

NON-CHARITABLE PURPOSE TRUSTS A MOORE STEPHENS GUIDE

The legal framework for the establishment of non-charitable purpose trusts was introduced in Jersey by amendment to the Trusts (Jersey) Law 1984.

Properties of Purpose Trusts

Under traditional English law, trusts developed as a tripartite relationship between a settlor, a trustee and a beneficiary. Legal ownership of trust property passes from the settlor to the trustee, whilst beneficial ownership rests with the beneficiary who has the right to use and enjoy the property.

This tripartite relationship requires the existence of ascertainable beneficiaries. Purpose trust legislation allows trustees to hold property without such beneficiaries, provided the property is held for an identifiable purpose. Consequently, in the case of purpose trusts, whilst legal ownership of trust property remains with the trustees, beneficial ownership passes to the specified purpose.

Special requirements for Jersey Law

To ensure that the terms of a purpose trust can be enforced, in the absence of beneficiaries traditionally empowered so to do, Jersey trust law has been amended to require that any trust with non-charitable purposes must provide for the appointment of an enforcer.

The enforcer's duty is to enforce the trust in relation to its non-charitable purposes, which means that the enforcer will monitor the administration of the trust. The enforcer cannot be a trustee.

In accordance with existing trust law, a purpose trust may exist indefinitely. There are no particular formalities for the creation of a purpose trust and as there is no register of trusts in the Island, there are no filing requirements. Confidentiality can therefore be assured.

The purpose of the trust must be set out in the trust instrument, but unlike some jurisdictions adopting similar legislation, the Jersey law does not specify the form of purpose to be adopted. However, common law is likely to determine that the object (purpose) of a trust must be sufficiently certain and administratively workable to create a valid trust. Similarly, it is accepted that the purpose of a trust must be lawful and not contrary to public policy.

Possible uses of Purpose Trusts

The most obvious use of a purpose trust is to enable purposes which are not charitable to be fulfilled. Many individuals wish to confer benefits on worthy causes that are not strictly charitable and this vehicle will facilitate such acts.

However, purpose trusts may also be of interest to commercial investors wishing to make use of the key feature that a purpose trust has no beneficiaries.

i) Private trust company

A company is incorporated specifically to act as trustee of a single private trust or indeed a series of trusts established for an extended family. The shares in the trust company can be held by professional trustees of purpose trusts, so that the professional trustees are not the beneficial owners of the private trust company. This provides a degree of insulation within the structure and places a buffer between the professional trustees and the trust or trusts.

A similar structure can be used by businesses wishing to control the activities of agents or similar associates without becoming the beneficial owner of those agents. This may be desirable where a restriction of competition or other activities is required, without direct ownership

ii) Off balance sheet finance

Transactions can be performed by a separate “group” company, which is owned by a purpose trust, thus allowing them to be recorded outside the consolidated financial statements of the parent.

For the purposes of consolidation, a group comprises subsidiaries that are controlled in terms of voting rights. If a company is incorporated with two classes of shares, one class conferring economic benefit and the other voting rights, the voting shares can be held on purpose trusts and the non-voting shares can be held on other voting rights and the non-voting shares held by the main investing company. The result is that the “parent” company has all the economic advantages of participation in the subsidiary, without actually owning it.

A similar structure can be used to acquire specific assets. An offshore company with two classes of shares, as noted above, is incorporated. The voting shares are held on purpose trusts and the non-voting shares held by the intended purchaser of the asset need not show that asset in its balance sheet. If finance is required, the shares held on trust can be used to secure bank loans to fund the initial purchase.

iii) Ownership of special purpose vehicles

For tax or other reasons it may be necessary for the beneficial ownership of a special purpose company not to be clearly identifiable; ownership by a purpose trust, which has no beneficiaries, can provide such a structure.

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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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