Jersey Trusts

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This note seeks to give a brief overview of Jersey trusts. In particular, it seeks to explain the main characteristics of the various types of Jersey trust and the key advantages of using them.

Overview

The Trusts (Jersey) Law 1984, as amended (the "Law") provides the legal framework for trusts in Jersey. In addition, there is a vast amount of Jersey case law as well as consideration of judgments made in England and Wales and the rest of the Commonwealth.

The Law defines a trust as existing where a person (a "Trustee") holds property not for the benefit of himself but for the benefit of another (a "Beneficiary"). Under the Law, a trust does not have a legal personality. Where a trust is governed by Jersey Law, it is known as a 'Jersey Trust'.

Main Characteristics of a Jersey Trust

- **The Settlor**

  The Settlor creates a trust by making a declaration of trust and transferring the legal title of his own assets to another, known as a trustee (the "Trustee"), for the benefit of a "Beneficiary". The property or assets of the trust are often referred to as the "Trust Fund".

  Article 9A of the Law allows for the Settlor to reserve many powers in his favour, such as the power to revoke, vary or amend the terms of the trust, make distributions and/or remove a Trustee. Advice should be taken should the Settlor wish to reserve any of these powers.

- **The Beneficiaries**

  Beneficiaries are those who benefit from the trust and are said to hold the 'beneficial interest', while the Trustee holds the 'legal interest'. It is possible for persons not yet named as beneficiaries of the trust to become so in the future, providing a provision is made for this power in the trust document.

  Beneficiaries may be individuals, corporate bodies, or a class of persons. Subject to tax advice, the Settlor may also be the Beneficiary of a trust.

- **The Trustee**

  Trustees are those who hold the trust property and administer the trust property and assets. The Trustee may be an individual (or individuals) or a body corporate, who must perform certain obligations set out in the Law and trust document. Generally, the Trustee of a Jersey trust is a trust company based in Jersey.

  Although the Trustee holds the legal title of the Trust Fund, the trustee is not entitled to administer the assets for the benefit of himself. This would be a breach of trust and fiduciary responsibility. The benefit of the trust lies purely with the Beneficiaries of that trust, future and existing.

- **The Protector**

  The Protector is a person appointed under the trust document with certain powers in relation to the trust. A Protector is often appointed to ensure that there is someone capable of appointing a new Trustee should this become necessary, to oversee the proper exercise of the Trustee's powers, or where the Settlor wishes to restrict certain powers of the Trustee to the consent of the Protector.

Powers that are generally vested in the Protector include; the power to appoint and remove Trustees, the power to add or remove Beneficiaries and the power to terminate the trust. Protectors are not mandatory.

- **Settlement, Declaration of Trust, and Instrument of Trust**

  This is the document that sets out the terms upon which the trustee shall administer the trust. For example, it will include the powers of the Trustee, such as the power to make investments and/or pay moneys to a beneficiary. It is possible to reserve powers in favour of the settlor and/or a protector.

Types of Jersey Trust

In simple terms, a Jersey trust is normally a 'Discretionary Trust' or a 'Life Interest Trust'.

With a Life Interest Trust a beneficiary will have certain rights in relation to capital and/or income of the trust. Under a Discretionary Trust, beneficiaries shall have no rights as to income and capital since the trustee may exercise its discretion to decide when and to what extent beneficiaries shall benefit (subject to any powers reserved in favour of the settlor or protector). A Discretionary Trust is the most common trust in Jersey.

Uses and Advantages of a Jersey Trust

A Jersey trust has a variety of uses including asset protection, estate planning, confidentiality, as part of a corporate transaction and to minimise taxation.

There are also numerous advantages of creating a Jersey Trust, including but not limited to:

- Jersey is politically and economically stable;
- well developed legal system;
- large range of case law;
- professional trustees which are regulated by the Jersey Financial Services Commission;
- it may be possible to circumvent 'forced heirship laws';
- Jersey is not required to adopt EC directives on taxation;
- no capital gains tax in Jersey;
- no stamp duties or other fixed charges payable on the creation of a trust or during the administration of a Jersey trust; and
- no income tax liability for Jersey trustees on income received by them from the trust where none of the beneficiaries are resident in Jersey.

Avoidance of Inheritance Restrictions

Forced heirship restricts how a person may deal with his estate in the event of his death. Such rules are common in most civil law jurisdictions.

In 2006, the Law was amended to expressly provide that the forced heirship laws do not apply to Jersey Trusts (save where the settlor is domiciled in Jersey). Accordingly, persons domiciled outside of Jersey can place assets into a Jersey Trust during their lifetime without the restriction of the forced heirship laws applying.

A further advantage of a Jersey Trust is that, unlike a Will, it is not a public document and, therefore, provides the added advantage of confidentiality

About Hatstone

Hatstone is a multi-jurisdictional group providing legal, investment fund administration, fiduciary and corporate services with offices in the British Virgin Islands, Jersey, Ireland, London, Panama and South Africa. Our team is committed to providing responsive service and innovative solutions to our clients.

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