

GUERNSEY TRUSTS

The benefits of locating your trust in Guernsey



OVERVIEW

Trusts have been part of Guernsey law for centuries, with increased focus over the past 50 years on Guernsey serving as an international trust administration centre. Guernsey is a British Crown Dependency and not part of the United Kingdom or the European Union, thereby maintaining considerable autonomy over its internal affairs. With flexible and highly-regarded trust legislation, Guernsey offers many of the advantages of US jurisdictions such as Delaware, without the complexity of the US tax code.

Guernsey is not a bank secrecy jurisdiction, as evidenced by its more than 30 tax information exchange agreements with other countries - including more than half the G20 nations. On the contrary, it has been designated a "white-listed jurisdiction" by the Organisation for Economic Co-operation and Development (OECD), reflecting its high standards for international finance and strict regulatory oversight of the Guernsey Financial Services Commission. Guernsey's popularity stems from its internationally compliant environment, effective regulation of the fiduciary industry, tax neutrality and highly effective body of trust law.

WHAT IS A TRUST?

A trust is a legally binding agreement created by a settlor (owner of the assets) who entrusts some or all of their assets to an individual person or organisation (trustee) to manage the assets for the benefit of another (beneficiary). The trustee may possess the holding and management rights to the beneficiary's assets but its authority over the assets is constrained by its duties as a fiduciary. It must act in the best interests of the beneficiaries by satisfying its duties of care, loyalty and impartiality.

The nature of the trust, including the beneficial interests that arise under the trust and the powers of the trustee to administer the trust, are typically defined in a trust deed, trust agreement or the trustee's declaration of trust. In addition, the laws of the jurisdiction in which the trust is settled will influence the rights and duties of relevant parties to the trust.

BENEFITS OF A TRUST

The use of a trust to separate legal and beneficial ownership of assets offers a number of benefits:

Safeguarding assets

Trusts can be an effective way to preserve and protect assets. Assets placed in a trust are no longer owned by the settlor and may be protected from seizure in the case of legal proceedings or a divorce settlement. Note that if a trust is formed to avoid an existing liability, trust assets can in certain circumstances be returned to the settlor and seized.

Tax planning

A correctly structured and administered trust may produce tax savings and may assist in preventing unintended tax liabilities.

Confidentiality

The trust's structure and the transfer of assets from the settlor can be used to keep confidential any connection of trust assets to a particular set of beneficiaries.



Family planning – heirship

Civil law jurisdictions and countries with Islamic law have ‘forced heirship,’ preventing the deceased from leaving their assets to whomever they wish. A trust will facilitate a course of action that will allow for a wider and purposeful distribution of the estate.

Estate planning

A trust is a sophisticated way of managing the settlor’s wishes after passing away. For example, a trust could ensure education is provided for the settlor’s children, but restrict access to the capital until later in life.

Charitable giving

A trust may be structured to provide the settlor’s chosen charity a one-time benefit or, for example, an annual gift, structured over years or into perpetuity.

Protecting the frail

A trust may provide for those who may be unable to manage their own affairs such as children, the aged or individuals in poor health.

Preserve family assets

A trust can ensure that an individual’s accumulated wealth is not transferred to a single generation. It can be structured to ensure assets are retained in a single fund to accumulate and provide for the family over successive generations.

Family business

Transferring shares of a company into a trust may ensure the longevity of the company, preventing a sale or voluntary liquidation without the consent of the trustee. By separating control of the shares from the enjoyment of the income they generate, trusts allow family businesses to be maintained for the benefit of the family after the passing of the entrepreneur without fracturing control of the business. Provisions in the trust may include paying a dividend to the family or stipulating how the proceeds should be used or distributed in the event of the sale or liquidation of the company.

WHY GUERNSEY FOR YOUR TRUST?

By establishing a trust structure in Guernsey, you can gain several strategic advantages that may not be available in other countries.

- High degree of confidentiality for client data
- Asset protection against claims of creditors and spouses
- Perpetual duration of the trust
- Protection from forced heirship claims
- Tax neutrality

Guernsey’s well-established judicial infrastructure and strong political stability is a benefit as well. Its highly regarded Trusts Law, established in 2007, attracts trust business on a global scale from some of the leading families around the world.

The vast majority of trusts in Guernsey are discretionary, giving the trustee the flexibility to address changing circumstances that might not have been contemplated at the time of the trust’s creation.

Of course, the breadth of a trustee's discretion can give rise to the concern that the trustee will not always exercise its discretion in the best interests of a particular beneficiary, or the beneficiaries as a whole. To minimise such concerns, a trust can police or supervise a trustee's discretion through a number of control mechanisms:

- A letter of wishes expressing the grantor's donative intent
- Protector committees with authority to consent to, or veto, trustee decisions
- Reserved powers held by the settlor
- Limits on the trustee's powers to dispose of certain assets
- Co-trustees and advisers with supervisory powers over the trustee
- Removal power vested in a trust protector

Confidentiality

Privacy and discretion may be of great importance to you and your family. These concerns are well-managed in Guernsey, which is among the strictest global jurisdictions.

Guernsey law does not require a trustee to file trust deeds with the Royal Court of Guernsey or register its trusts with a public agency, as do some jurisdictions. Nor is there any regulation requiring trustees to publicly file trust account statements, which could reveal intimate details of a trust's administration. If it is dictated in the terms of the trust, Guernsey law permits the trustee to withhold all information about the trust from beneficiaries, unless the Royal Court directs otherwise.

Guernsey's 2001 Data Protection Law rigorously protects the confidentiality of personal client data such as name, address, date of birth and tax identification. It states that data controllers based in Guernsey cannot transfer personal data to any country that lacks "adequate protection" of personal data. Since few jurisdictions meet this demanding standard, Northern Trust makes anonymous all client data before transmitting out of Guernsey.

Guernsey's confidentiality laws, however, do not mean Guernsey is a "tax haven" to hide income and assets from taxation in other countries. Guernsey's tax information exchange agreements with other countries (more than 30 and growing) and its status as a "white-listed" nation in the OECD's catalogue of international tax compliance confirm Guernsey is not a welcome destination for a tax evader.

Asset protection

Effective wealth planning often includes strategies for preserving and shielding assets from creditor claims. Although asset protection techniques have been available for centuries, the art of asset protection has achieved a high degree of acceptance and utilisation only within the last decades of the 20th century.

The interest in asset protection has stemmed from a number of trends. Increasing personal injury litigation and corporate liability claims are creating doubt around the adequacy of liability insurance. Similarly, rising divorce rates and the uncertain enforceability of prenuptial agreements are causing individuals to seek other methods of protecting family wealth.

In response to several economic threats, many high-net-worth individuals are establishing self-settled (or asset protection) trusts in jurisdictions that recognise such vehicles. Beginning in the late 1980s with a number of offshore jurisdictions such as Cook Islands and Nevis, and followed by 13 US states within the last 15 years, clients may create a trust in which they retain various economic interests as a beneficiary as well as designated powers over trust assets. In these jurisdictions, creditors will not be able to reach trust assets unless they meet certain stringent conditions. In most cases, creditors will have to file claims within a specified period after the trust is established (generally, one to four years) and will invariably have to prove the client's funding of the trust was fraudulent. Unless a creditor's claim is both timely and effective in demonstrating fraud, the assets will be out of their reach.

Like a number of offshore jurisdictions and more than a dozen US states, Guernsey is a jurisdiction in which a client can establish a self-settled trust for his or her own benefit, with a legitimate goal of protecting the trust assets from creditor claims. Under “customary law” as developed in the Channel Islands, a Guernsey court may set aside a transfer to a trust that is fraudulent as to existing creditors, but not so for future creditors whose claims arose after the transfer of assets to a trust. Thus, a Guernsey beneficiary who remains solvent after creating a self-settled trust, taking into account all his or her existing creditors, should find a properly drafted trust highly resistant to the claims of future creditors seeking to reach the trust assets in satisfaction of their claims.

Perpetual duration

An imprudent jurisdiction choice for your trust could result in its termination well before it is necessary or desirable.

Historically, the practical effect of a rule against perpetuities was that trusts in the United Kingdom and the United States could last only a few generations, after which the trustee would have to distribute the trust assets to the class of remainder beneficiaries.

Unlike jurisdictions that limit the trust durations, Guernsey does not have a rule against perpetuities, so there is no constraint on the length of time a Guernsey trust can exist. Family assets transferred to a “dynasty” or perpetual Guernsey trust will remain subject to the trustee’s management and discretion, and the client’s directions contained in the trust deed, until the trust terminates according to its own terms.

With a Guernsey trust, whatever benefits the settlor intended – keeping family wealth safe from creditor and spousal claims, protecting assets for infirm or profligate beneficiaries, allowing pooling of assets for investment opportunities, maintaining a family business or simply keeping a family fortune intact – those benefits can remain in force as long as desired. Moreover, if a Guernsey trust creates a tax advantage by ring fencing assets from subsequent beneficiaries’ taxable estates, the longer duration of a Guernsey trust can only enhance the tax benefit.

Protection from forced heirship

Most individuals prefer to have complete control over the disposition of their assets during their lifetime and upon their death. Although common law countries respect such “freedom of disposition,” most of the world’s nations impose state-mandated dispositive schemes on accumulated wealth. Guernsey law offers an opportunity for residents subject to forced heirship regimes to regain their freedom of disposition.

In the United States and the United Kingdom, where trust law evolved out of English common law, trusts are a common and often essential element of estate planning among high-net-worth individuals and their advisers. But in the rest of the world, many countries restrict a decedent’s rights to use a trust or other vehicle to control the ultimate disposition of assets at death. State-controlled mandatory inheritance laws and traditional family laws have been in place for centuries.

Civil law nations such as France, Italy, Spain, Germany and most Latin American nations favour inheritance schemes that benefit children, especially male children, over a surviving spouse, collateral relatives and strangers. The civil law inheritance regime is premised on the idea that wealth should remain within family bloodlines.

Shari’ah law which applies to the world’s Sunni Muslims, including majority populations in Saudi Arabia, Egypt, United Arab Emirates, Turkey and Indonesia, has developed complex rules for dividing property among a decedent’s heirs. The Qur’an does not permit individuals to vary the inheritance rules, which are designed to avoid potential conflicts within a family.

Guernsey law does not recognise a court's jurisdiction outside Guernsey if the judgment or order is inconsistent with the Trusts Law. The heir who arrives in Guernsey with a claim at odds with the trust deed will likely find an unreceptive arbiter in the Royal Court.

Tax neutrality

Whatever the particular advantages a jurisdiction may offer its trusts, a paramount consideration in locating a trust should be its tax neutrality. Northern Trust's Guernsey affiliate is also a 'qualified intermediary' under US tax regulations and offers a fully tax-compliant and tax-neutral environment.

As a tax-neutral jurisdiction, Guernsey does not impose income tax on trusts for non-resident beneficiaries as long as the trust income was not sourced in Guernsey – thereby avoiding multiple taxation. For example, a Guernsey trust that generates income from US securities will likely be subject to US income taxation, but will not pay a second tax to Guernsey.

Guernsey does not impose any other tax on trust assets to offset the lack of taxes on trust income. There are no estate, gift, inheritance or capital gains taxes in Guernsey, and no transfer taxes or duties payable when assets are transferred into a trust.

In Guernsey's tax-neutral environment, you may have an opportunity to restructure your wealth in a manner that avoids unnecessary income or transfer taxes that might otherwise apply. Of course, the results of any such tax planning will depend on your residence and domicile and should involve your legal and tax advisors. Northern Trust cannot provide any tax advice on these matters.

NORTHERN TRUST IN GUERNSEY

Since our founding as a trust company in 1889, Northern Trust has combined exceptional service and fiduciary expertise with innovative services and capabilities, serving as a fiduciary for the trusts and estates of successful individuals and their families.

Northern Trust Fiduciary Services (Guernsey) Limited began in 1972 as a trust company affiliate of Barings Bank. As part of our 2005 acquisition of business segments of the former Barings Bank, we acquired Guernsey fiduciary services capabilities and are now one of the largest employers in Guernsey.

We manage in excess of \$40 billion, including:

- Equities, bonds and cash
- Exchange-traded funds, private equity interests, hedge funds and mutual funds
- Family businesses including tea farms, vineyards, bloodstock operations, property development and salt distribution
- Residential properties, undeveloped land, artwork, cars and boats
- Personal residence staff

As part of trust structures and on a stand-alone basis, we administer and provide directorships to more than 200 companies with domiciles in jurisdictions including Guernsey, Jersey, Isle of Man, British Virgin Islands, Grand Cayman, the United Kingdom and France.

Comprehensive Fiduciary Oversight

A corporate fiduciary's role has expanded exponentially with broader investment options and more sophisticated methods for coordinating all a family's assets and liabilities. In serving as a corporate trustee, Northern Trust is committed to fulfilling a broad selection of responsibilities.

- Perform fiduciary duties and discretion on behalf of beneficiaries
- Execute investment responsibility

- Accurate and efficient trust operations and asset servicing
- Ongoing auditing and regulatory compliance
- Proactive working relationship with legal counsel, accountants, family office and third-party advisers
- Detailed maintenance of tax costs
- Preparation of trust tax returns
- Maintenance of asset titles and inventory
- Ongoing fiduciary accounting and accurate reporting

Complete Solutions

Specialised knowledge of complex fiduciary aspects sets Northern Trust apart from others in the industry. To facilitate complete management of portfolios and other financial holdings, Northern Trust offers:

- Asset protection trusts
- Estate administration
- Partnership accounting for trust assets
- Blind trusts for government officials and corporate directors
- Foundation services
- Family office support
- Single-stock diversification strategies
- Offshore trusts
- Dynasty trusts
- Grantor retained annuity trusts
- Qualified personal residence trusts
- Intentionally defective grantor trusts
- Qualified domestic trusts
- Split interest charitable trusts
- Special needs trusts

LEARN MORE

Our dedicated fiduciary services team consults with global families, family offices and their advisers on a variety of strategies and solutions for addressing their complex investment, reporting and planning needs. For more information, please consult your relationship manager, or visit northerntrust.com.

© 2014 Northern Trust Corporation. Head Office: 50 South La Salle Street, Chicago, Illinois 60603 U.S.A. Incorporated with limited liability in the U.S. Products and services provided by subsidiaries of Northern Trust Corporation may vary in different markets and are offered in accordance with local regulation. This material is directed to professional clients only and is not intended for retail clients. For Asia-Pacific markets, it is directed to institutional investors, expert investors and professional investors only and should not be relied upon by retail investors. **For legal and regulatory information about our offices and legal entities, visit northerntrust.com/disclosures.** The following information is provided to comply with local disclosure requirements: The Northern Trust Company, London Branch; Northern Trust Global Services Limited; Northern Trust Global Investments Limited. The following information is provided to comply with Article 9(a) of The Central Bank of the UAE's Board of Directors Resolution No 57/3/1996 Regarding the Regulation for Representative Offices: Northern Trust Global Services Limited, Abu Dhabi Representative Office. Northern Trust Global Services Limited Luxembourg Branch, 2 rue Albert Borschette, L-1246, Luxembourg, *Succursale d'une société de droit étranger* RCS B129936. Northern Trust Luxembourg Management Company S.A., 2 rue Albert Borschette, L-1246, Luxembourg, *Société anonyme* RCS B99167. Northern Trust (Guernsey) Limited (2651)/Northern Trust Fiduciary Services (Guernsey) Limited (29806)/Northern Trust International Fund Administration Services (Guernsey) Limited (15532) Registered Office: Trafalgar Court Les Banques, St Peter Port, Guernsey GY1 3DA.

