

Charitable and philanthropic structures in Jersey

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Whilst benevolent giving is generally done from the heart, it is of increasing importance to donors that it is also done with their head. Modern donors want to achieve real value and impact from their giving and often want to play an active role in the structure in order to ensure this. Due to its personal nature, philanthropy continues to be an area which many donors prefer to keep confidential and consequently private philanthropic structures continue to be attractive. In addition, whilst donors have a giving goal, they often require professional support and advice in firstly, achieving that goal thorough the establishment of an appropriate structure with flexibility for the donor to be involved during his lifetime in deciding the strategy and selection of good causes, and secondly, to ensure the good governance and administration of the structure so that it can provide benefit for years to come, even after the donor's death.

Jersey is well established in the establishment and administration of private structures for charitable or wider philanthropic purposes (meaning wider aims that may not fall within the strict definitions of "charitable") in particular charitable trusts, non-charitable purpose trusts and foundations. Due to the flexibility of Jersey law such private structures can be created for a wide variety of philanthropic purposes and Jersey is particularly attractive to donors due to its stability as a jurisdiction (both economically and politically) and its robust legislation, judicial and regulatory regime, not to mention its wealth of experienced professional advisors.

Such private philanthropic structures often complement larger structures which have been established for wealth preservation and succession planning or investment purposes and are often viewed as a way of involving and bringing together the different branches of high net worth families in a joined purpose outside the family's principal business or investment activities. Philanthropy and the involvement in structures created for philanthropic and charitable giving are therefore an increasingly important tool in preparing the next generation for the responsibility and opportunities of wealth and as a way to pass on family values.

Jersey foundations can be created for one or more objects which can be charitable, non-charitable or a mixture of both and since their introduction in 2009 they have shown themselves to be popular for philanthropic uses. A foundation is an asset holding vehicle which is incorporated and therefore has separate legal personality, unlike a trust, allowing it to contract on its own behalf. A foundation is an "ownerless" entity as there is no beneficial owner.

A foundation's powers are exercised by its council in accordance with the powers and functions set out in the charter and regulations of the foundation. At least one council member, known as known as the "qualified member", must be registered under the Financial Services (Jersey) Law to carry on foundation services business and the foundation must have a "guardian" whose main role is to ensure that the council carries out its functions in order to achieve the objects of the foundation. It is possible for the founder to be both a council member and the guardian thereby enabling the founder to retain some control and to monitor the council by virtue of being a council member or guardian.

In addition to the founder, the council may be populated with a combination of handpicked advisors, family members or persons with specialist knowledge in the philanthropic objects of the foundation.

Charitable trusts and non-charitable purpose trusts

In addition to charitable trusts for charitable purposes which satisfy the charity test, Jersey law permits the creation and enforcement of non-charitable purpose trusts (also known as "purpose trusts"). The trustee of a purpose trust holds the trust fund upon trust to carry out specific purposes which do not qualify as exclusively charitable and are not for the benefit of beneficiaries. Therefore, purpose trusts often used for philanthropic purposes or for a mixture of charitable and philanthropic purposes or asset holding purposes. Under Jersey law a purpose trust must provide for an "enforcer" whose duty it is to enforce the trust in relation to its non-charitable purposes. The enforcer must be a person different from the trustee. It is therefore an ideal role for a donor who having settled the trust for philanthropic purposes wants oversight in relation to the administration of the trust and the benefits it distributes. It is also possible for the enforcer to be a committee of family members or a corporate enforcer whose board is populated by family members and advisors.

Charity

The Charities (Jersey) Law 2014 provides Jersey with a modern legal framework to support all types of international philanthropic and charitable enterprise in Jersey including the establishing a register of charities with a restricted section available for structures that do not solicit donations from the public (i.e. privately funded structures), a Charity Commissioner, a statutory charity test, a modern definition of "charitable purposes" and charitable tax reliefs.

Registration as a charity is voluntary but relevant in determining entitlement to certain charitable tax reliefs and to the use of the term "charity". For those not wishing to register as a charity, tax neutrality is preserved for structures with no beneficiaries in Jersey and no income deriving from land and buildings in the Island.

An entity will satisfy the test and be regarded as a charity if (1) all of its purposes are charitable purposes or purposes that are purely ancillary or incidental to any of its charitable purposes and (2) in giving effect to those purposes it provides a public benefit (in Jersey or elsewhere) to a reasonable degree.

Venture philanthropy

Another area developing in Jersey is venture philanthropy, which for many high net worth investors is a natural extension of their business activities. Jersey Finance is a member of the European Venture Philanthropy Association and, in addition, to the structures described above, Jersey has within its tool box various fund, corporate and limited partnership vehicles through which to make such investments.

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