

Key Facts Trusts

Jersey's trust legislation contains specific provisions enabling a settlor to reserve an extensive range of powers in respect of the trust, enabling the creation of Settlor Reserved Powers Trusts.

Introduction

The Trusts (Jersey) Law 1984 (the "Law") is widely regarded as having established the standard for offshore trust legislation. The benefits of a Jersey trust will depend on the residence and domicile of the settlor and the beneficiaries and include:

- Confidentiality – there is no register of Jersey trusts
- Avoidance of forced heirship requirements
- Estate planning – facilitating succession of family wealth without estate and probate duties
- Taxation – a trust can assist in limiting or postponing incidence of taxation
- Reduction of political risk – by removing assets from the settlor this prevents them being seized
- Political stability
- Established legal framework

The types of Jersey trusts available include discretionary trusts, fixed interests trusts, accumulation and maintenance trusts, purpose trusts and settlor reserved powers trusts.

Settlor Reserved Powers Trusts

The Law contains specific provisions enabling a settlor to reserve an extensive range of powers in respect of the trust, including the power:

- To add, remove or exclude beneficiaries
- To appoint or remove a trustee, enforcer or protector
- To revoke, vary or amend the terms of the trust deed
- To advance, appoint, pay or apply income or capital of the trust property or to give directions for the making of them
- To give investment directions – binding directions to the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property
- To appoint or remove a director of any company wholly or partly owned by the trust
- To appoint or remove an investment manager or investment adviser
- To change the proper law of the trust

Key Facts

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- To restrict the exercise of any powers or discretions of a trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person as may be specified in the terms of the trust

Advantages

Reserved powers trusts are popular with settlors for whom the primary objectives of the trust are neither mitigating tax nor asset protection. The advantages of a settlor reserved powers trust include:

- The settlor is able to retain a level of control that allows him or her to provide direction in investment and administration decisions
- The settlor is able to eliminate his or her concerns over transferring full control to institutional trustees
- Allowing the settlor to continue to act as a director of an investment holding company to utilise his or her expertise and knowledge of a business or in choosing investments that the trustees do not have in making such decisions
- Providing a settlor with on-going involvement to allow them to provide direction in the event of a change in personal or family circumstances

Risks

Onshore legal and tax rules may limit the nature and extent of the powers that can be reserved by a settlor before they compromise or negate the advantages of a reserved powers trust. As such it is essential that onshore tax, legal and risk mitigation advice is taken by the settlor prior to the establishment of the trust.

The trustees will have an on-going duty to monitor the investments and consideration should be given to arrange for reporting on the trust assets to the trustees.

Establishment and Administration

Trident Trust has extensive experience working with professional intermediaries and their clients to draft deeds for reserved powers trusts that meet the objectives of the client, as well as acting as a professional trustee and trust administrator of both discretionary and reserved powers trusts.

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