Jersey: Advancing the private client landscape

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Jersey: Advancing the private client landscape

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Katherine Neal discusses the legal frameworks and standards that have allowed Jersey to establish itself as a transparent, modern, and attractive jurisdiction for private wealth matters.

Jersey is a self-governing British Crown Dependency, and is the largest of the Channel Islands lying some 15 miles off the north-west coast of France.

Its legal system is derived, in part, from the customary laws of Normandy and, although strongly influenced by the laws of England and those adopted in other Commonwealth countries, Jersey creates its own laws, has its own court system and offers a tax-neutral environment. All of which provides certainty for those considering the jurisdiction as a platform for private wealth, charitable and commercial structures

Despite its relative size, Jersey has established itself as one of the world's leading financial centres, with its political and economic stability and modern, robust and comprehensive legal infrastructure. This coupled with Jersey's wealth of highly skilled, forward thinking and commercially aware trust, legal, tax, banking and finance specialists maintains Jersey at the forefront of global finance and private wealth matters.

Common Reporting Standard (CRS) and client diligence (CDD)

In addition to being party to various double tax agreements, Jersey has highlighted its commitment to global transparency by being one of the "early adopters" of the CRS.

Similar to the Foreign Account Tax Compliance Act (FATCA), which is concerned with tax information gathering in relation to US persons for the US's Internal Revenue Service, the goal of the CRS is to gather tax information regarding those resident in CRS participating jurisdictions (held by financial institutions in other participating jurisdictions) and to report such information to the relevant tax authorities of their jurisdiction of residence.

At present, over 90 countries have committed themselves to the CRS of which the “early adopters” have undertaken to make the first tax information exchanges by 2017.

At a local level, the Anti-Money Laundering and Countering the Financing of Terrorism handbook produced by the Jersey Financial Services Commission (the **JFSC**) sets out detailed guidelines to ensure Jersey’s compliance with international standards to prevent and detect money laundering and the financing of terrorism, whilst promoting the use of a proportionate, risk based approach to CDD measures.

Trusts

The Trusts (Jersey) Law 1984 (as amended) (the **Trusts Law**) is widely regarded as the international standard for offshore trust legislation and has been adopted as the basis of the trust law of a number of other jurisdictions.

Although the discretionary trust is arguably the most widely used form of Jersey trust, on the basis of the flexibility that it affords, other common forms of Jersey trust include fixed interest trusts, accumulation and maintenance trusts, charitable purpose trusts and non-charitable purpose trusts (this final category being specifically permitted by the Trusts Law). Non-charitable purpose trusts are used for a variety of purposes (such as for philanthropic, but not strictly charitable purposes, or to hold shares in a company or a private trust company). However it is a requirement that an enforcer is appointed so as to enforce the terms of such trusts in relation to their purposes.

Jersey trusts can be of unlimited duration and are commonly used for the preservation of wealth, dynastic and succession planning and to circumvent forced heirship rules that may have otherwise applied on the death of the settlor had the assets not been settled into trust. They can also be used for asset protection purposes by providing an additional layer to protect assets from claims on the bankruptcy or divorce of beneficiaries, and in a wide variety of commercial contexts such as unit trusts or in relation to pension, employee benefit and share incentive schemes.

There is no requirement to register trust documents with a government office or agency, and the Financial Services (Jersey) Law 1998 (as amended) (the **Financial Law**) also imposes minimum standards on professional trustees and requires them to adhere to certain criteria in addition to being licensed by the JFSC.

As a general proposition, judgments of foreign courts or tribunals do not, per se, have legal effect in Jersey and the Trusts Law provides that the validity or interpretation of a trust, the validity or effect of any transfer or other disposition into trust and the nature and extent of any beneficial right or interest in the trust property shall (amongst other matters) be determined in accordance with the law of Jersey, and no rule of foreign law shall affect such question. These principles, enshrined in Article 9 of the Trusts Law, are commonly known as Jersey's "firewall legislation".

Foundations

Foundations can be created for charitable objects, non-charitable objects or a mixture of both, and are particularly favoured in common law jurisdictions where the concept of trusts is less well known. Since the introduction of the Foundations (Jersey) Law 2009, Jersey foundations have found their own place as an alternative to certain traditional arrangements particularly in the context of wealth management, structuring and succession planning as well as for philanthropy and wider charitable giving.

Jersey foundations enable the founder and/ or beneficiaries to be involved in their day to day management, by being able to sit as members of the council of the Foundation (the **Council**), which can be a particular motivation for some individuals. There is also no requirement for the identities of lay members of the Council to be made public thus, if relevant, allowing such persons to maintain legitimate confidentiality. Each Council, however, must have one qualified member, essentially a regulated trust company.

The regulations of the Jersey foundation can be drafted so as to allow the appointment of "advisory groups" to the Council that would, for example, allow older members of a family to sit on the Council whilst permitting younger generations to sit on such advisory groups, almost as a form of training for their future involvement with the foundation. This can be of particular interest to large families, or those with complex relationships, who are keen to involve younger generations.

Unlike Jersey trusts, Jersey Foundations have a separate legal personality. They can last for an unlimited duration and can hold a wide variety of assets, including higher risk classes of assets that trustees may otherwise be reluctant to consider (such as wasting assets, private equity interests and so forth).

Jersey foundations are sometimes referred to as "orphan vehicles", as they do not have shareholders or an owner. This characteristic has lent itself to them being used as private trust companies (**PTCs**), which act as trustees of trusts, as there is no need to consider additional layers of ownership above the Jersey foundation itself. Jersey Foundations can also be used to fulfil roles such as a protector or other power holders of trusts, or as alternative investment vehicles.

Whilst the majority of Jersey foundations established to date have been newly incorporated vehicles, the current legislation provides a clear framework for migrating so called "recognised entities" (foreign foundations or other corporate entities) to Jersey.

Private Trust Companies

A PTC is an entity whose sole purpose is to act as trustee in relation to a specific trust or trusts (and which does not solicit from or provide trust company services to the public). The board of directors of the PTC can consist of professionals or a mixture of professionals and lay persons, and Jersey PTCs are increasingly used by individuals who choose to establish their own PTC as an alternative to transferring assets to a professional trust company. Although a disadvantage of using a PTC can sometimes be the cost of establishment, in the majority of cases the added comfort of having a dedicated bespoke trustee for a trust or group of trusts can far outweigh this. The annual running costs of a PTC can also, in some instances, be less than those of a public trust company.

The Financial Law, the principal legislation regulating Jersey's trust company industry, provides that a person carrying out trust company business must be registered with the JFSC. However, under ancillary legislation, a Jersey PTC is exempt from this requirement on the fulfillment of various "light touch" criteria (such as the notification of its name to the JFSC). Further, there is no requirement for copies of documents in relation to the trust or trusts for which the PTC will be acting as trustee to be filed.

With regard to ownership, shares in a PTC can be held by an individual (however this, itself, may raise practical concerns regarding succession on the death of the owner), within a purpose trust or by a Jersey foundation (which can also, as discussed above, act as a PTC itself).

Why not?

As a jurisdiction, Jersey has worked hard to distance itself from the perception held by some that it is a clandestine tax haven and has taken huge steps to portray itself as a transparent, modern and attractive jurisdiction. Some of the matters set out in this article demonstrate the advances that have been made.

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