GUIDE

APPLEBY

GUIDE TO TRUSTS IN GUERNSEY

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PREFACE

This Guide is intended as a brief summary of Guernsey as a trust jurisdiction, looking at the essential elements of trusts and some of the advantages of using Guernsey trusts.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the contact information provided at the end of this Guide.

Appleby
Guernsey
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1. GUERNSEY AS A TRUST JURISDICTION

Guernsey is a premier international fiduciary centre with a wealth of experience in the provision of trust services.

Whilst there are examples of Guernsey's recognition of the trust concept dating from the eighteenth century, Guernsey's trusts services industry as we know it today was born in the 1960s/1970s as a result of United Kingdom exchange controls, tax planning and the migration of wealthy residents.

It has continued to develop to meet the needs of the ever mobile international clients and also the developing international regulatory environment and is now host to some 190 licensed fiduciaries, ranging from large internationals to independent boutique operations.

As well as being mature, Guernsey's trust services industry is also dynamic and innovative – as evidenced by its leading international trusts law, The Trusts (Guernsey) Law, 2007. For example, pursuant to the law, Guernsey law trusts:

- can last indefinitely;
- can be created for non-charitable purposes (as opposed to the more traditional option of being created only for individual beneficiaries or charities);
- must apply Guernsey law to questions regarding the validity or variation of a trust. This is helpful in the context of, for example, forced heirship provisions as the Guernsey law directly specifies that forced heirship provisions are not recognised. It can also be helpful in the context of matrimonial and other matters;
- are generous in the amount of powers they allow the settlor to reserve or grant to trusted third parties. It includes for example the power to revoke or vary a trust, appoint trust assets, appoint/remove beneficiaries or control trust assets. However, as is always the case, great care should be taken when considering which powers are to be reserved/granted to someone other than the trustee so as to avoid adverse tax or other unwanted consequences.

As a result of Guernsey's leading laws, and its accumulated wealth of expertise, Guernsey has an excellent reputation as a tried and tested jurisdiction. Guernsey is in the forefront of a group of jurisdictions committed to full compliance with the OECD's international standards in tax transparency and exchange of information.

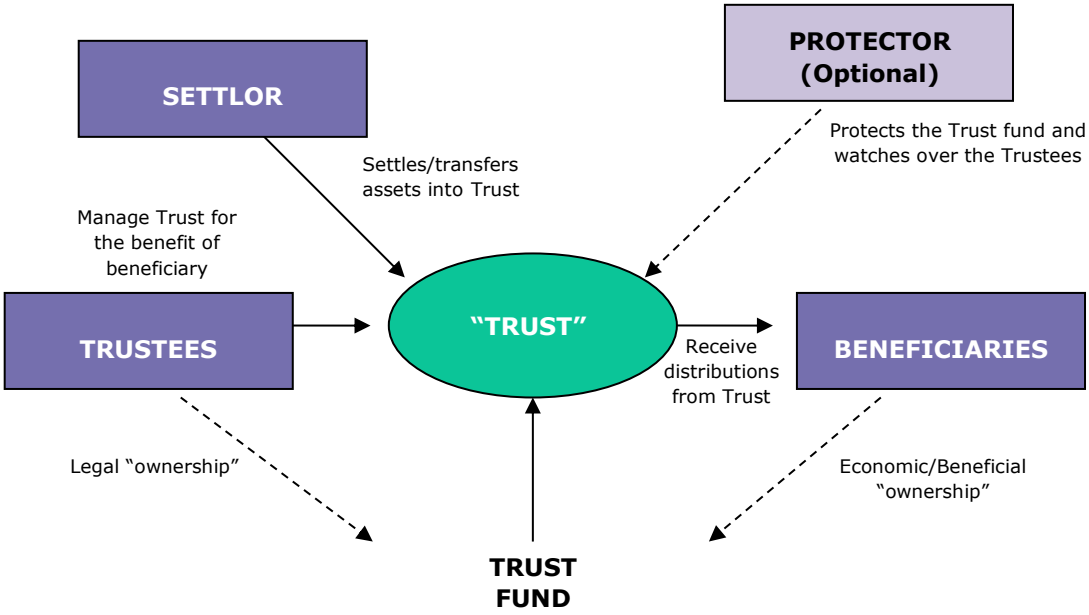
2. WHAT IS A TRUST?

A trust[1] involves the separation of the legal title, or ownership, of property from the right to benefit from that property.

It involves a person (**settlor**) transferring property (**trust fund**) to another (**trustee**) to hold for the benefit of another person (**beneficiary**) or purpose.

[1] In modern usage the terms "trust" and "settlement" are used interchangeably.

A typical trust structure may look something like the following:



Trust is a useful and practical concept that has been around for centuries. Both the Romans and early Islamic societies developed similar structures, but it is England and its affiliated Crown Dependencies and former commonwealth countries that have been at the forefront of the development of trusts and it is now a concept particularly associated with common law jurisdictions.

A trust can be established during your lifetime (an *inter vivos* trust) or upon your death under the terms of your will (a testamentary trust). Nowadays, although a trust can still be established orally or by conduct, most trusts are formally established in a written instrument and are additionally stated to be governed by local law (such as The Trusts (Guernsey) Law, 2007).

3. REGULATION OF GUERNSEY TRUSTEES

Guernsey is renowned for its robust yet pragmatic regulation of professional trustees, trust companies and company administrators, having been actively and effectively regulated by the local regulator (the Guernsey Financial Services Commission) since April 2001.

4. TYPES OF TRUSTS COMMONLY USED IN GUERNSEY

4.1 Discretionary Trust

Probably the most widely used type of offshore trust. The trustees are under a duty to use their **discretion** to apply the income and capital of the trust assets for the benefit of a class of beneficiaries. The trustees decide which beneficiaries benefit, and what proportion of the trust fund they receive. Whilst the trustees have discretion, they are subject to obligations as to how they exercise it and must do so only for the benefit of the beneficiaries. The beneficiaries have no right to either income or capital of the trust, but merely a hope that the trustees will exercise their discretion for their benefit. The settlor can give guidance (usually through a **letter of wishes**) to the trustees as to how they would like the trustees to exercise their discretion, but ultimately cannot control them.

4.2 Life Interest or Interest in Possession Trust

One or more specified beneficiaries (**Life Tenant(s)**) have a right to receive a fixed share of trust income for a specified period (usually life). Capital is held either on fixed interest trusts or at the discretion of the trustees for specified beneficiaries to benefit after the Life Tenant's death. A popular use of this trust is to grant the right to live in a property to a Life Tenant but stipulate that on the death of the Life Tenant the property falls into the estate of another beneficiary.

4.3 Charitable Trusts

Trusts set up for charitable purposes, which commonly enjoy certain tax benefits.

4.4 Non-Charitable Purpose Trusts

These trusts are neither for individuals nor for charity, but instead used, for example, in conjunction with asset financing transactions, securitisations or private trust company structures. Under Guernsey law, these trusts are only valid if in writing and the trust instrument nominates an **enforcer** who is responsible ensuring that the trustees look after the trust fund and the purposes of the trust appropriately. Certain jurisdictions including England do not have the same wide concept.

4.5 Bare Trusts

Under this type of trust the beneficiary is really the owner of the trust assets and can ask the trustees to give assets to them at any time or alternatively direct the trustee to act in a particular way. The trustee is merely acting as a nominee or custodian. This form of trust is popular in offshore structures where, for example, a fiduciary company is the legal owner of shares in a company in a structure they administer.

4.6 Protective/Asset Protection Trusts

A sub-species of life interest trusts under which the income rights of a socially or financially vulnerable beneficiary, such as a bankrupt individual, automatically terminate if the beneficiary attempts to dispose of the rights, at which point the terms of the trust covering that income become discretionary, leaving the beneficiary with no defined right. These can be particularly useful, for example, as a way of preventing family assets dissipating in the event of a divorce.

4.7 Employee Benefit Trusts and Pension Trusts

Trusts to motivate employees by providing performance related benefits settled in trust by an employer or to house pensions funds (individual and occupational) for the benefit of their employees.

5. USES OF TRUSTS

Trusts can be extremely useful structures for dealing with a variety of issues including:

- **Confidentiality**: Assets are held in the name of the trustees, thereby keeping the identity and interests of the beneficiaries confidential.
- **Succession Planning**: Subject to certain forced heirship rules, trusts enable you to determine with greater flexibility exactly how your estate is distributed. For example, trusts are often established in wills to allow a second spouse to benefit from a property while alive but ensuring that the children of a previous marriage receive the estate when the spouse dies.
- **Avoiding Probate**: The deceased settlor's assets are legally held by trustees and so do not form part of their estate on death. Probate, with its associated difficulties and costs, is therefore avoided.
- **Asset Consolidation and Management and Asset Protection**: A way of placing worldwide assets in one holding vehicle to simplify asset management and centralised financial reporting. In addition to establishing holding structures for wealth protection, growth and transition, a

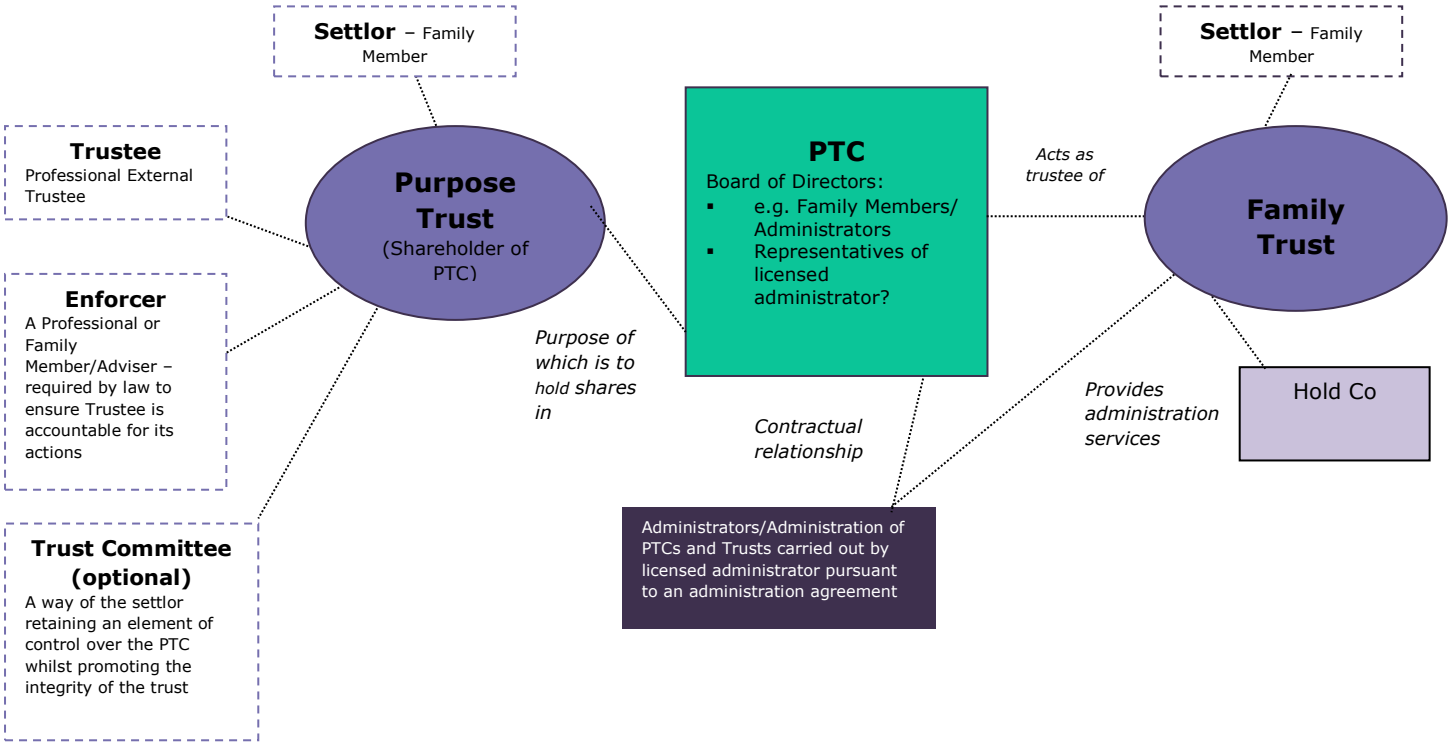
family office can be a tool to implement broader succession, leadership and governance plans. Trusts may also be used to protect assets from claims of future creditors to the extent permitted by law.

- **Tax Planning**: May be used to reduce tax liabilities in some circumstances. For example, since assets settled in trust do not form part of the settlor's estate if settled within certain time constraints, inheritance taxes can be reduced.
- **Protecting minors**: Trustees looking after assets until children are mature enough to deal wisely with their finances protects children from having control over too much money too early, whilst the trustees can, if the appropriate trust is drafted, direct money for their education, maintenance and other needs.

6. PRIVATE TRUST COMPANY (PTC) STRUCTURES

A PTC structure, similar to the typical structure shown below, is a trust structure that is seeing increasing popularity amongst high net worth individuals wishing to establish and manage their own trust company, usually with the assistance of family members and trusted advisers.

The following is a typical PTC structure, although there are no standard structures as they are very flexible and can be modified in a variety of ways to accommodate the particular needs of a client.



A PTC is a privately owned company incorporated specifically to act as trustee of one or more family trusts. Like any other company, a PTC is run by its board of directors, who in the case of a PTC make the trustee decisions. Whilst run by the board of directors, PTCs (and the underlying trust for which they act as trustee) are usually administered by a professional trustee who is experienced at carrying out trust and corporate administration.

The benefits of using PTC structures include:

- **Family Control**: PTCs provide a means by which the client, or their family, can retain a greater degree of control over the trust affairs without compromising the validity of the family trusts. The client can compose the board of directors with themself, family members and trusted advisers who have a heightened knowledge of the family's business and financial affairs and are empathetic to the needs of the beneficiaries. Careful thought needs to be given to the composition of the board of the PTC and also who is to have power to appoint and remove its directors.
- **Avoiding Future Changes in Trusteeship**: Having a PTC as trustee of family trusts will avoid the need for future changes of trusteeship. Instead, only the management agreement between the PTC and the licensed administrator would need to be terminated and a new agreement would need to be entered into between the PTC and the new licensed administrator, with the old licensed administrator's PTC directors (if any) ceasing to be on the board of the PTC.
- **Confidentiality**: Ownership of the structure can remain confidential when structured with the use of, for example, a purpose trust.
- **Trustee Liability**: Professional trustees are always aware of their liability and the risk of being sued, not only by beneficiaries but also third parties. As a result, professional trustees are reluctant to take ownership of assets or participate in ventures where substantial risks may be present. PTCs (due to the composition of the board) can provide for riskier investments to be included in the structure.
- **Philanthropy**: PTCs can make confidential philanthropic payments whilst ensuring the person managing the structure understands their thought process in providing for such causes.
- **Flexibility**: A PTC is likely to be more flexible and quicker in dealing with trust assets.

7. TAXATION IN GUERNSEY

Guernsey income tax is the only local tax that may be applicable to trust structures. Trustees may be Guernsey income tax payers and may be obliged to file tax returns when resident in Guernsey.

To establish if Guernsey income is payable, one must first distinguish between **income from a trust** and **income of a trust**:

Income of a trust: Only where the settlor is liable for Guernsey income tax and they and/or their spouse can or may benefit under the trust or in any circumstances control the trust property will the settlor be liable to pay tax on the entire income arising to the trust.

Income from the trust: The position depends on the tax position of the beneficiaries:

- Where the settlor and beneficiaries are non-Guernsey resident, Guernsey tax is only payable on Guernsey source income (other than bank interest, although this may be subject to a retention tax under the EU Savings Tax Directive).
- Where the settlor is Guernsey resident but excluded, Guernsey tax is only payable in the hands of Guernsey resident trustees – unless income is paid from a non-Guernsey company. No tax is payable where the trustees are not Guernsey resident.
- Where the beneficiaries are Guernsey resident, Guernsey tax is payable by them on what they receive, and the trustees may be taxed on that amount on the beneficiary's behalf.

8. CONCLUSION

Guernsey is, for many reasons, an agreeable and accommodating place for the establishment and administration of trusts. There are a significant number of different types of trust, each of which might be suitable for use in a different set of circumstances. Of course every client's particular circumstances

will be specific to that client and anyone considering setting up a trust should obtain expert advice as to what type of trust (if any) best meets their needs.

For more specific advice on trusts in Guernsey, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found here.

*Not admitted in Guernsey

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