

Purpose Trusts in Guernsey

The concept

Traditionally trusts were established to provide either for beneficiaries or to further a charitable purpose. A Purpose Trust is a type of trust which has no beneficiaries but instead exists for advancing a non-charitable purpose of some kind.

Trusts for charitable purposes are also technically Purpose Trusts, but they are usually referred to simply as Charitable Trusts. People referring to Purpose Trusts normally are usually taken to be referring to Non-Charitable Purpose Trusts.

In most jurisdictions, they are usually unenforceable (there are limited exceptions) but in 2008 Guernsey enacted legislation specifically to promote the use of Non-Charitable Purpose Trusts.

When using offshore structures to assist in tax, estate planning or company restructuring, it may be of considerable assistance to create a trust in which no company, or individual, has a beneficial interest.

Guernsey law

The terms of a Purpose Trust must define the valid purpose(s) to which the trust fund may be applied. Under Guernsey law a trust for non-charitable purposes must not be so uncertain that its performance is rendered impossible, contrary to public policy, or immoral.

There are no other limitations imposed by law. A trust established to hold assets or to exercise functions is expressly stated to be valid. The law also envisages hybrid trusts where there may be beneficiaries and purposes.

A Purpose Trust must be created in writing to avoid problems caused by incomplete oral gifts.

Without beneficiaries there is no ascertainable person to enforce a Non-Charitable Purpose Trust. Therefore an 'Enforcer' must be appointed to act. A positive duty will be introduced to compel trustees to appoint an Enforcer if there is none in office. Equally if the Enforcer is not capable of acting or alternatively is refusing to act the trustee must initiate action to have the Enforcer replaced.

It is the fiduciary duty of the Enforcer to police the trustees and to enforce the stated purposes of the trust. A trustee cannot also serve as an Enforcer of the same trust but the law does permit employees or associated companies of a trustee to serve as Enforcer.

The Guernsey Trusts Law introduced in 2008 specifies that there is no limit upon the duration of any Guernsey trust, including Purpose Trusts.

Guernsey's fiduciary offering

These legislative developments are further to Guernsey's 50 years experience in providing fiduciary services, which has cultivated a wealth of expertise and a first class infrastructure.

The Island plays host to some 150 licensed fiduciaries, ranging from international organisations to independent operations, holding more than £300bn of assets in trust. The industry's highly skilled workforce is complemented by a network of sophisticated legal, accounting, tax and actuarial advisers, making it an ideal home for Purpose Trusts.