Economy

What is a trust?

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A trust is a relationship recognised under law, created when a person (usually called a trustee) agrees to hold assets either for the benefit of others (usually called the beneficiaries) or for particular purposes (such as for the charitable purpose of the prevention or relief of poverty).

A trust is not a legal entity in itself and does not have legal personality. Instead the trustees have legal responsibility for the assets and it is the trustee who will enter into contracts or take on liabilities.

Why have a trust?

Traditionally trusts were established to protect an individual's or family's personal wealth and to allow planning for the future, often called estate and succession planning. They can assist in continuity of ownership for family assets and legitimate tax planning.

Trusts can also be used for commercial uses such as employee benefit trusts, pension funds, and unit trusts.
It is also common to find charitable trusts being used for various charitable purposes.

Other characterisations include:

- A *discretionary trust* where a trustee has a wide discretion to decide the amount of capital and income which each beneficiary will receive and when, thus permitting a trustee to respond to the particular circumstances of the trust and the beneficiaries at any particular time.
- A *fixed interest or life interest trust* where a beneficiary has a fixed entitlement set out in the trust instrument to income and/or capital of the trust.
- A *Reserved Powers trust* where certain powers are given to a named third party (such as the settlor or a particular advisor). These can relate to a variety of things but often deal with investment powers.
- *Non-charitable purpose trusts* are established for a number of reasons: these might be where there are philanthropic but not charitable purposes or where there is a private family trust or for international financial transactions.
- *Protective trusts* are used to protect the assets of a trust so that the interest of a beneficiary will be reduced or terminated if the beneficiary attempts to assign their rights as a beneficiary or becomes subject to some sort of compulsory assignment.
- A *Will trust* is one that comes into being on the death of the settlor.

Persons involved – key terminology

Trustee - a person who holds the assets for the benefit of others or for a particular purpose.
Beneficiary – a person for whose benefit the assets are held
Settlor – a person who places the assets into the trust. Once the assets are in the trust, the settlor ceases to own them.
Enforcer – a person who ensures that the purposes of a purpose trust are carried out
Protector – a person who, according to the specific terms of a particular trust, monitors the activities of the trustee and offers guidance to the trustee. Their consent may be required before a trustee exercises a power or discretion. Not a requirement but optional.

How to create a trust

Trusts are governed by the Trusts (Jersey) Law 1984. This permits a certain degree of flexibility within an appropriate and legitimate framework.

The key document for a trust is the trust deed or instrument of trust, which sets out the role and responsibilities of the trustee and how the trustee must administer the trust assets and distribute them to the beneficiaries or for the stated purposes. Whilst it is not mandatory for a trust (except for a unit trust) to be in writing, it is usually the case that the terms of the trust will be formally set out in written form.

In order for there to be a valid trust, there must be a clear intention by the settlor to divest themselves of the assets to one or more trustees. The identity of the beneficiaries (individually or by means of a class such as 'my issue'), or the purposes of the trust, must be clear. The property to be held in the trust must also be certain.

Trustee duties and obligations – including as to the prevention of financial crime

A trustee must observe the utmost good faith and must always act in the best interests of the beneficiaries. They are responsible for the administration of the trust in accordance with the terms set out in the trust deed and the law governing the trust.
Where a trustee is providing its services by way of business, they must be regulated by the Jersey Financial Services Commission
In addition, the provisions relating to the prevention of financial crime apply to trustees. In particular:

- Article 2 of the Proceeds of Crime (Provision of Information by Trustees) (Jersey) Order 2021 (jerseylaw.je) requires a trustee to disclose that it is acting as a trustee (and not in their personal capacity) when forming a business relationship or conducting a one off transaction with a relevant business, thereby putting the relevant business on notice that they must carry out identification measures on the trustee and on the legal arrangement (the trust). This applies to every trustee, whether or not the trustee is a regulated trust and company service provider (TCSP).

- The Money Laundering (Jersey) Order 2008 applies to all trustees, either in full, or as extended by the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016 to persons acting as trustee in a non-professional capacity.

The trustee is required:

a. Before the establishment of a business relationship or before carrying on a one-off transaction;
b. on an ongoing basis during the relationship; and
c. If the relevant persons suspects money laundering or has doubts regarding the adequacy of documents, data or information provided;
   i. To identify the settlor, protector, any person with a beneficial interest in the trust, and any person who otherwise exercises control over the trust;
   ii. To obtain information on the purpose or intended nature of the business relationship or one-off transaction.
   iii. To scrutinize transactions on an ongoing basis to ensure the transactions being conducted are consistent with the knowledge of the customer.
   iv. To ensure that documents, data or information obtained under identification measures are kept up to date and relevant (Article 3 MLO).

The JFSC AML/CFT/CPF Handbook details the obligations for professional trustees to carry out CDD including identification measures and ongoing monitoring on the trust and persons connected to the trust.