



Jersey Non-Charitable Purpose Trusts

Traditionally, the hallmark of a trust is that its terms require the trust assets to be utilised for the benefit of beneficiaries, whether they be individuals or legal persons. However, under the Trusts (Jersey) Law 1984 (the “**Trust Law**”), it is possible to establish trusts for purposes (whether they be charitable or non-charitable) rather than for beneficiaries. This note concentrates upon non-charitable purpose trusts.

Establishment of the Trust

As with beneficiary trusts, the Purpose Trust require adherence to the same legal certainties as required under the Jersey law for other trusts, namely there must be (a) certainty that the settlor intends to create the trust (b) certainty as to the identity of the subject assets to constitute the trust fund and (c) certainty as to the objects intended to benefit under the trust (in this case purposes rather than persons or a class of persons constituting the beneficial class). As such, it is necessary to understand at any given time whether or not the proposed application of trust assets is within the terms of the trust deed and the stated purposes.

Whilst the purposes can be widely drawn, they need to not be inconsistent with public policy considerations or otherwise be contrary to the laws of Jersey.

Other Terms of the Purpose Trust

A trust may as a matter of Jersey law continue indefinitely and the same applies with a non-charitable purpose trusts. Accordingly, the perpetuity restrictions that sometimes inhibit the longevity of trusts under other systems of law which do not apply in Jersey.

The terms of the trust deed will set out the terms of the trusts powers and provisions which apply to the operation of the Purpose Trust and provisions would ordinarily be included to deal with remuneration of the trustee, indemnification and administrative powers applicable to the operation of the trust.

The Enforcer

In order to ensure that the trust obligation is enforceable, given the fact that there are no beneficiaries with the trust, Jersey law requires that someone be appointed as the “enforcer”. This person fulfils the function of holding the trustees accountable to the trust obligation and to ensure that the trust is administered in the best interests of the purposes. The enforcer does not profit, directly or indirectly, from his office unless the terms of the trust permits such profit or such profit is approved by the Royal Court in Jersey and it would be usual for the terms of the trust instrument to provide for payment of a professional enforcer’s fees and expenses in the usual way.

The rights of an enforcer to receive trustee information are limited to the same extent as the rights of a



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beneficiary. However, these rights are relatively wide and provide for disclosure upon request of documents which relate to or form part of the trust accounts, but it is possible to extend the rights of disclosure by the terms of the trust, if it is considered that this is desirable.

The Purpose Trust requires there to be an enforcer at all times and it would also be usual for the terms of the trust to deal with the mechanism for the resignation and appointment of an enforcer. In this regard, an enforcer can be an individual or a corporate entity but the enforcer must not also be the trustee of the trust for obvious reasons. It would be permissible to have an individual who is a director of a corporate trustee or a subsidiary of the corporate trustee to act as the enforcer but care would need to be taken to ensure that any conflicts of interest were properly managed and provided for in the trust documentation.

Defining Purposes

Under the terms of the Trust Law, a purpose is defined as “any purpose whatsoever, whether or not:

- Involving the conferral of any benefit on any person; or
- Consuming or capable of consuming the income or capital of the trust including without limitation the acquisition, holding ownership management or disposal of property and the exercise of functions.”

It is permissible for the holding of shares in a company to be a purpose, notwithstanding that this would not, of itself, dispose of the trust fund. This is an important feature of a non-charitable purpose trust as it permits such structures to be used to hold, for example, shares in a private trust company where the desire is for the company to be “orphaned” from those who have sought its creation.

Variation

In the event that the purposes of a non-charitable purpose trust have been fulfilled or have ceased to exist or are no longer applicable, then the Royal Court of Jersey may on an application vary the purposes of a trust, or sanction order to such variation, as the Court considers consistent with the settlor’s original intention. As such, this is similar to the well-known “cy-pres” doctrine that applies to charitable trust.

The Royal Court is also empowered to approve any arrangement to vary or revoke a purpose of a Purpose Trust or to modify the trustees’ powers applicable thereto provided it is satisfied that this is “suitable and expedient” and otherwise consistent with the original intention of the settlor. The parties who have a “material interest” in the trust would normally be convened to such application and given an opportunity to be heard on matters.

The party bringing the application would typically be the trustees but the Attorney General in Jersey would also have, potentially, jurisdiction to bring the application.



Utility of Purpose Trusts

As mentioned above, a key feature of non-charitable purpose trust is that they are able to hold assets as a purpose. This can be important where structuring requires a special purpose vehicles (SPV) to be created to deal with commercial transactions (e.g. securitisations or other off balance sheet structuring), to hold shares in a private trust company (PTC) or, perhaps, for the holding of shares in a family business or for investment purposes (perhaps

in the context of investing in family businesses where it is not perceived that such an investment would be a judicious investment for the trustee of a beneficiary trust to make) or for altruistic and philanthropic purposes e.g. preservation of monuments, funding of political purposes and other community based projects.

The Purpose Trust remains an important part of Jersey's offering of legal structures, both in the private wealth and commercial sphere and is likely to continue to remain popular with clients.

For further information or specific advice, please contact [Nigel Pearmain](#), [Jeffrey Giovannoni](#), [Daniel Walker](#) or [Frances Littler](#) of Voisin.

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.