



**fiduchi**

Inspiring. Independent. Trusted.

**Understanding Trusts**  
A guide to the basic principles

Private Wealth



## INTRODUCTION

This brochure provides a straightforward guide to the basics of trusts and is specifically designed for those readers who have very little, or no knowledge, of these structures.

The guide introduces the reader to the basic principles of a trust and the various parties involved; it also looks at the circumstances when trusts are most frequently used and why they might be set up in Jersey rather than any other jurisdiction. A typical trust structure is considered along with a case study of a trust operating in practice.

The procedures to follow when establishing a trust are discussed in detail and reference is made to the termination of a trust once it has reached the end of its useful life.

Finally, there is consideration of the trust and company administration services provided by Fiduchi Limited ("Fiduchi"). Contact details are also provided of relevant members of our team who will be able to help the reader should they be interested in discussing matters further.

This booklet should not be used as a definitive guide for establishing a trust. Trust structures and trust law can be complex and appropriate professional and legal advice should be taken before proceeding further.



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## Understanding Trusts

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## What is a trust?

A trust is an arrangement between three parties - the trustee, the settlor and the beneficiaries. In practice, the terms of this arrangement are set out in the foundation document of the trust; the trust instrument.

A trust is an equitable obligation, binding a person (the trustee) to deal with property over which he has control (the trust property), for the benefit of persons (the beneficiaries), any one of whom may enforce the obligation.

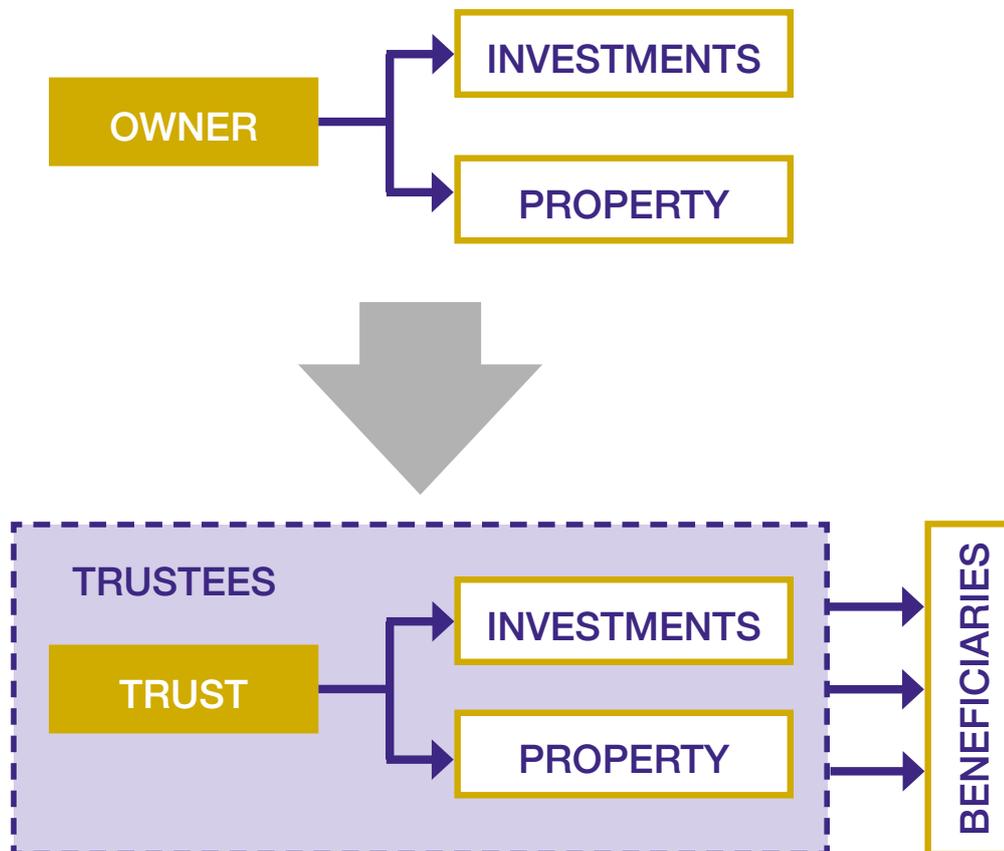
The trustee has an absolute obligation to act in the best interests of the beneficiaries in accordance with the terms of the trust instrument. Any act of neglect on the part of a trustee that is not authorised or excused by the terms of the trust instrument, or by law, is called a breach of trust.

Control of the trustee, may, under the terms of the trust, be subject to fiduciary or personal powers vested in another person, who may sometimes be expressly designated a "protector".

The trust property will typically include real estate, cash or investments. The trustee has the legal interest in the trust property, giving him the right to manage, administer and transfer the assets.

The beneficiaries have an equitable interest in the trust property, which represents the right to enjoy the benefit of the assets according to the terms of the trust.

A trust does not have a legal personality of its own. It does not take a physical form. It is, in reality, no more than a special relationship.



## Reasons why clients establish a trust?

Clients have establish trusts for a multitude of reasons. Some of the more common reasons are detailed below:

### **Privacy**

In Jersey, there is no public register of trusts and no requirement for the trust instrument or trust accounts to be disclosed or filed with a regulatory body. Accordingly, confidentiality is provided for the settlor and beneficiaries.

### **Asset protection**

Once assets are settled in to trust, the settlor ceases to own these assets, meaning that a trust is an effective way to protect assets from future creditors of the settlor. Trusts also protect these assets from other claims, such as forced heirship rules or in the case of changes in personal relationships of the settlor (e.g. between husband and wife).

### **Preservation of family wealth and/or the family business**

There may be situations where senior members of a family are concerned about spendthrift children and/or ensuring the continuity of the family business or family wealth. These concerns can be managed, after the death of the senior family members, by transferring the ownership of the business and/or wealth into a trust managed by a professional trustee, and by giving written guidance to the trustees on how the business/wealth should be managed.

### **Protecting the interests of minors**

A trust with a professional trustee may be useful to manage wealth for the interests of minors, particularly if there are no close trusted family friends or relatives with the expertise and experience in managing investments or large sums of wealth.

### **Inheritance planning**

A trust offers flexibility as to how assets are distributed following the death of a settlor. The settlor can stipulate how and when assets should be apportioned between beneficiaries, allowing him to create a long-term dynastic structure for the benefit of future generations in the knowledge that assets will be managed responsibly for the benefit of the beneficiaries even in his absence.

### **Taxation planning**

Offshore trusts are frequently used to legitimately mitigate an individual's worldwide taxation liabilities.

### **Reduced political risk**

Where the trustee and the assets are in a stable jurisdiction a trust can provide protection against the nationalisation or seizure of assets.

### **Wider commercial strategy**

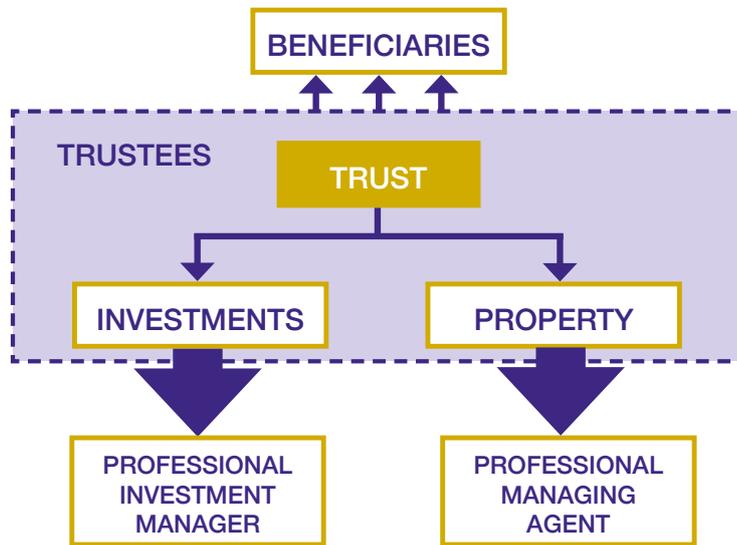
Trusts can be used commercially, such as for the creation of a group structure or as a mechanism to orphan another corporate vehicle.

## Why establish a trust in Jersey?

The location, reputation and experience of the trustee are all important matters when considering establishing a trust. There are many providers of trust services and many centres where such business is conducted. Jersey has a number of key attributes which make it an attractive location for establishing a trust, some of which are set out below:

- The world's premier offshore jurisdiction with a long and successful track record of providing trust and company administration services.
- A tax-free environment for non-resident entities. Jersey trusts with non-Jersey resident beneficiaries generally incur no Jersey tax.
- A politically stable government and a stable economic and fiscal environment.
- High ethical standards in government, the professions and commerce.
- Excellent support services including legal, accounting, banking and telecommunications.
- A modern (and often copied) trusts legislation and an effective and respected judiciary, with a supportive government committed to the long-term success of the finance industry.
- Accessibility in terms of transport links, location and time zones, which helps promote administrative efficiencies and facilitates a closer relationship between the trustee and the client.

## A typical trust structure



The above diagram represents a typical structure using a Jersey trust. A subsidiary holding company is frequently used to hold the assets of the trust because it is usually tax efficient to do so (especially if investing in the UK).

Professional investment managers and property agents, who may be independent of the trustees, are appointed to provide specialist advice and skills to manage the trust assets. Terms of reference will be agreed with them upon appointment, and the trustee will be responsible for ensuring that these terms are being adhered to (for instance, by ensuring the investment manager is providing investment performance comparable to an agreed benchmark).

The directors of the holding company will usually be provided by the trustee, although clients may sometimes be directors themselves, depending on the circumstances.

## The parties to a trust

**'Settlor'** - The settlor is the person who establishes the trust. He is the person who transfers money or other property to the trustees for them to hold under the terms of the trust.

**'Trustee'** - The initial trustees are appointed by the settlor. They receive legal title to the trust property when the settlor creates and constitutes the trust.

In managing and disposing the assets of the trust, the trustees have a fiduciary duty to always act in the best interests of the beneficiaries and a legal obligation to act within the terms of the trust instrument and trust law.

It is common for the settlor to express his wishes to the trustees regarding the management and/or the disposal of the assets, usually in a letter of wishes (refer section 6.7). The trustees can refer to the settlor's wishes for guidance when making decisions regarding the trust assets.

When using offshore trusts, the trustee will usually reside and carry on trust business from within the offshore jurisdiction. The trustee will typically be a corporate vehicle (a "trust company"), which is associated with a professional organisation such as a bank, legal firm or accountancy practice.

**'Beneficiaries'** - The beneficiaries are the persons for whose benefit the trust is created. They may be named and identified in the trust instrument or described by reference to a class of beneficiaries. The settlor may also be a beneficiary.

A beneficiary has an equitable ownership interest in the trust property which allows him to enjoy the property, or its income, according to the terms of the trust.

**'Protector'** - The role of the protector is to oversee the trustees to ensure that they are managing the trust fund appropriately and in accordance with the trust deed. The protector is usually nominated by the settlor and is often a relative, close friend or a trusted adviser.

Where a protector is appointed, the trust instrument will specify the type of transactions that cannot be carried out by the trustee without first receiving the protector's consent. Typically, protector powers are limited to the approval of distributions, changes to the beneficiaries and changing of the trustees.



## How to establish a trust structure in Jersey

### Contact Fiduchi and obtain tax and/or legal advice in your home jurisdiction

It is important to ensure that Fiduchi are involved early on in the decision-making process to ensure that we understand the client's objectives and to suggest the most appropriate trust structure to be established.

It is also important that appropriate tax and legal advice is taken in the home jurisdiction of the client, to ensure no tax, legal or regulatory breaches occur as a consequence of establishing an offshore structure.

### Provide an explanation of the planned structure

An explanation of the purpose of the offshore structure will be required including information such as the proposed activities and transactions, the purpose of those activities and the various parties involved.

If there is a tax or legal rationale for establishing the offshore structure, then an understanding of this rationale will also be needed (this is often most easily achieved by providing a copy of the tax or legal advice obtained by the client).

Information regarding the significant assets and liabilities that are likely to be held in the structure will also be required.

### Verify the identity and address of related parties

Jersey Law requires that the identity and residential address of the various parties involved in the offshore structure be appropriately verified. For individuals, this usually involves providing an appropriate photographic document, such as a certified copy of their passport, ID card, driving licence or similar, to verify their identity. To verify the individual's address, it is usual for a certified copy of a recent utility bill to be provided that clearly records the residential address. In situations where the address is recorded as a post office box number, alternative evidence may need to be provided.

### Provide details on the source of wealth and source of funds

International regulations require that Fiduchi obtains a full understanding of the client's wealth and their path to wealth. This is often best obtained by the provision of a curriculum vitae. In addition, Fiduchi must have a documented understanding of the source of any funds transferred into trust.

Appropriate evidence to verify the source of funding and wealth will need to be provided, such as a reference from suitable referee or a copy of audited accounts or a transaction contract.

### Provide third party references from appropriate referees

Independent references should be provided on the settlor. Two independent references should be provided from suitable referees such as a bank with which the settlor has maintained a long-standing relationship, a legal advisor or accountant.

### Determine the type of trust to be used

There are a number of different types of trust that could be used - determining the choice will depend on the needs of the beneficiaries and any tax or legal considerations. The most commonly used trusts are as follows:

- **Discretionary Trust**  
This is the most commonly used trust, providing the trustees with complete discretion to manage the assets and income in accordance with the beneficiaries' best interests.

- **Interest in Possession Trust**

This type of trust may be used in circumstances where there is a desire by the settlor to preserve the capital of a fund for certain beneficiaries, but to permit other beneficiaries to receive the income arising from the assets. The trustees must distribute the income earned in the trust to those beneficiaries with a specified right to receive it, but retain discretion over the capital.

A typical example when this type of trust is used is when a settlor wants his spouse to take benefit from the use of the family house for the remainder of her life and for the children to take benefit after she dies.

- **Reserved Powers Trusts**

A reserved powers trust allows a third party to the trust (usually but not necessarily the settlor) to retain certain powers in respect of the trust. These powers may allow the power holder to give binding instructions to the trustee over particular aspects of the trust, such as how the trust's assets are invested or who may benefit from the trust and in what circumstances. Trusts of this type offer flexibility and can be attractive to settlors from jurisdictions unfamiliar with the trust concept, but care must be taken to ensure that the reservation of any particular power does not give rise to any adverse tax or legal consequences.

- **Purpose Trusts**

These are trusts that are set up for a defined purpose as opposed to being set up to benefit specific beneficiaries or charities. These trusts can be used in any number of ways and can be applied to private family trusts as well as to international finance transactions or trusts used for social benefit projects. These trusts require the appointment of an 'enforcer', whose duty it is to enforce the trust in relation to the stated purpose but otherwise, they have essentially the same characteristics as all other Jersey trusts.

### Clarify details of the settlor's wishes

Once the trust is established it is common for the settlor to provide guidance to the trustees on the administration of the trust fund by way of a letter of wishes.

A letter of wishes is not a legally binding document and the trustees do not have to follow the guidance of the settlor. However, in practice it proves to be a useful tool that the trustees use to facilitate their decision making and to determine how best to manage the trust assets in the best interests of the beneficiaries and in accordance with the original purpose of the trust. For example, a letter of wishes may give guidance on how to allocate between the beneficiaries the benefit taken from the trust assets following the death of the settlor.

A letter of wishes is usually provided to the trustees when the trust is created and may be amended from time to time. Subsequent letters of wishes can be provided at a later date.

### Timeframe to set-up

Most trust structures can be established within a week. However, the timeframe is usually determined by the speed with which the various information required above can be gathered and how many amendments (if any) are needed to the standard trust instrument that we can provide.

## Transfer/Termination of a trust

A trust can be transferred to new trustees in certain circumstances. This is not an unusual process and is generally achieved by a simple deed of retirement and appointment which is drafted by local lawyers.

A trust automatically ceases to exist if there are no longer any assets contained within it. The usual method of terminating a trust is to distribute all of the remaining assets to the beneficiaries. This is generally achieved by a simple deed of appointment which is drafted by local lawyers.

## CASE STUDY:

### A typical trust structure

Mr A owns shares in a private company (Co Ltd), which is looking to raise external public finance through a listing on a stock exchange. Mr A has a wife and four children and decides to settle his shares in Co Ltd into an offshore trust for the benefit of him, his wife, his children and a cancer research charity. (Mr A is now the sett/or of the trust and one of the beneficiaries along with his wife, children and the charity).

As a result of the settlement of the shares into the trust, legal title over the shares now rests with the trustee. Mr A provides the trustee with a letter of wishes, which states that, in the event of the trust holding significant cash balances, he would like the trustee to consider investing such cash in low risk, income generating listed equities. Mr A also requests in the letter that any income earned from these investments should be primarily for the benefit of Mr A and his wife. The letter also states that Mr A would like his children to benefit from the capital of the trust once they have reached the age of 25.

Co Ltd is then listed on the stock exchange and the share price increases substantially. Mr A asks that the trustees consider selling half of the shares held in Co Ltd and investing the proceeds into an investment portfolio. After consultation between Mr A and the trustees, three professional investment managers are identified for consideration to be the appointed as the investment manager to the trust. Mr A and the trustee meet each of these investment managers to determine the most suitable for the trust.

After considering the wishes of Mr A and the large increase in the value of the shares held in Co Ltd, the trustee decides to sell half of their shareholding in Co Ltd and appoints one of the investment managers to select a suitable investment portfolio of equities and to manage the portfolio in accordance with Mr A's objectives.

The trustee monitors the performance of the investment manager on a quarterly basis and provides the beneficiaries with a report of the investment performance. The trustee also pays out any income earned from the portfolio to Mr A and his wife as and when required.

A number of years later, all of the children have reached the age of twenty five. Mr A and the beneficiaries all ask the trustee to consider winding up the trust as the children are considering purchasing properties so they would all like to receive a lump sum capital payment. The trustee considers this and approves the winding up of the trust as it is in the best interest of the beneficiaries to receive all of the funds that they are entitled to at once. A deed of appointment is prepared, appointing the remaining trust assets out to the children of the settlor, the relevant payments are made and the trust then ceases to exist.

## About



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Fiduchi is an independent, director-owned trust company which provides private wealth, corporate and yacht services for international families, entrepreneurs and small and mid-cap companies. Fiduchi also provides services to local trading companies and to some multinational groups and state-owned enterprises.

Fiduchi is regulated by the Jersey Financial Services Commission and provides trustees services through its professional trust company Fiduchi Trustees Limited. Further information can be obtained from our website [www.Fiduchi.com](http://www.Fiduchi.com)

We pride ourselves on our motivated team of specialists dedicated to providing a fully integrated offshore administration service offering. We have a wide variety of experience and skills in offshore services and have advised, implemented and administered many offshore trusts and companies for clients all over the world.

Our team includes qualified accountants, trust specialists, company secretaries, bankers and other relevant professionals. We have the technical expertise and knowledge to provide a comprehensive service for multi-national groups, privately owned businesses, individuals and families.

We are an associated company of Baker Tilly Channel Islands and we work closely with other Baker Tilly offices throughout the world to apply the range of professional skills necessary to provide creative and practical advice and solutions to individual problems.

Our trust and company specialists provide an extensive range of professional services and are able to help in such areas as:

- Formation of trusts, their administration and the provision of trustees
- Formation and administration of companies and the provision of directors
- Accounting and bookkeeping services
- Liquidation and restructuring services

If you would like to know more about Fiduchi or if you want to discuss further how to establish an offshore trust or company, please contact one of our team below.

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