

TRUSTS FOR PRIVATE CLIENTS

Trusts have evolved in common law through many centuries and to-day are employed to preserve family wealth and to pass the title to assets through generations. Well understood in common law jurisdictions they are gaining favour in civil law countries where, once perceived to be a complicated foreign legal concept, they are being recognised as a flexible vehicle in which to hold, and through which to pass, title to family assets.

A trust is created by the formal transfer of assets by the creator (generally known as the settlor) to a trustee, to be administered and applied to or for the benefit of persons identified by the creator as the beneficiaries. The powers and duties of the trustee are generally recorded in a written instrument which is carefully crafted to ensure that the purpose of the settlor, in creating the trust, can be fulfilled, that the trustees have sufficient power to administer the assets without having to revert to the courts for direction, and that the beneficiaries are clearly defined.

Persons contemplating the creation of a trust for the first time may recoil at the prospect of passing the control of assets to a trustee. In Jersey, as in many offshore financial centres, trustees are strictly regulated by the local authorities who ensure that:

- **they are appropriately qualified (in the case of trust companies such as Channel House Trustees Limited that they are adequately staffed by qualified personnel),**
- **they can prove they are solvent (assessed on a monthly basis) and**
- **that they carry adequate professional indemnity insurance.**

Trustees are licenced and regulated by the Jersey Financial Services Commission in terms of the Financial Services (Jersey) Law 1998. Regulation is strict with the business of trustees being monitored and inspected continuously.

Trusts take many forms but the most common are testamentary, fixed interest and discretionary trusts.

A testamentary trust flows from the administration of the estate of a deceased person where there is a requirement to retain assets to safeguard the interests of a beneficiary during their lifetimes, or perhaps to maintain assets until a beneficiary has reached a certain age. These are but two examples.

Fixed and discretionary trusts are very similar in concept except that with a fixed trust the trustees are directed on how the trust fund should be distributed to stated beneficiaries, whereas with a discretionary trust the trustees may distribute assets to any one or more of the beneficiaries, even to the exclusion of others, as they, in their absolute discretion, think fit. Whilst this is the position in law, in practice the settlor will advise the trustees from time to time of his wishes in relation to the administration of the trust and the distribution of its assets. His wishes are likely to be considered by the trustees provided they lie within the terms of the trust.

The discretionary trust is by far the most popular form of trust instrument. In a typical family situation assets are transferred by a settlor to a trust to be administered by the trustees for the benefit of beneficiaries who will generally be identified as the settlor, the settlor's spouse for the time being his or her children and remoter issue. In the normal course of events the settlor will be the principal beneficiary of the trust during his or her lifetime, thereafter the

spouse and ultimately the children and remoter issue (issue referring to grand children, great grand children, etc.). The attraction of a trust is that the settlor will witness the administration of his or her assets, may continue to benefit from them, and will be assured that upon their demise the trust will continue for the benefit of the surviving beneficiaries.

All manner of assets may be settled in a trust – cash, stocks and shares, real property, etc.

Jersey is a tax neutral jurisdiction insofar as non-residents of the island are concerned. Trusts frequently offer taxation benefits, the extent of which will depend upon the residence or citizenship of the principals and the location of the trust assets. Trusts should be created only when appropriate professional advice has been obtained. Channel House Trustees Limited will be pleased to participate in the planning process.