

THE JERSEY LAW TRUST

European Trustees (Jersey) Limited (“European”) provides company, corporate and trustee services in the offshore environment of Jersey. It can provide company and corporate services in relation to companies incorporated in Jersey, Guernsey, Cayman, BVI or other jurisdictions where considered appropriate for the particular project. European also provides Trustees to offshore Trusts whether Jersey Law trusts or otherwise.

This Brief is intended to provide some pointers and to dispel some myths about trusts and what to avoid or look for when considering transferring significant wealth to Trustees on trust.

The offshore Trust is as synonymous with the Island of Jersey as the Jersey Royal, the Jersey Lily, and the Jersey Cow. It has the highest reputation in relation to its administration of the same.

Since as long ago as “God created Woman”, well at least the film version with Ms Bardot, Jersey has understood and promoted the concept of the Trust as a means to protect, preserve and provide wealth; protect from creditors and spendthrifts and provide to those whom the settlor of the trust may wish to benefit be it a relative, friends, charity or otherwise.

What is a Trust?

A Trust has no legal personality. It is not an entity like a company or incorporated association. As a description it is perhaps poor in that invariably its meaning is rather dependent upon the person describing the Trust. The Trust cannot therefore transact any business as might a company, and the Trustees are not the agents of the person declaring or settling their wealth upon trusts. A Trust is essentially a relationship between the Settlor, the Trustees, and the beneficiaries. The Trustees can of course transact using trust property. Invariably trust property is held not by the Trustees but in companies whose shares are owned by the Trustees.

The typical fully discretionary trust comprises the person giving or settling his or her wealth, the Settlor, in the form of assets to trustees on trust. The Settlor gives the wealth away to the trustees who take legal ownership of the assets given but the trustee does not own it for his own account. He must administer it in accordance with his duties as a trustee. The trust instrument will record the terms of the trust and the group of persons who can benefit from the wealth of the trust. If the trust is a discretionary trust then such benefit is effected by the exercise of the Trustee’s discretion. To give but a few examples trusts can also be

charitable, non-charitable, and otherwise engineered to provide the settler with income during their lifetime and afterwards to other beneficiaries. The beneficiaries have the beneficial or equitable interest in the asset. There might be a Protector involved, who, being a close family friend, might have to be consulted before the trustee does certain things, including distributing some of the money from the trust. The Settlor can also reserve to themselves certain powers during his or her lifetime so restricting or complimenting the trustees powers or discretion. So why use a trust?

Why a Trust?

Trusts can have many and varied uses which can evolve from its original use to another, for example: to benefit one person first and then another; to save or defer tax liability, whether it be inheritance tax by enabling wealth seamlessly to pass from one generation to another, capital gains tax by legitimately pushing the gain offshore, or income tax. Trusts can be used to avoid forced heirship rules, protect assets from creditors, spouses and other family members and to avoid the lengthy delay and cost of administering the estate of the successful individual who has used his skill and entrepreneurial wit to leave assets and businesses in any number of jurisdictions to otherwise be discovered and administered by the poor Executor.

By way of example Mr Jones might decide to leave the UK before selling a company or his shares in a company or venture to settle down in a more tax advantageous jurisdiction. On his way out of the UK he might visit Jersey and settle his shares in the company on trust. The trustees might hold these shares in one company buy a house in the name of another and allow Mr Jones to be the Managing director of a third company from which he might obtain a salary. Wealth is built up in the trust. Mr Jones avoids capital gains tax and paying income tax on trust income. His only concern is his salary. Depending on the tax regime of his new country of residence / domicile he may avoid this also. The trustees can benefit Mr Jones's children and his wife who are part of the beneficial class of the trust. Upon Mr Jones's death, assuming Mr Jones has taken the appropriate advice to avoid any forced heirship rules, Mr Jones's personal estate is minimal, if it exists at all, and his family continue to benefit from the trust.

Professional Advice and Administration

Of course none of this works unless the trusts and underlying companies are set up properly with the appropriate legal and tax advice and properly administered by professional and reputable trustees. Beware the Trustee who says not to worry and that they will deal with everything.

Be inquisitive and ask searching questions as to the legality of the structure and its financial consequences. Beware the Trustee who says that you should not worry because you are still in control of the assets. If you are and the structure is challenged it may be that the trust is

declared invalid and all your financial objectives are set at nought or worse and you have paid handsomely in professional fees to get there.

Invariably for an offshore trust to operate properly management and control needs to be with the Trustee. There is no reason why the Settlor or other persons should not play a rôle going forward, by way of reserving powers, as a protector or as an adviser. Be aware of what that rôle can be and its limits. There is no reason why the trust should not, for example, own the freehold of a hotel or office block and you rent it back.

Conclusion

The Trust has many guises to deal with different situations: the straight-laced discretionary type, the interest in possession trust, the non-charitable purpose trust and the charitable trust to name but four. Each has a different application. The elegance of the Trust is its ability, properly drafted, to adapt to different situations or to be rigidly set in concrete.

European Trustees

European is an independent trust company that works closely with the law firm of BoisBois whose partners own European.

European provides services to a broad range of clients, both private and corporate. Because it is partner owned there is no turnover of principals and clients can be assured of a long lasting professional relationship with principals whose experience ranges from aviation to property development.

Because of its independence European is able objectively to identify opportunity and because its board comprises lawyers expert in commercial and trust litigation is able to identify and manage risk.