



VOISIN LAW

Jersey has a modern and progressive trust law, the Trusts (Jersey) Law 1984 (the “**Trusts Law**”), which provides a very suitable and convenient base for a large number of international and personal trusts.

A trust is a legally binding arrangement whereby a person (known as “**the Settlor**”) transfers the legal title to certain assets to one or more persons (known as “**the Trustees**”) to hold for the benefit of other persons (known as “**the Beneficiaries**”).

An important body of case law has been developed over the years by the Royal Court of the Island of Jersey. Jersey customary law broadly follows (albeit not exclusively) English common law principles on trusts. The Royal Court of the Island of Jersey will enforce the Trustees’ duties including, if necessary, at the instigation of the Beneficiaries.

In Jersey, trusts are most commonly established in writing by an instrument (known as “**the Trust Instrument**”) executed by both the Settlor and the Trustees. A trust may also be formed by a declaration of trust, in which the name of the Settlor does not appear.

Legal title to the assets subject to a trust passes from the Settlor to the Trustees who then hold and administer the assets in accordance with the Trust Instrument, subject to the requirements of the Trusts Law. It is common practice for a Settlor to provide the Trustees with a letter of wishes which, though not generally legally binding, gives the Trustees guidance as to how the Settlor wishes them to exercise their powers and discretions.

Trusts established for non-residents are frequently discretionary, allowing considerable scope in the nomination of Beneficiaries and the appointment of the trust fund between Beneficiaries. The Settlor may wish, however, to give fixed rights as to the income and/or capital to certain Beneficiaries. These points need to be discussed and agreed with the proposed Trustees before the Trust Instrument is drawn-up. On occasion, the Settlor of a discretionary trust will appoint a protector of the trust assets and the Trust Instrument will require the Trustees to refrain from exercising certain powers and discretions granted to them by the Trust Instrument until such time as the consent of the protector is obtained. A protector may be conferred certain “positive” rights, such as a right to appoint and remove Trustees.

Trusts can be used for a variety of reasons. A Jersey trust is a useful vehicle in which to hold substantial family wealth in a politically stable jurisdiction. In certain circumstances a Jersey trust can be used to defer or avoid both income and capital taxes. Jersey trusts are also used for estate planning and, as the trust can continue beyond the Settlor’s death, can ensure continuity in ownership and management of a family’s property. Jersey trusts can be established for charitable or [non-charitable purposes](#).

Article 9A of the Trusts Law allows a Settlor to reserve for himself – or grant to someone else – certain powers. This type of trust is often referred to as a “reserved power trust”. Powers which can be reserved include the power to direct investments, to revoke or vary the terms of a Trust, to advance, appoint, pay or apply income or capital of the Trust or to give directions for the making of such advancement, appointment, payment or application, to appoint or remove a Trustee, enforcer, protector or Beneficiary and to change the proper law of the Trust.

Trusts have wide and far reaching benefits, which include:



VOISIN LAW

- Asset protection (e.g. for preservation of family wealth, including for spendthrift concerns or political risk)
- Tax planning
- Succession planning (e.g. forced heirship or probate formalities)
- Philanthropic purposes (e.g. charitable trusts)
- **Non-charitable purposes** (e.g. within the context of a “*private trust company*” arrangement)
- Commercial structuring (e.g. unit trusts for the collective investment of capital, Eurobond issues, off-balance sheet transactions, securitisation or employee benefit plans or employee share option schemes)

Trusts can be used within the context of “*private trust company*” arrangements, where typically a non-charitable purpose trust (sometimes replaced by a Jersey **foundation**) is established to hold shares in a private trust company which acts as trustee of a discretionary trust.

Article 9 of the Trusts Law provides that questions relating to the Trust (or transfers of property to the Trust) is to be determined by reference to Jersey law (excluding Jersey’s own conflicts of laws rules and *légitime* rules) and that no consideration should be given to any rule of foreign law. Article 9(2) of the Trusts Law states that the Royal Court of the Island of Jersey should ignore foreign law claims based on a lack of recognition of the trust, infringement of forced heirship rules and a personal relationship with the Settlor (e.g. husband and wife). Article 9(4) of the Trusts Law states that foreign judgments with respect to a Trust shall not be enforceable to the extent they are inconsistent with the principles set out in Article 9 of the Trusts Law.

Anyone intending to establish a Jersey trust should first take advice from a legal adviser who is competent to advise upon the laws – tax, exchange control or other laws – of any other relevant jurisdiction. Jersey trusts established by a Settlor outside Jersey, for the benefit of persons resident outside the Island, are (subject to certain restrictions) not liable to Jersey income tax.

The Trusts Law imposes certain duties on Trustees, provides for certain rights of Beneficiaries and generally regulates the operation and administration of Jersey trusts.

There is no statutory or other requirement to file the Trust Instrument or in any way record the establishment of a trust on any public register and so the existence of a Jersey trust remains a confidential matter between the Settlor, the Trustees and the Beneficiaries.

Voisin is able to offer the following services:

- General structuring advice;
- The drafting of the Trust Instrument and any letter of wishes and any drafting requirements on an underlying **company** structure.
- Whenever necessary or appropriate, liaise with other professional advisers, such as professional Trustees or accountants.



VOISIN LAW

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

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.