Put Simply: Myth Busting Trusts and Foundations

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Some may think trusts and foundations are only used by very wealthy people or families, or that by putting assets into a trust or foundation in international finance centres (IFCs) like Jersey, then they are avoiding tax.

Some claim offshore trusts and foundations are secretive, and they are used for criminal activity; hiding the real identity of beneficial owners to avoid reporting information to authorities.

In Jersey, these claims are all myths. Here are the reasons why:

Myth 1
Offshore trusts are only for the very wealthy

Truth
This is not the case. Trusts are very common and play a key role in many aspects of everyday life and people will encounter trusts more often than they realise.

Most company pension schemes are structured as trusts, as well as life insurance policies and charities. All of these are accessed by people around the globe, every day – not just the very wealthy.

Why are they used? In the case of a pension fund, the trust structure helps clarify the administration, regulation and taxation of the fund. Jersey has expertise in administering these structures that may not be found elsewhere.

Similarly, many life insurance policies are 'written in trust' so that when the person insured dies the policy pays out to a trust run by the insurer, which then pays the cash out in line with the insured person's wishes. The trust structure ensures that the deceased's wishes about how the insurance funds are to be distributed can be followed quickly and accurately.

It is also common for charities raising money from public or private donations to be set up as a trust or foundation. Many of these are administered offshore (in places such as Jersey) but used to benefit specific charities or charitable projects onshore and the wider public.

Myth 2
Jersey trusts and foundations are secretive and they are used for criminal activity and tax evasion. They keep the identity of the ultimate beneficial owners a secret, to avoid reporting data to authorities.

Truth
In fact, Jersey foundations are commonly used to act as charitable bodies. They can collect donations and perform charitable work in any part of the world. Because a regulated and licensed person must be involved in the set up and maintenance of a foundation, it is unlikely foundations will be used for criminal activity. Licenses are issued by the island's financial regulator -the Jersey Financial Services Commission (JFSC).

Trusts are also commonly used to avoid forced heirship rules. Some countries have forced heirship rules which means the law decides who inherits the trust's assets. If a settlor from a country with forced heirship rules sets up a trust in Jersey, the settlor can decide who inherits the trust's assets. They can also decide who should take over as settlor if they leave. Having the option to choose who inherits is a positive solution, for instance, for people experiencing difficult or estranged family relationships.

In relation to identifying beneficial owners and reporting data to authorities, all financial services businesses, including trust company service providers (TCSPs) in Jersey are required to follow strict laws and regulations, monitored by the regulator - Jersey Financial Services Commission (JFSC).

While the public has limited or no access to information on trusts or foundations, Jersey legislation requires financial services businesses which provide trust, company and foundation services to voluntarily provide information to the authorities, including anti-money laundering authorities. Beneficiaries of a trust in Jersey also have the right to certain information about the trust, in line with Trusts (Jersey) Law.

Jersey has agreements in place with authorities around the world to disclose beneficial owner or financial information when required. These requirements are designed to preserve legitimate confidentiality for foundations and trusts, but at the same time, make trusts and foundations transparent enough to act as a deterrent for anyone trying to use one to try and evade taxes or hide the proceeds of crime or corruption.

For example, when you set up a foundation in Jersey, you must provide details of the beneficial owners to the JFSC at the same time. Financial services businesses must keep full details of beneficial ownership and control and make this information available to the Companies Registry or the JFSC when requested. Following the introduction of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 in January 2021, the foundation's regulations must also now be provided (in abridged form) as well as details of its significant persons. Some of this information will be made available to the public.

We don't have a central registry for trusts, but we do have laws in place to prevent money laundering. If you are a company or individual who provides trust, foundation and company services, then you must comply with anti-money laundering legislation in Jersey as well as United Nations or European Union Sanctions Orders which apply in Jersey.

On top of this, Jersey was an 'early adopter', or one of the first jurisdictions in the world, to adopt the Common Reporting Standard (CRS) which aims to prevent cross-border tax evasion. Over 100 countries around the world have signed up to this standard.

To comply with CRS, each year Jersey financial services businesses who provide trust and foundation services must report certain financial account information of 'specified persons' (i.e. anyone who lives in a CRS-compliant jurisdiction and has certain financial accounts in a CRS-compliant jurisdiction) to the Jersey Comptroller of Taxes. The Jersey Comptroller of Taxes passes this information to the 'specified person's' home tax authority. 'Specified persons' includes settlors and also beneficiaries who receive benefit from the trust or foundation in any reporting year.
Similarly, Jersey has an agreement with America to assist with tax compliance and to implement certain rules, called FATCA. This means certain financial account information (similar to CRS) about US citizens or a US resident individual, partnership or company or trust is reportable to the US authorities.

Myth 3
Avoiding tax is the primary reason for setting up trusts and foundations in IFCs like Jersey.

Truth
When setting up a trust or foundation, tax is a consideration, but more often than not, it is not the main reason people choose to set use these wealth-holding structures.

Reasons why people choose to set up trust and foundations in Jersey include:

(1) it's easier to pass wealth on to a successor or the next generation using a trust,
(2) it's safer to use a trust or foundation if you live in a politically unstable country,
(3) trusts and foundations protect assets for the future if, for example, a couple gets divorced, and
(4) for their confidentiality.

(1) Trusts and foundations make it easier to pass wealth on to the next generation

Trusts and foundations can be used to keep ownership of particular assets, such as a business, within a family. The use of a trust or foundation avoids, on the death of a beneficiary, the risk of a share of assets becoming owned outside the family, enabling assets to be preserved intact for the benefit of future generations.

A settlor can unload asset ownership into a structure for the benefit of his or her family, while maintaining an element of control.

Under Jersey Law, a settlor can reserve certain powers for themselves or grant them to someone else.

Some families prefer to set up their own private trust company (PTC) instead of using a trustee (see Put Simply Trusts: How do trusts work?). The PTC acts as a trustee of one or more of the family trusts. Experienced family members and trusted advisers with knowledge of the family and its business can become board members of the PTC. Usually they sit alongside directors provided by the professional service provider. This is a positive for families as it allows them to have a level of control and influence.

Regulatory and standard-setting bodies around the world want international families to comply with the right rules in the countries where they hold assets. Using a family-managed PTC which includes people you trust with specialist tax knowledge is an ideal solution for international families.

Trusts and foundations are particularly useful for succession planning because if a settlor dies, their reasons behind setting up the trust in the first place can easily be passed onto the next person. Trusts and foundations provide an efficient way to transfer beneficial ownership interests if the settlor dies. It can also simplify formalities where assets are owned in multiple jurisdictions.

Trusts may enable a settlor to avoid forced heirship rules which may be mandatory under the laws of their home country or nationality. Forced heirship laws in some countries can dictate when, how much and who gets what from a trust's wealth.

Unlike a will, which only takes effect on death, putting assets into a trust or foundation can provide certainty on how assets will ultimately be used and who will receive the benefit of them. At the same time, trusts and foundations are flexible in how assets are managed before they are distributed and the circumstances in which they are distributed, for example, you do not have to wait until a death occurs to distribute the wealth.

When a settlor sets up a trust, in effect they are unloading ownership of assets. Once assets are put into a trust or foundation they no longer form part of the settlor's estate. When the settlor dies, it is the trustee of the trust who holds and continues to administer the assets for the benefit of the beneficiaries. Advantages of this are:

a) Family members will have immediate access to assets following the death of the settlor rather than waiting weeks or months for access via the probate court
b) Assets in a trust or foundation can simplify complex cross-border estates - avoiding estate duties and having to complete multiple probate administrations if assets are located in multiple jurisdictions
c) Unlike a will which becomes public probate record; a trust or foundation can protect the family's privacy which is often important where inheritors are very young children or potentially vulnerable young people.

Case study
A high value family business owned by the settlor was put into a trust. Some, but not all of his adult children were employed.

The settlor had a life interest in the income of the trust (generated from the business). His children (and the family line following them) would be entitled to benefit from the income generated from the business in equal shares when he dies. They would not be entitled to the capital – this would be preserved for future generations of the family.

The trust provided a mechanism, so the children could "sell" their beneficial interest to other beneficiaries, but not to third parties. Doing it this way meant that the family members who may want to separate their wealth from the family business in future were secured. It would also mean family members who were maybe more actively involved in the family business could increase their beneficial interest.

(2) Trusts and foundations offer safety in politically unstable countries

Jersey is attractive to wealth-owners because it's a stable jurisdiction, both economically and politically. Its robust legislation, judicial and regulatory regime and in particular, the flexibility of its trust and foundation legislation, are other reasons why people choose to set up trusts and foundations in Jersey.

Some countries have mandatory laws which do not allow wealth-owners to decide who receives the wealth when they die - these laws are called forced heirship rules, also explained as reserving shares in a person's estate. Putting wealth into a Jersey trust or foundation protects wealth-owners from these rules so they can make decisions themselves about how their estate should pass.

If assets are transferred by a settlor to a Jersey trust during their lifetime, Jersey law does not follow the rule of any other jurisdiction relating to inheritance or succession which says that 'such a transfer is not allowed'. This means assets can be left to whomever the settlor chooses;

not just to the people specified by the law of another country.

For Middle Eastern families, a Jersey trust or foundation can be Sharia Law compliant. The legislation governing trusts and foundations is flexible enough to consider Islamic rules of inheritance and restrictions on investment.

The ability to create fully or partially Sharia Law compliant trusts and foundations is increasingly important for Middle Eastern families In some circumstances, strict Sharia portions which limit the portion of assets that can be given to a person who is not an heir do not allow for female family members to benefit; historically the eldest sons may have taken over the family business from their father but nowadays, we see daughters and other female family members actively involved in family business.

Case study
A Middle Eastern settlor settled certain business interests into a Jersey discretionary trust which was partially compliant with Sharia law but enabled his daughter to continue to be involved in the management and benefit from the family business after the settlor's death.

(3) Trusts and foundations protect assets for the future.

Jersey's economy and political environment are stable. Because of our clear statutory framework and supporting case law, Jersey is seen as a safe place. It is also a place where assets may continue to grow, free of foreign law interference. This is attractive to non- Jersey settlors who live in countries which may not offer the same stability, security or investment opportunities.

In cases of divorce, before divorce proceedings start, a trust can protect assets. Divorce, second marriages, second families and step relationships are part of modern family life, and losing family wealth on divorce is a concern for many settlors and beneficiaries. Jersey Law can help protect the trust assets from claims made against a settlor or beneficiary by a soon-to- be-divorced person.

Case study
Before entering into a second marriage, a settlor with family and financial assets based in various different countries set up a discretionary Jersey trust.
As a result of the experience he went through during the break-up of his first marriage, the primary purpose of the discretionary trust was to protect and ring fence assets for the benefit of his children and their family line. He also wanted to protect the assets against any future divorce proceedings – in case he or his children went through a divorce in the future.

He had children from his first marriage and his future wife also had children from a previous relationship.

So, he made it clear the only beneficiaries of the trust were his own children and their family line. It excluded his second wife, any future spouse of his children and any step children (because he considered that the step children had access to sufficient financial resources from their own parents).

Another reason why people may want to protect assets for the future is to plan for long term disability.

Unlike a will, which only comes into effect after you die, a disability plan can be incorporated into the terms of a trust. In the event a settlor or beneficiary becomes incapacitated there would be no need for a court-supervised guardian, because the assets are held on the terms of the trust and in the hands of the trustee.

Case study
A married couple jointly set up an offshore life interest trust. The wife suffered from a degenerative disease and the husband was of an advanced age. They were concerned that if the husband died before his wife, then the wife would not be physically capable of administering their finances and dealing with her day to day financial requirements.

The couple had a joint life interest in the trust during their lifetimes with the key purpose of providing costs of any special care, medical treatment and other living expenses for the wife and the burden of the administration of such matters would fall to the trustee, rather than the couple.

The trust terms also provided for a 'protector committee' made up of the couple's friends and family (including a medical professional) so the trustee would be able to consult with them on the couple's care and funding requirements.

(4) People set up trusts and foundations for their confidentiality.

Confidentiality is a key feature of Jersey trusts and foundations. Being able to feel your assets are safe and confidential in Jersey, no matter where you are from in the world, is attractive for lots of people. It's even written in our laws.

To be clear, confidentiality does not mean secretive or shady. Given that trusts and foundations are dealing with personal family and financial matters, most people setting up such arrangements expect them to be kept confidential. See Myth 2 for details of how trusts and foundations prevent and deter money laundering. Jersey's regulator, the JFSC, do not tolerate 'shady' or illegal business.

Jersey trusts and foundations are governed by Jersey Law. This law means that any questions relating to a Jersey trust or the transfer of assets to a Jersey, are determined by the domestic Jersey Law, in most cases. No consideration should be given to any rule of foreign law or 'non-

Jersey' Law. Foreign judgments on trusts cannot be enforced in Jersey because of our clear rules in Article 9(4) of the Trusts (Jersey) Law 1984; it would be inconsistent with our laws to allow foreign/non-Jersey Law judgments to be made on trusts. So, trust information is kept confidential and cannot be scrutinised by foreign judgments.

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Meet the Author

Josephine Howe

Partner

Jersey

E: josephine.howe@ogier.com

T: +44 1534 514201

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