.

Life interest trust

This is a trust in which a particular beneficiary or beneficiaries has a right to the income of the trust for a specified period, usually their lifetime. There may be a number of life interests that follow one another, for example a husband followed by his wife (or vice versa). Following the death of the last-named life interest beneficiary the provisions of the trust will often follow those of a discretionary trust, such that the remaining discretionary beneficiaries who can benefit at the discretion of the trustee following the termination of the life interests.

> Examples: A father wished to provide for his adult son who had learning disabilities. Due to this disability, the son was unable to work and generate sufficient income to allow him to live in a property of his own. His disabilities also meant he needed the assistance of a full time live-in carer for life.
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> The father wished to put funds in a trust for his son's sole benefit during his son's lifetime. On the son's death, the trustees would be free to benefit any of the settlor's nieces and nephews at their discretion. He set up a life interest trust, supplemented by a letter of wishes explaining his reasons for creating the trust. This ensured the trustees were fully aware of the purpose of the trust and would act in the best interests of the son during his lifetime.
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> The money made from the trust's investments paid for the son's general living expenses, medical costs, a property for him to live in with a carer and alterations to the property.
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> While the son could manage a weekly budget, he was vulnerable. His father did not want people to take advantage of his son, especially if they learnt of his family wealth. Having his wealth held in a trust and managed by trustees meant that when the father (the settlor) died, his son would be looked after, and all his needs met. This gave the father peace of mind.
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> Another example is a husband establishing a life interest trust which was to benefit him and his second wife during their respective lifetimes and, on the death of the survivor, benefit the children of his first marriage (his only children).
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> The husband wanted to make sure his second wife could enjoy a similar standard of living following his death, but at the same time ensure that the trust assets were ultimately preserved and enhanced (and protected) for his children. The husband was concerned that if he left all his estate to his second wife in his will (instead of transferring it all to a trust during his lifetime), on

his death, his second wife could amend her will so all his assets would ultimately benefit her family, not his children. The trust therefore gave him comfort that his children would ultimately receive his assets.

Accumulation and maintenance trust

An accumulation and maintenance trust is similar to a discretionary trust; the beneficiary does not have a fixed entitlement to benefits and the trustee decides on who receives distributions.

However, the discretionary feature is only for a set period. During this discretionary set period, any income may be paid out for certain purposes or added to the trust's capital. This type of trust is often used for the benefit of children. The trustee decides whether to make distributions among the children (the beneficiaries) up to a specific age for their education, maintenance and benefit. Once the children reach a specific age, each child will then be entitled to a share of the trust.

> Example: A husband and wife settled a substantial sum into a trust to provide for their children. While the children were under the age of 35, any income generated by the trust was to be used to pay for school fees and general living expenses. When the children turned 35 years old, they would be entitled to their share of the capital of the trust fund, along with any income that had not been distributed but added to the trusts's capital. The children would receive their share outright. The parents felt 35 was a suitable age for the children to receive their share; if the children received the money at a younger age then this may have discouraged them from making a living for themselves

Reserved powers trusts

Under Jersey law a settlor can retain certain powers in respect of a trust. For example, a settlor can:

1. Change the terms of the trust or terminate the trust
2. Direct the trusteed to make distributions of income and capital to beneficiaries
3. Appoint or remove any trustee
4. Give directions on investing the trust fund and / or the appointment of an investment manager

Whether a settlor wishes to retain these powers will normally depend on their tax status and where they live.

Example: The settlor of the trust was a stockbroker and due to his expertise, he wished to be actively involved in the investment strategy of the trust fund. Accordingly, he decided to retain the power to give directions to the trustees regarding the investment of the trust fund.

For the settlor, the benefit of this type of trust was that he retained a degree of control. The benefit for the trustees was that they should not be held responsible for any loss suffered by the trust fund as a result of any directions on investments they followed. The settlor also retained the power to appoint and remove trustees. This gave him comfort because if he felt the trustees' work was detrimental to the ongoing administration of the trust, then he could remove them and appoint a suitable replacement.

Purpose trusts

A trust may be established for charitable or non-charitable purposes.

For charitable trusts, the Attorney General is responsible for enforcing the terms of the trust. For a non-charitable purpose trust, a person known as an 'enforcer' (see above) who cannot also be a trustee, must be appointed to enforce the purposes of the trust and ensure the trustee manages the trust with due diligence, prudence, and to the best of their ability and skill.

Example: A charitable purpose trust was created to hold the shares in a private Jersey company. That company held valuable intellectual property rights that were licensed for use by organisations in the US, Europe and India.

The licence agreements issued by the company, were to enable organisations to provide courses to the public on developing full mental and creative potential through a particular type of meditation.

Reasons for establishing trusts

To avoid foreign forced heirship rules

If a settlor transfers assets to a Jersey trust during their lifetime, Jersey law does not follow the rule of any other jurisdiction relating to inheritance or succession which says that such a transfer is not allowed. This means that assets can be left to whomever the settlor chooses, not just to the people specified by the law of another country.

Example: In the Middle East, Sharia law has certain rules regarding who can inherit on death. This is a type of forced heirship. By settling sums into a Jersey trust, however, a settlor has the freedom to choose who can inherit and may be able to overcome such forced heirship rules. However, the trust must be set up and the property transferred to it during the lifetime of the settlor, and not following death.

To protect assets

Due to Jersey's economic and political stability, its clear statutory framework and supporting case law, Jersey is seen as a safe place for property. It is also a place where property may continue to grow, free of foreign law interference. This may be particularly attractive to non-Jersey settlors who live in countries that may not offer the same stability, security or investment opportunities. For example, trusts are popular with clients living in Russia and Africa, who occasionally fear, not only for their safety, but also the theft of their property or possibly abduction (should the extent of their wealth become public).

Jersey is an ideal location for setting up an international asset-holding trust. Jersey's stability, together with its well-developed legal system which understands and recognises trusts and provides the highest standards of protection for beneficiaries. For example, all professional trustees must be regulated and licensed by the Jersey Financial Services Commission (JFSC). Also, communications and local infrastructure are excellent on the Island and the authorities guard Jersey's reputation for security and financial integrity.

Privacy and confidentiality

Under Jersey law, we do not have a register for trusts and there is no requirement to make it public when a trust is set up in Jersey. This maintains confidentiality. Because of this, a beneficiary may not be aware they are a beneficiary. If they are a minor, i.e. under 18 years of age, this may be particularly helpful because it protects them and allows them to carve out their own path before receiving any money from the trust before they are of age. The trust can still provide for minors, for example by making maintenance and advancement payments towards their education.

The private nature of Jersey trusts is also attractive to settlor's in jurisdictions where, if their true wealth was known, their personal safety may be at risk.

Tax benefits

The main source of tax in Jersey is income tax. However, if none of the beneficiaries of a Jersey trust live in Jersey then the trust is exempt from tax on its foreign income. It will only be liable for tax on any Jersey income (except interest received on a Jersey deposit bank account). This allows the trust fund to grow without weighty tax obligations.

If a trustee is not based in Jersey, however, the trust fund may be subject to tax in the jurisdiction where they are located. It may be better therefore, to have a Jersey-based trustee, not only for tax purposes but also because the trustee will be familiar with Jersey law and because the language of the trust will be in English.

If a beneficiary does not live in Jersey and receives a distribution, they may be liable to tax in their own jurisdiction. If a beneficiary moves to Jersey however, the trust's entire income may become subject to tax.

It is worth noting Jersey has entered into double-taxation agreements with a number of countries, including the United Kingdom, Guernsey, Hong Kong, China, Singapore, Estonia, Malta and the State of Qatar. Jersey has also signed an agreement with the USA to share certain tax information. Jersey is committed to entering into similar agreements with other countries, some of which may be more limited than a full agreement.