

JERSEY TRUSTS

A MOORE STEPHENS GUIDE TO THEIR ESTABLISHMENT AND ADMINISTRATION

Trusts Generally

To establish a trust, a person, the settlor, transfers title over property to the trustee. However, the beneficiaries retain all the rights to the enjoyments of the trust assets; the trustee is a custodian over those assets.

The trustee's obligations are normally set out in a document known as a trust instrument. This document not only defines the powers of the trustee but also the class of beneficiaries, which can include the settlor.

Jersey Trusts

Jersey gained prominence in the last 30 years as an important offshore financial centre with International Banks, Chartered Accountants and Legal Practices providing professional trustee services. These organisations have developed considerable expertise ensuring trust instruments can be drafted to suit individual needs.

There is no register of trusts and no statutory or other legal requirement to disclose the existence of trusts to any government or fiscal authority in the Island or elsewhere. Accordingly, confidentiality can be assured.

Jersey trusts are governed by the Trusts (Jersey) Law 1984, and must be administered in accordance with that enactment. Through this mechanism the Jersey courts safeguard the interests of the beneficiaries.

To cater for the varying needs of international investors Jersey trust instruments tend to be comprehensive giving the trustee a wide range of powers. For example it is common for the trust instrument to provide trustees with the power to add persons or objects (including charitable objects or purposes) to the class of beneficiaries.

The settlor of a trust may nominate a protector whose consent is required before the trustee can exercise certain powers. The protector may be the settlor himself, a close personal friend, a relative or professional adviser. It is recommended that where the settlor is resident in the United Kingdom, the protector is resident elsewhere.

It is customary for the settlor of a discretionary trust to prepare a letter of wishes indicating to the trustees how they might consider administering the trusts and its underlying assets and for whose benefit the trust fund might be applied. Although a letter of wishes cannot bind the trustees or otherwise fetter them in the exercise of their powers, the trustees will, in practice, attach considerable weight to the wishes expressed to them by the settlor in such a letter, which may be amended, as circumstances require.

A settlor may not be available to personally sign the trust instrument. If so, a trust can be established by declaration whereby the trustee declares that it is holding property transferred to it upon certain trusts. A declaration of trust can be established with a small initial sum, the main corpus of the trust fund being added subsequently, but whenever property is transferred into trust regard should be had to any anti-avoidance legislation in the country of residence or domicile of the settlor.

Moore Stephens' corporate trustee in Jersey is First Island Trustees Limited, a Jersey registered company, which is wholly owned by the partners of Moore Stephens Channel Islands practice. Use of a corporate trustee ensures that the services of the trustee are constant and not dependant upon the availability of a particular individual.

Long Form Trusts

There are two principal types of trusts. Life interest, where a specified individual, often the settlor, has a right to receive trust income during his or her lifetime, and discretionary. Apart from dealing with income and capital in different ways, these two trusts types may also be taxed differently and care should therefore be taken when selecting the nature of the trust to be established. Discretionary trusts are very flexible, allowing the trustee to make specific provision for the individual needs of the beneficiaries. The trust instrument may be drawn up to permit the trustee to advance capital, to accumulate income and to appoint trust assets (whether in whole or in part) to other trusts or individuals.

A trust can be used for direct asset holding or, alternatively, the investment of the trust fund can be made through an underlying company. There are commercial activities, such as trading, which lend themselves more readily to a corporate structure than a trust. In such cases the trustee can advance funds upon appropriate terms to a wholly owned private company. This increases the flexibility of the structure in that it enables profits to be retained within the company with distributions made as dividends or, if appropriate, as repayments of loans or as combination of both.

The Source of Funds and the Need for References

It is the policy of this firm to take up references in respect of all new clients and, in certain cases, to request a formal letter of introduction from the legal or financial advisers of a new client.

Under local laws we are also obliged to ascertain the source of funds under our management and we reserve the right to make whatever enquires we consider appropriate in this regard.

The Need for Advice

In certain jurisdictions, the disposal of assets into a trust may trigger a liability to taxation and it is therefore essential that the settlor obtains appropriate, professional advice as to the fiscal ramifications of creating a Jersey trust or incorporating a Jersey company. Such matters, will of course, be determined by reference to the settlor's place of residence and domicile.

It is this firm's practice not to accept appointment as trustee without confirmation that formal advice has been received and if assistance is required, Moore Stephens International has member firms in over 90 countries, which can advise on the legal and taxation issues applicable in the settlor's place of residence. As it is an offence to establish a trust and use that entity to conceal income or gains from the revenue authorities in the settlor's country of residence, such advice is essential.

It must be appreciated that when assets are settled on trust, legal title passes to the trustee.

The Costs of Establishing a Trust and its ongoing Administration

Our minimum fee for establishing a Jersey trust is £2,250 plus legal fees that, depending on the precedent trust instrument used; vary from £195 to £300 and disbursements of approximately £250. This includes the transfer of property to the trustees, the engrossment of the trust instrument in standard form and, if required, the preparation of a letter of wishes. If a more complex structure is required we would charge, in addition a consultancy fee based on the level of work undertaken. First Island Trustees Limited charges an annual trustee fee of £2,250 which is payable in advance. The annual trustees fee is levied irrespective of the degree of activity involved in administering the trust and is payable for as long as First Island Trustees Limited is appointed as trustee. A lower combined fee is charged where we also administer a company, which is wholly owned by the trust.

Administration and accounting fees are charged on a time basis and will reflect the nature of work or duties undertaken on the trustee's behalf and the responsibility and expertise required in connection therewith. Such services include bookkeeping facilities, monitoring investment portfolios and any other non-routine work required.

To enable payment of trust expenses a minimum balance of £6,000 should be maintained in the trust's bank account at all times.

Moore Stephens, unlike many competitors, do not levy fees on an ad valorem basis. It is not unusual for professional trustees in Jersey to charge an annual fee quantified as a percentage of the value of the capital assets underlying the trust.

Moore Stephens Jersey is part of Moore Stephens International, which is regarded as one of the world's major accounting and consulting networks consisting of 366 independent firms with 647 representative offices and some 21,250 people across 98 countries.

This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact either Clive Barton or Paul Camara:

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