

Trusts in Guernsey

“...can be customised to suit the needs of each individual.”

Simon Graham discusses some potential benefits of trusts for Guernsey Residents



The history of the trust can be traced back to the Middle Ages yet even in today's modern environment they continue to be valuable tools in managing family wealth and mitigating exposure to taxation. The modern trust has developed over the years into an extremely flexible and efficient instrument. This is evidenced by its wide variety of uses and, rather surprisingly to some, not all of these are tax driven.

Guernsey is an established base for administering trusts, which have statutory recognition under The Trusts (Guernsey) Law 1989. When utilised by persons not resident in the island, a Guernsey Trust will typically be referred to as an Offshore Trust. There are however many reasons why a trust could also be beneficial for Guernsey residents. Before looking in more detail at the reasons for using a trust, it is worth clarifying what exactly a trust is and who the key people involved are.

Put simply, a trust is an arrangement whereby legal ownership of property is controlled by one party, the trustee, to use or apply for another person or persons, the beneficiaries. Trust deeds are many and varied and can be customised, within Guernsey Trust Law, to suit the needs of each individual. In broad terms there are two main categories of trust; life interest and discretionary and then there are further variants based on a mix of these rules.

A life interest trust will give a beneficiary the entitlement to the income of the trust, which cannot be withheld by the trustees and there may be an authority to distribute the capital. In a discretionary trust the trustee has wide ranging powers, including the ability to accumulate income, or to distribute the income and capital of the trust as he sees fit in his role as trustee. No beneficiary has a right to the trust's capital or the income, merely the right to be considered by the trustee.

To assist the trustees in their role, the settlor would normally provide them with a 'letter of wishes' which seeks to set out the settlor's intentions when establishing the trust (the letter of wishes can be updated regularly). The trust deed itself will contain various clauses that set out the trustees powers and duties. It is important to note that whilst trustees are the legal owners of the trust assets they do not have a beneficial interest in them, i.e. they cannot profit from those assets themselves.

As mentioned above, there are many different uses for trusts. They can be tremendously flexible and adaptable instruments. They can be used so that the ownership of assets is not fixed at the time a gift of those assets is made,

but is determined in the light of subsequent events. A trust can often take care of a particular family situation or problem that would otherwise be insoluble. For example, a trust can preserve the ownership of a family business in a situation where it might otherwise become fragmented.

Many jurisdictions, including Guernsey, impose so-called forced heirship rules; these dictate how an individual's estate must devolve upon death. Typically fixed proportions must pass to spouses and children, yet often forced heirship rules do not adequately deal with divorces, remarriages, stepchildren and family dissension. A suitably drafted trust can help overcome the restrictions of such rules and can ensure that the settlor's estate devolves in accordance with his wishes.

Outright gifts are often subject to waste and abuse; the benefits of an asset or the income it generates can be made available to an individual through a trust while at the same time affording protection from such problems. Similarly a trust can be drawn up to protect assets in the event of family dissent or bankruptcy. Trusts can also preserve the anonymity of the ownership of assets and the beneficiaries.

Whilst in recent years successive Chancellors have looked to erode the fiscal benefits provided by trusts for UK resident and domiciled individuals, trusts still remain effective tax planning tools, especially when established by non-UK nationals. Trusts set up by non-UK nationals, or non-domiciliaries, are able to provide long term inheritance tax protection down through the generations, even when future beneficiaries are themselves UK resident and domiciled. In addition to inheritance tax protection, these trusts can also provide capital gains tax savings.

We at MeesPierson Reads can offer advice on taxation and other issues relating to the setting up and administration of a trust for Guernsey resident and non-resident individuals. We can arrange for the establishment of the trust for recognition under The Trusts (Guernsey) Law 1989 and provide professional and experienced corporate trustees who will protect the interests of the beneficiaries whilst being guided by the wishes of the settlor. We can also advise on investment strategy and provide investment management services in relation to the assets of the trust where required.

Anyone seeking further information should contact either Simon Graham or Marie Cassidy, in the first instance, or the MeesPierson Reads director or manager with whom you normally deal.