

Jersey Association of Trust Companies

JERSEY

A Quality Trust Location



Jersey - The International Finance Centre

Excellence ...Expertise ...Choice

For more than 40 years Jersey has been at the forefront of international financial services developments designed to cater for the needs of the international investor.

A small Island near the coast of Northern France, Jersey has established itself as a leading international finance centre for both institutional and private clients seeking a quality location to meet their banking and investment requirements.

Its unique constitutional position, involving an 800-year allegiance to the British Monarchy and the existence of its own Parliament which has responsibility for domestic and fiscal affairs, has been an essential factor in its evolution as one of the world's premier financial services jurisdictions.

As a British Crown Dependency, the Island offers political and economic stability, a flexible, independently endorsed regulatory framework, a tax neutral environment, a mature and respected legal system and, backed by a 40-year track record of product and service innovation, a skilled and responsive workforce.

These ingredients continue to be the basis for its global appeal as a jurisdiction of choice for international investors.

As a matter of policy, the Island's regulator - the Jersey Financial Services Commission - will only authorise the global top 500 banks to establish a presence in the Island. Jersey currently has more than 50 such banks from across Europe, the United States and Canada, South Africa and the Gulf region.

It also has approximately 200 licensed trust and company administrators; over 100 investment managers, stockbrokers, advisers, custodians and fund administrators; a significant presence by all "Big Four" accountancy firms; and a range of highly regarded offshore law firms with close links to major international firms.

In four decades, Jersey has developed a breadth and depth in its range of services that many other competing jurisdictions find difficult to match.





The Trust Industry in Jersey

The trust is a legal concept originally developed by English courts of equity although it is now governed, to a certain extent, by legislation. Jersey trust law has, at its core, principles derived from English trust law but has been significantly enhanced to meet the more sophisticated needs of international clients.

Jersey has a modern trusts statute, The Trusts (Jersey) Law 1984, as amended ("the Law") which provides a comprehensive body of legislation under which public and private trusts can be established. Unlike trust legislation in other British colonies and dependencies, the Jersey legislation was not based closely on the English Trustee Act and associated legislation, but rather constituted a new kind of model trust law. The Jersey Law has proved to be remarkably successful over the past 20 years, and has been widely copied in other offshore jurisdictions.

Its interpretation is supported by a considerable body of local trust case law, and several articles and books have been published on it. For these reasons, Jersey is today one of the most mature and developed of the offshore trust jurisdictions.

The concept of trusts has been fully recognised by the local courts. The Law gives jurisdiction to the Royal Court of Jersey over foreign and domestic trusts administered in Jersey.

Jersey's reputation as a well regulated, flexible jurisdiction with a sophisticated legislative framework was recently endorsed by a survey published by Legal Week in March 2004 which revealed that 87% of the 100 lawyers questioned chose Jersey as their preferred offshore jurisdiction in which to establish a trust.

About Jersey

- In 2004 Jersey celebrated 800 years of loyalty to the English Crown.
- In exchange for that loyalty, Islanders have received many privileges and benefits over the centuries, including the all-important right to set their own taxes.
- Jersey is not part of the United Kingdom. It is a self-governing Crown Dependency.
- Jersey is not a part of the European Union and is therefore not obliged to implement EU Directives.
- The Island is 45 square miles in area and has a population of 87,500.
- A quarter of the working population works in the Finance Industry.
- Finance accounts for nearly 60 per cent of GDP. Tourism, agriculture and e-commerce are also important.
- The Island has one of the highest figures for GDP per capita in the world.
- Jersey is closer to France than it is to England, but it is only a half hour flight away from London Gatwick Airport or London City Airport.
- It is in a convenient time zone with a working day that straddles close of business in the Far East and the opening of business in North America.

Principal advantages of Jersey Trusts

How are trusts created?

Non-resident trusts, where the settlor or grantor and the beneficiaries are not resident in the Island, are the most common type of trust in Jersey, and have been in extensive use since the 1960s, well before the codification of the trust law in 1984 to guide the local courts.

Non-resident trusts have always been a particularly attractive way for sophisticated foreign clients to separate beneficial and legal ownership of their assets in a tax effective manner. The use of a Jersey trust has developed alongside the Finance Industry to become more mature, efficient and effective.

Non-resident trusts are not taxed in Jersey, nor is a tax levied on distributions from the trust to non-resident beneficiaries.

There are no other tax consequences for the sophisticated foreign client who settles an estate in trust, as there are no gift or estate taxes in Jersey and local taxes do not apply to non-resident trusts. In addition, the terms of the trust deed may be kept confidential, as there is no requirement to register the trust with the authorities. With correct planning the trust may assist in protecting both the settlor or grantor and the beneficiaries, against overseas expropriation, high taxation or forced heirship rules.

In Jersey, trusts are most commonly established by an instrument in writing duly executed by both the person gifting the trust assets (the settlor) and the trustees. A trust may also be formed by way of a unilateral declaration of trust by trustees already in possession of certain assets.

A Jersey trust may be formed for a period of up to 100 years, although the Law also provides that a trust or its terms may be revoked or varied.

Legal title to the trust assets must pass from the settlor to the trustees according to the nature of such assets. The trustees must hold and administer the assets in accordance with the terms of the discretionary trust (subject always to the provisions of the Law). It is common practice for the settlor of a trust to provide the trustees with a letter of wishes which, although not legally binding, will serve to guide the trustees in regard to the exercise of their powers and discretions.

Trusts established for the benefit of non-residents are frequently discretionary and allow considerable scope in the nomination of beneficiaries and the appointment of the trust fund between beneficiaries. The settlor may, however, wish to provide fixed rights as to income or capital in favour of certain beneficiaries. These matters need to be discussed and agreed with the proposed trustee before the trust instrument is drafted. On occasions, the settlor of a discretionary trust may nominate a "protector" of the trust assets. In such cases, the trustees may not exercise certain powers and discretions without the prior consent of the protector.



High Standards

Jersey is committed to developing and maintaining high regulatory standards and has been recognised for its co-operative approach with international law enforcement agencies and other regulators in the fight against serious fraud, money laundering and terrorist financing.

In the most recent investigation into Jersey's regulatory standards by an outside body, the IMF gave the Island a clean bill of health and said that, "Jersey has a robust supervisory framework and adequate legal system."

The Financial Stability Forum also found Jersey to be a Group One jurisdiction, and the Financial Action Task Force concluded that the Island was close to complete adherence to their principles.

Uses of trusts

Trusts may be established for a variety of objectives. A Jersey trust is a useful vehicle through which to make tax or succession planning arrangements as it may be utilised to defer or avoid the incidence of both income and capital taxes in other jurisdictions. A Jersey trust may also be a useful vehicle for estate planning purposes as a trust can continue beyond the settlor's death, ensuring continuity of ownership and management of a family's wealth.

Who will a trust work for?

Trusts may be used for several different, far-reaching purposes, including:

- **Provision for a spouse and dependants**
- **Preservation of family property and protection against political risk**
- **Tax planning**
- **Avoidance of inheritance laws or probate formalities**
- **Employee benefit trusts and employee share option schemes**
- **Charitable trusts**
- **Purpose trusts**
- **Trading trusts**
- **Unit trusts**
- **Avoidance of exchange controls**
- **Ownership of special purpose vehicles**

Common types of Trusts

Discretionary Trust

The discretionary trust often provides the most flexible and efficient structure for the settler/grantor and the beneficiaries. Under the terms of a discretionary trust, the trustee is given wide powers over the trust fund to make decisions in the best interests of the beneficiaries as a whole. For this reason the beneficiaries are regarded as not having a specific interest in the trust, but only a right to be considered when the trustee exercises its discretion.

Fixed Interest Trust

Under a fixed interest trust, primary beneficiaries will normally be granted a right to receive the income (and possibly a portion of the capital) of the trust fund and the trustee's discretion over the trust fund will be limited. Secondary beneficiaries may also be included who will have rights after the primary beneficiaries' rights have terminated.

Charitable Trust

A charitable trust may be established under Jersey Law to create a charitable fund or to make provision for existing charitable institutions or purposes. Charities may also be created in the form of a company limited by guarantee.

Purpose Trust

A purpose trust is created for the benefit of specified purposes and not for persons. Purpose trusts have been used in a variety of commercial transactions including ownership of private trustee companies, ship and aircraft financing, insurance company ownership structures, and securitisation structures.





What to look for in a Trust Company

Pension & Employee Benefit Trust

International businesses may wish to establish pension and employee benefit structures in Jersey. The use of such trusts to hold assets can offer added protection for the benefit of employees and the employer. The trust can help avoid unduly onerous regulations and, in some cases, can provide for tax savings. For example, the majority of FTSE 100 companies use the Island as the tax neutral location in which to administer their global employee share option schemes.

Commercial Trust Structures

Jersey trust companies are familiar with specifically crafted trusts designed for a specific corporate purpose or complex transaction (for example, special purpose vehicles – SPVs – established for note issuing programmes or other types of capital markets transaction). Jersey has become the preferred location for many highly regarded investment schemes instigated by leading global financial institutions and multi national firms. Jersey is frequently the preferred offshore partner to the City of London, New York and other major finance centres for the establishment of securitisation programmes, private equity schemes, capital market transactions and other corporate financial planning which require a respected and well-regulated offshore location.

All trust service providers carrying on business in Jersey are formally regulated by the Jersey Financial Services Commission under the Financial Services (Jersey) Law 1998. The flexible but comprehensive regulations provide an additional degree of security to international investors seeking to establish a relationship with a Jersey trustee.

Jersey trust companies will provide a variety of services to their clients and will specialise in trust administration with confidential personal service tailored to the client's particular requirements. These requirements commonly include ownership of a family run business, wealth preservation and succession planning or commercial applications of trusts.

Each trust will be administered by experienced trust personnel working hand in hand with professional advisers, investment managers and custodians, to co-ordinate and oversee the affairs of the trust and any related companies.

Ultimately, a successful trust arrangement is based upon a personal relationship between the settlor, trustees and trust beneficiaries. Prospective clients should look for, and be satisfied that they have identified, a service provider who has been granted a licence by the Jersey Financial Services Commission and who is committed to building and maintaining a long-term relationship with them.

Company administration in Jersey

Incorporating a Jersey company

Incorporation of a Jersey company is a straightforward process and can be undertaken by any regulated trust and company services provider. 'Standard' incorporations typically take 2-3 days although for a small additional fee a 'fast track' service is also available for incorporations to be completed within two hours if required. In addition to Jersey companies, most service providers will also be able to incorporate and administer companies domiciled in a range of other jurisdictions if required.

However, recent enhancements to Jersey's company law have delivered a number of innovative features making Jersey companies an increasingly attractive option to international investors. For example, it is now possible to re-domicile companies both in and out of Jersey, subject to appropriate regulatory approvals, thereby allowing continuance of existence from one jurisdiction to another.

Par value, no par value, unlimited liability companies and companies limited by guarantee have also been introduced, greatly increasing the range of options for Jersey based structures. Further changes to the Companies (Jersey) Law 1991 planned for 2005 should also see the introduction of protected cell company legislation in Jersey.

Uses and advantages of Jersey companies

Jersey companies are used by residents and non-residents for a wide range of activities, such as investing in securities or property, or acting as a group holding company. Strict regulations, including a robust authorisation process, apply to Finance Industry related activities.

Non-resident owners of Jersey companies may apply to be exempt from tax in Jersey and to pay a flat rate annual fee of £600. This exempt company fee will be discontinued at the end of 2008, when the exempt company and International Business Company ("IBC") will become zero-rated for corporate tax (thereby preserving the attractiveness of such companies to international investors seeking a 'tax neutral' vehicle).

There is no ultra vires doctrine, and companies enjoy the powers of a natural person. However, directors are bound by the commonly accepted duties of a director. Although private tax exempt companies are not required to file accounts or have audited accounts, they must prepare annual accounts. A Jersey company requires a minimum of one director and a secretary, which may be a corporate body. Corporate directors are not currently permitted.

Non-Jersey registered companies may legitimately base their activities in Jersey. However, if the majority of the board is comprised of Jersey directors then such companies must apply for exempt tax status.

Regulation of Trust service providers in Jersey

Jersey has a mature and well-respected regulatory regime, which has recently been independently endorsed by the International Monetary Fund (IMF) as meeting international standards. In line with all internationally acclaimed financial centres, Jersey also has a comprehensive legislative framework in place to combat money laundering and to prevent the financing of terrorism.

All professional trust and company service providers operating in the Island are formally regulated by the Island's independent regulatory authority, the Jersey Financial Services Commission (JFSC), and are also subject to annual external audit and are required to adhere to a formal Code of Practice which

includes strict corporate governance and regulatory capital requirements. Compliance with the Code of Practice is monitored by the JFSC through a formal programme of onsite supervisory visits.

The level of regulation, whilst comprehensive and providing comfort to clients, does not however stifle the industry. Jersey has a mature and vibrant trust industry hungry for innovation and committed to service excellence. The Island has a skilled workforce of specialists who are qualified both by length of service and through holding internationally acclaimed professional qualifications. These specialists can assist in all aspects of complex tax planning, provide fiduciary services and are committed to building and maintaining long-term relationships with clients. Jersey understands the commercial realities of the 21st century and designs solutions which work for sophisticated clients.

These aspects of financial business in the Island have been hard won. Jersey is proud to be, and intends to remain, a leading financial centre with a regulatory regime to match.

For further information regarding the Jersey Financial Services Commission and the regulation of trust companies or other financial services providers please refer to www.jerseyfsc.org

Looking to the future with confidence

Over the past 40 years, Jersey has earned widespread recognition and respect as a successful international financial services centre, and a leading jurisdiction for trust and company solutions. However, the Island has not stood still and is continuing to develop its infrastructure, regulatory and legislative regime, products and services, and the skills of its workforce in order to retain its leading position within the global financial services industry. As part of this development, Jersey is presently reviewing its trust law which came into force in 1984. Among the changes expected are:

- Introduction of statutory provisions covering settlor reserved powers and clarifying duties and responsibilities of trustees in this regard. This will provide greater statutory certainty to an increasingly common feature of many trusts, namely the desire and ability of settlors to have a continuing role in certain aspects of trust administration, most commonly, providing investment advice to the trustees;
- Planned improvements to the Article which deals with the duty of trustees to disclose information about a trust as well as the rights of beneficiaries to receive trust information; and
- Clarification of the position of 'purpose trusts', to enable them to be used in a wide range of transactions, including holding shares in a private trust company or in an SPV as part of a securitisation structure, with greater transparency and certainty than has previously been possible.

Company administration in Jersey *continued...*

Other common investment vehicles in Jersey

Jersey has comprehensive Limited Partnership (LP) and Limited Liability Partnership (LLP) legislation. Limited Partnerships in particular are popular investment vehicles and are frequently used for private equity investment, which has been an area of significant growth in Jersey in recent years.

Jersey is also planning to introduce a Foundations Law, which will provide a similar structure to the Jersey Trust, except that the Jersey Foundation will have its own legal personality and will appeal in particular to investors from civil law jurisdictions. Foundations will introduce a new type of financial services offering in Jersey, designed to complement the existing range of products and services offered by the trust industry.

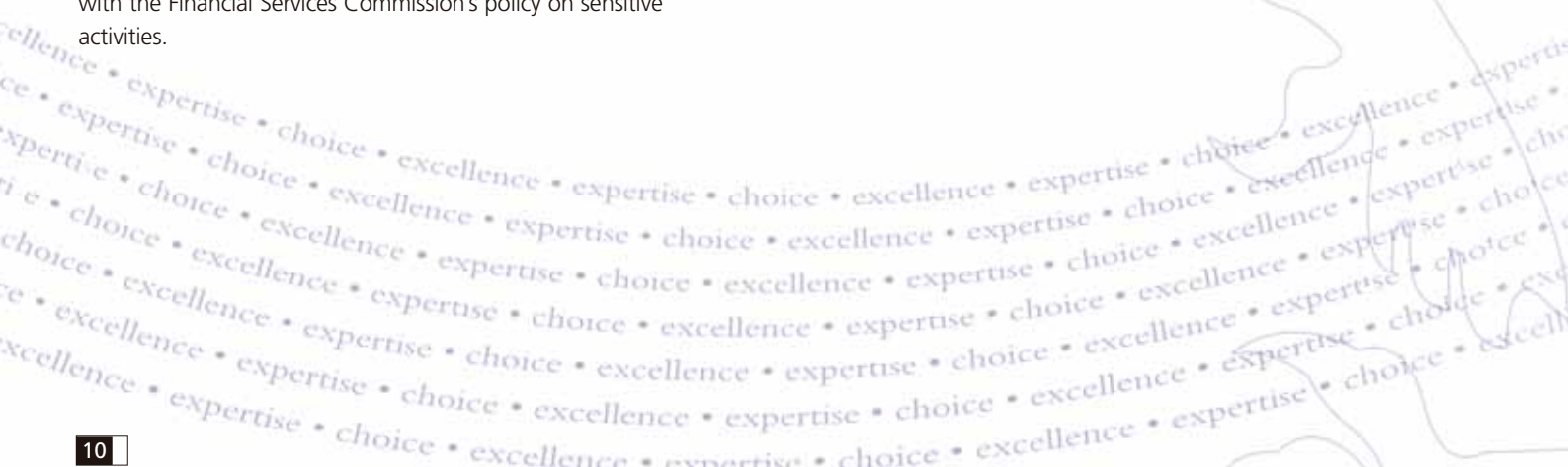
A foundation is an entity that holds assets in its own name for the purposes set out in its constitutive documents, and its administration and operation is carried out in accordance with contractual, rather than fiduciary principles. Unlike trusts, foundations are distinct legal entities, but, unlike companies, they have no shareholders. For clients and authorities originating in civil law jurisdictions where the concept of a trust is unfamiliar, a foundation can be a more acceptable vehicle.

As well as being used for wealth management and estate planning, foundations may also have applications in more specialised areas, such as long-term charitable aims or securitisations, where it is desirable that property be given to a legal entity and applied for specific purposes. As with companies and trusts, the use of Foundations will be subject to compliance with the Financial Services Commission's policy on sensitive activities.

The International Perspective

The Island's existing reputation for probity as an offshore centre has helped it to build a strong relationship with international bodies such as the OECD. It is currently represented on an OECD group considering how to achieve a global 'level playing field' on tax issues and on separate OECD groups looking to set related global standards for information provision and exchange. At the end of 2003, following a comprehensive review, Jersey's regulatory regime received further independent endorsement from the International Monetary Fund (IMF). The Island's high regulatory standards and the agreements on taxation reached with both the OECD and the European Union have helped Jersey secure a long-term future for its Finance Industry.

The increasing level of regulation has not led to a flight of capital as some predicted. In fact, quite the reverse is true, investors have taken comfort from the sound levels of regulation which have, if anything, acted as a catalyst for growth in the Island.



Jersey Association of Trust Companies

The Jersey Association of Trust Companies (JATCo) is an organisation that represents the majority of trust companies in the Island of Jersey, who in turn employ an estimated 4,000 people locally. Its members, and those employed by them, contribute a significant percentage of the Island's annual tax revenues.

Activities

JATCo is a proactive organisation, which represents its members' interests to government and financial services regulators. It also runs an educational programme to enable decision makers and opinion formers (both locally and further afield) to have critical information upon which to make decisions affecting the Island's trust industry. JATCo canvasses its members' opinions and informs members about developments within the industry be they technical, regulatory or of a practical nature. It holds forums and seminars on current topics of interest as well as sending regular newsletters to members. Items of interest and education are regularly posted on the Association's website. It represents members on various industry, regulatory and

governmental working parties making minutes of such working parties available to members wherever possible.

Membership

To find out more about JATCo, please refer to www.jatco.org



Jersey Finance was formed in May 2001 to represent Jersey's Finance Industry and to promote the Island as an International Finance Centre. A non-profit making organisation, Jersey Finance is jointly funded by the Finance Industry and the States of Jersey, the Island's Government.

Jersey Financial Services Commission

The Jersey Financial Services Commission (JFSC) is a statutory body corporate, governed by a Board of Commissioners. It is responsible for the regulation, supervision and development of the financial services industry. There are around 750 licence holders.

While the JFSC maintains its independence as a regulator, its policy is to work closely with those in the financial services industry, with Jersey Finance and the Island's Government.

A good example of this interaction was the development of the policy for Expert Funds, which followed close consultation with the industry. It was recognised that the regulatory requirements necessary for retail funds designed for sale to the general public and with a low investment requirement are not necessary for funds where the investment threshold is high and where the investors can be considered expert in evaluating the risks involved.

The JFSC believes that combining investor protection with proper risk assessment has produced new policy proposals which should allow Jersey to better exploit market opportunities without departing from the principles of the International Organisation of Securities Commissions, of which it is a member.

For further information regarding the Jersey Financial Services Commission and the regulation of funds in Jersey, please refer to www.jerseyfsc.org



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