

NON-CHARITABLE PURPOSE TRUSTS

OCORIAN BRIEFING

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Non-charitable purpose trusts are expressly provided for by the Trusts (Jersey) Law 1984 as amended (the "Trusts Law"). Whilst the Trusts Law provides that a trust will be invalid to the extent that "it is created for a purpose in relation to which there is no beneficiary, not being a charitable purpose", it also states that a trust will not be invalid by reason of this provision "if the terms of the trust provide for the appointment of an enforcer in relation to its non-charitable purposes, and for the appointment of a new enforcer at any time when there is none."

Key points

With a non-charitable purpose trust established under Jersey law, the following are key points to note:

Duration: The trust can be established for an unlimited period.

Registration: There is no public registration of trusts in the Island.

Restrictions: The Trusts Law provides that a trust cannot directly hold immovable property. Loi (1862) sur les teneures en fideicommiss et de l'incorporation d'associations (the "1862 Law") - allows for trusts of Jersey situate immovable property in certain defined circumstances. (A consideration of the 1862 Law is outside the scope of this briefing.)

Enforcement: The Trusts Law imposes the duty of enforcement in relation to non-charitable purpose trusts on an office holder known as an enforcer. The enforcer's statutory duty is to enforce a trust in relation to its non-charitable purposes.

Subject to the qualification that the enforcer of a non-charitable purpose trust cannot also be a trustee of the trust, there are no other limitations with regard to the choice of the enforcer. An individual or a corporate entity can be appointed, and there is no requirement for the enforcer to be resident in Jersey.

The Trusts Law imposes a duty on the trustee of a non-charitable purpose trust to secure the appointment of a new enforcer at any time when there is none, and also to apply to the Royal Court for the removal of the enforcer and the appointment of a replacement where the trustee has reason to believe that the enforcer is unwilling or refuses to act, or is unfit or incapable of acting.

To facilitate his role, the enforcer is entitled to see trust accounts and can apply to the Royal Court for orders and declarations.

Amendments: Amendments to the chosen purposes of a non-charitable purpose trust are possible, either as provided for by the trust instrument itself, or through an application to the Royal Court. In specified circumstances, the court can declare that

the remaining property held on the terms of a non-charitable trust is to be held for such other non-charitable purpose as the court considers to be consistent with the settlor's original intention. This jurisdiction can operate, for example, where a trust's stated purpose has been fulfilled, or no longer exists, or provides for only a partial use of the property. The Trusts Law also allows for the Royal Court to approve an arrangement that varies or revokes the purposes of the trust or enlarges or modifies the trustee's powers of management or administration, if the court is satisfied that the arrangement is suitable and expedient, and is consistent with both the settlor's original intention and the spirit of the gift. Before exercising this jurisdiction, the court will need to be satisfied that any person with a material interest in the trust has had an opportunity to be heard.

Taxation: With regard to Jersey taxation, whilst a Jersey resident trustee of a non-charitable purpose trust would ordinarily be chargeable to income tax in respect of all income arising to the trustee in that capacity, a concession is available in relation to non-charitable purpose trusts under which no resident of Jersey (other than a charity) has an interest or is intended to have an interest, whether during or at the end of the trust period. In such circumstances, Jersey income tax is not payable in respect of foreign income or Jersey bank interest.

Uses

Non-charitable purpose trusts have a valuable role to play as "quasi charitable" trusts where a client wishes to create a trust for good causes which are not strictly charitable. Examples, here, are trusts with humanitarian, ecological, environmental or research objects. Such trusts are also used to provide for the ownership of corporate vehicles in a variety of circumstances. An example, here, is that of a non-charitable purpose trust which owns the shares in a private trust company in order to facilitate the administration of a series of private family trusts.

There is also a range of commercial uses for non-charitable purpose trusts. An example, here, is to hold the shares in a Jersey or non-Jersey company as part of a financing scheme where there is a need to hold assets off balance sheet.

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