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Trust & Corporate

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An Introduction to Trusts in Jersey

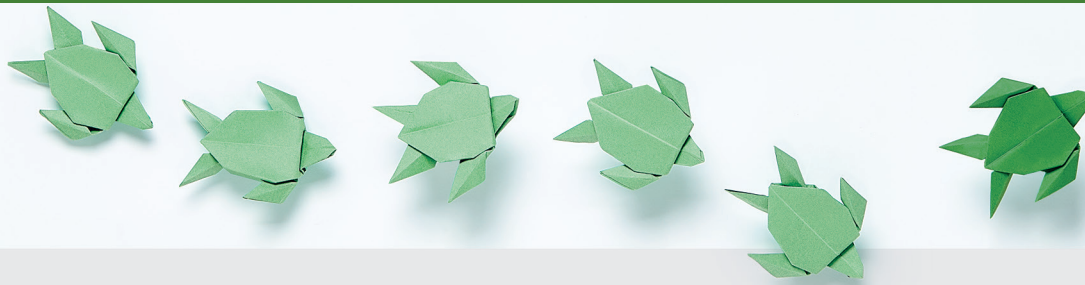
A Trust is a legal arrangement by which one person (known as the "**Settlor**") transfers legal ownership of their assets to one or more other persons (known as the "**Trustee(s)**") who are required to hold those assets (defined as the "**Trust Fund**") for the benefit of other persons (known as the "**Beneficiaries**"). The result is that the legal ownership of the assets (which remains with the Trustee(s)) is separated from the beneficial ownership of the assets (which is with the Beneficiaries).

There are "three certainties" which must be fulfilled for a Trust to be created, otherwise the Trust will fail:

- Certainty of **Intention**; there must be an intention to create the Trust.
- Certainty of **Subject**; the property to be settled into the Trust must be described.
- Certainty of **Objects**; the intended class of Beneficiaries of the Trust must be detailed with sufficient certainty to allow them to be determined.

Trusts created during the lifetime of the Settlor are known as an **Inter Vivos Trusts**, whereby the Settlor transfers assets to the Trustee(s). Alternatively a Trust can be created upon the demise of the Settlor if the appropriate provision has been made in the Settlor's Will. That creates a **Will Trust**. Unlike other jurisdictions, there are no rules against perpetuities, a Jersey Trust may continue in existence for an unlimited period.

A Jersey Trust is usually created by way of a written document (known as the "**Trust Instrument**") which sets out the rights, duties and powers of the Settlor, the Trustee and the Beneficiaries. The Trust Instrument may either be signed by both the Settlor and the Trustee(s), which constitutes as **Settlement Deed** or by the Trustee only by which a Declaration of Trust is created. A Declaration of Trust allows the Settlor to preserve anonymity.



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Key Features

The Settlor

The Settlor is the person who provides the Trust Fund and may or may not be a Beneficiary of the Trust. Although legal ownership of the assets is transferred from the Settlor to the Trustee(s), the Settlor may, if he so wishes, retain a degree of control over the Trust Fund, depending on the terms of the Trust Instrument. Whilst the Trust Instrument details out the powers of the Trustee(s), the Settlor may guide the exercise of those powers by a Letter of Wishes which, whilst not legally binding, details how the Settlor would like the Trustee(s) to administer the Trust Fund during their lifetime and also following their demise.

The Trustee

The Trustee is responsible for the administration of the Trust Fund and must do so in accordance with the provisions of the Trust Instrument and the Proper Law of the Trust. The fundamental duty of a corporate or individual Trustee is to act in the best interests of the Beneficiaries by acting with due diligence as would a prudent person, to the best of his ability and skill and with the utmost good faith. The Trustee must also preserve and enhance the value of the Trust Fund as far as is reasonable.

The Beneficiaries

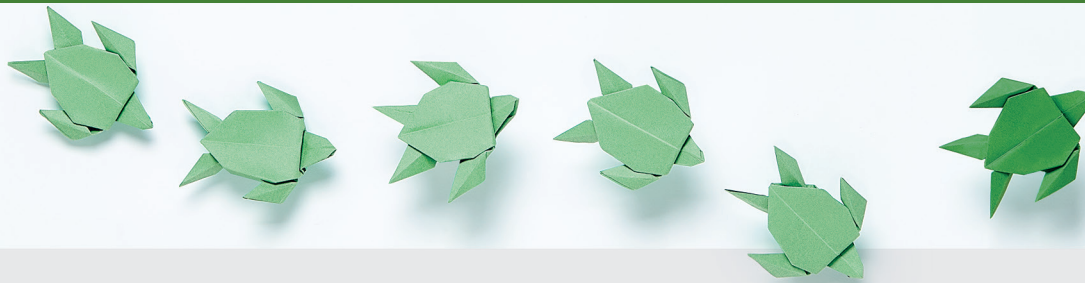
The rights of the Beneficiaries are defined in the Trust Instrument and they have the power to enforce the Trust. The Trustee must account to the Beneficiaries in relation to the administration of the Trust and have a right to see certain documentation about the Trust.

The Protector

A Trust may or may not have a Protector, depending on the requirements of the Settlor. A Protector may, by virtue of the Trust Instrument, maintain a degree of influence or control over the exercise of the powers of the Trustee by obliging the Trustee to seek the Protector's prior consent to the exercise of certain dispositive or administrative powers. Certain powers may otherwise vest in the Protector rather than the Trustee, for example, the power to appoint or remove the Trustees of the Trust.

The Trust Fund

The Trust Fund can be comprised of a wide range of assets in various jurisdictions and additional assets may be added to the Trust Fund once it has been established. The Trust Instrument may also give the Trustee the power to accumulate income accruing on the trust fund and add it to the capital of the trust fund.



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Benefits Of A Jersey Trust

There are a number of advantages of establishing a Trust in Jersey:

- It is a flexible, tailor-made vehicle for managing, protecting and maintaining family wealth for a class of nominated Beneficiaries;
- It is a confidential arrangement between the Settlor and Trustee, as there is no requirement for the Trust documentation to be registered or available for public inspection;
- It can be used as a vehicle to allow family wealth succession in a manner other than that which may be prescribed in certain countries such as forced heirship jurisdictions;
- It is a legitimate vehicle to assist in tax mitigation planning;
- The Trust Fund is separate to and does not form part of the Trustee's personal assets and so it is protected from any claims against the Trustee;
- Trust assets can also be protected against any claims against the Settlor or Beneficiaries;

- It avoids the expensive and time consuming formalities which are associated with the transfer of wealth upon the death of the Settlor;
- A Trust can help protect assets against political and economic instability;
- Trusts can also be established for charitable purposes.

If you would like to find out more about the Fairway Group and our Trust services please contact us at enquiries@fairwaygroup.com

Fairway Group take great pride in protecting and growing our clients' assets through our trust services offering. Universally revered, turtles are nomadic, long-lived, independent creatures who return to the same nesting grounds where they were born, demonstrating a true sense of direction and importance of legacy. Each protective turtle shell is unique and representative of the service provided to each of our clients.

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