Guernsey Trusts: A Brief Guide

Introduction to Guernsey

Guernsey offers an established and robust Trust Law and as a result has emerged as a prominent jurisdiction for the establishment and administration of trusts.

Guernsey offers a very well-regulated financial sector, with the Guernsey Financial Services Commission (GFSC) overseeing all trust business on the island. The GFSC ensures compliance with international standards and upholds the highest levels of corporate governance, meaning that Guernsey is known as one of the best regulated financial centres in the world, with a particular emphasis on international private client services.

Guernsey Law

Guernsey has a mixed legal system. The Anglo-Saxon Common Law system has a major influence, but the core source of law is Norman Customary Law. Trusts are well legislated for in the Trusts (Guernsey) Law 2007, which is further supported by a body of case law based on decisions of the Guernsey Courts.
The Trust Law is a modern one and was drafted to provide flexibility but also certainty to settlors and beneficiaries, ensuring that trusts can be tailored to meet their specific needs. Such flexibility is discussed further below and is key factor in making Guernsey attractive.

What is a Trust?

A trust is created when property or assets are transferred from a settlor to trustees, the latter of which are required by law to manage the property for the benefit of the beneficiaries. The beneficiaries will, in many cases, be family members (often including the settlor) but need not be.

Uses of a Trust

Due to the ability for a settlor to sever his or her ownership of the assets whilst ensuring they are professionally managed on behalf of the beneficiaries by the trustees, trusts are commonly used for:

Asset Protection
A properly constituted trust can protect assets from claims brought against the settlor or indeed against a beneficiary, as neither is the owner of the assets (which is instead vested in the trustees). Trusts are particularly useful in providing for future generations on a discretionary basis but without exposing the assets to certain claims (for instance, from an unexpected future litigant of the settlor, or a future spouse of a child in the event of a marriage breakdown).

Verfides (Guernsey) Limited, Dixcart House, Sir William Place, St Peter Port, Guernsey GY1 1GX T +44 (0) 1481 738 774 E guernsey@verfides.com W verfides.com
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Succession Planning
A trust is the ideal succession planning vehicle. Assets properly transferred into trust are no longer part of the estate of the settlor on death, and therefore devolve according to the Trust Deed rather than, for instance, a Will or the provisions of forced heirship rules in some jurisdictions.

Tax Optimisation
The transfer of assets into trust may provide tax benefits to settlors and/or beneficiaries, although this will very much depend on the tax law in the jurisdictions where those parties are resident and/or domiciled, and where the trust assets are located.

Trusts can offer particular tax advantages for those resident under a “territorial” tax regime. An example of that is the UK “resident non-domiciled regime” but can also include other “non-dom” and territorial regimes, or those with specific favourable tax rules applicable to trusts.

A Guernsey trust established by a non-resident and holding no Guernsey assets is exempt from all Guernsey taxation.

Privacy and Confidentiality
The Trust Instrument or Deed is a private document which is not filed at any registry in Guernsey and is not available for inspection by the public. The provisions of certain bilateral or multi-national agreements may however require the mandatory disclosure of certain information, as in all other reputable jurisdictions. This may include Double Tax Agreements, the Common Reporting Standard and FATCA.

Features of Guernsey Trust Law

The flexibility of the Guernsey law is demonstrated in a number of areas.

Trust Period
This may be limited or unlimited according to the Instrument.

Revocability
A Guernsey trust may be revocable or irrevocable. Where it is revocable, the settlor may bring the trust to an end and regain ownership of the trust assets. Specific advice would need to be taken on the impact of revocability on tax and asset protection matters.

Settlor Reserved Powers
The law allows for the Settlor to reserve certain powers to him or herself: that is, to retain control or a veto over one or more aspects of the administration of the trust. Such reserved powers are popular with settlors, particularly where they have expertise in the management of a certain asset class and wish to stay actively involved. Common reserved powers include:

- The power to direct the investment of part of or all of the trust fund
- The power to remove a trustee
- The power to amend the terms of the trust

Protector
A Protector is a person usually appointed by the Settlor at the time of creating a Trust with the specific power to oversee the management of the Trust Fund by the Trustees. It is often a trusted friend or adviser. A Protector is usually named in the Trust Instrument, although it is in certain circumstances possible to appoint a Protector to an existing Trust, if specific provision exists within the Trust Instrument.

A Protector does not have any control over the Trust Fund, their role being restricted to that of having the power to veto certain actions of the Trustee, as specified in the Trust Instrument. A Trust does not need to appoint a Protector.

Types of Guernsey Trust

The law can be used to create a wide variety of trusts, with the more common ones being:

Discretionary Trust
Typically, a discretionary trust will define a class of Beneficiaries but give the Trustees discretion over the amount and timing of payments to the Beneficiaries. The Settlor may give the Trustees guidance as to how to exercise their discretion in a letter of wishes (see below).

This type of trust may provide tax advantages as the Beneficiaries have no right to receive income or assets as the Trustees have discretion over any distributions. All income and gains therefore accrue to the trust. Furthermore, assets held by a discretionary trust may be protected from any “forced heirship” legislation or claims from the creditor of the Beneficiaries.

A discretionary trust can also be a flexible way of enabling a Settlor to make financial provision for dependents (typically children or minors). For example, the Trustees may pay income for the benefit of children who have no right to receive the trust assets until they reach a specified age.

It is usual that on the creation of a Discretionary Trust for the Settlor to issue to the Trustees a letter of guidance for the future administration of the Trust Fund. Such a letter is referred to as a Letter of Wishes. A Letter of Wishes is not legally binding on a Trustee but provides guidance to the Trustees as to the intention of the Settlor when establishing the Trust.

Life or Fixed Interest Trust
With a fixed trust, the Settlor will identify the Beneficiaries and specify the way in which the assets are to be distributed in the Trust Instrument. A fixed trust is often a suitable arrangement to enable surviving spouse to receive income from family property during his or her lifetime whilst ensuring that the property will be distributed on her death to children or other family members.

Purpose Trust

Unlike many jurisdictions, Guernsey Law permits the establishment of a non-charitable purpose trust. Such a trust does not have beneficiaries but instead a specific purpose, which the trustees must honour in the exercise of their powers. Purpose Trusts are commonly used to hold shares in family companies to prevent liquidation or sale and/or act as independent shareholder in the event of a family dispute. A purpose trust is also often used to hold the shares of a Private Trust Company (see our separate briefing sheet on PTCs).

An Enforcer must be appointed to a purpose trust in addition to the trustees. The Enforcer is responsible for ensuring that the trustees administer the trust fund in accordance with the stated purpose of the trust.

Employee Benefit Trust ("EBTs")

EBTs are used by both public and private companies in conjunction with a variety of employee incentive plans to attract, motivate and retain employees. These discretionary trusts are most commonly used to warehouse shares earmarked for employee ownership, and to provide an internal market for such shares.

Further Information

For further information please contact our Guernsey Office on +44 (0) 1481 738774 or e-mail guernsey@verfides.com.

This document has been prepared as a general guide and is based on the latest legislation and guidelines. Whilst every care has been taken in its preparation, Verfides cannot accept any responsibility for any person relying on this publication. Professional advice should be obtained before undertaking transactions and Verfides will be pleased to provide such advice where appropriate.

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