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Offshore 'lifeboat' trusts for US persons

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In recent months we have seen growing demand in the Channel Islands from Ultra High Net Worth US families and their advisors who are interested in establishing asset protection structures in well regulated 'safe harbour' jurisdictions. This is in response to concerns about unprecedented political instability at home and follows a similar trend to the wave of new trusts established offshore in response to the Arab Spring in 2010.

Such structures for US clients have become known as 'lifeboat' trusts.

This briefing provides an overview of the key advantages to US families and individuals in using Jersey or Guernsey discretionary trusts for asset protection purposes.

Discretionary trusts – an overview

A discretionary trust is a well established legal arrangement which can be established under the laws of either Jersey or Guernsey, both being reputable offshore financial centres which benefit from having robust and modern trust legislation and regulatory regimes.

For US persons, an irrevocable discretionary trust established in Jersey or Guernsey can offer effective asset protection, estate planning, and privacy benefits — while ensuring that the structure complies with all relevant US tax and reporting obligations (eg IRS Form 3520/3520-A and FATCA requirements).

Key benefits of discretionary trusts in Jersey and Guernsey

1. Asset protection

When structured appropriately with a professional regulated trust company as its trustee, an irrevocable discretionary trust can provide asset protection benefits to US persons who have concerns that either they or their assets might in the future be subject to claims – whether that be from governmental authorities, third party creditors or law suits.

Provided the trust is established and the assets are contributed prior to such claim arising, the settlor (being the person who has established the trust) will no longer be the legal or beneficial owner of the assets, and any claim will therefore need to be made against the trustee of the trust.

Both Jersey and Guernsey trust law allows the settlor of a discretionary trust to also be a beneficiary (meaning the trustee can make appointments to them and allow them to benefit from the assets in the trust fund) without compromising the integrity of the trust and its asset protection benefits.

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Both Channel Islands have robust 'firewall' legislation in place designed to protect trusts settled under Jersey or Guernsey law from the interference of foreign governments and judgments in conflict with Jersey/Guernsey law, including forced heirship claims.

2. A sophisticated legal framework

The Trusts (Jersey) Law 1984 (as amended) and the Trusts (Guernsey) Law 2007 are the most developed trust statutes globally, each providing flexibility and clarity in trust creation, administration and trustee duties.

In addition, the Jersey and Guernsey courts have a long history of upholding trust structures, enhancing confidence in both jurisdictions' legal systems.

3. Political and economic stability

Jersey and Guernsey are self-governing British Crown Dependencies which benefit from long-established political and economic stability, making them reliable jurisdictions for long term trust arrangements.

4. Confidentiality and privacy

Although compliant with international transparency standards, neither Jersey or Guernsey are required to maintain a public beneficial ownership register for trusts or companies, preserving a high level of privacy for settlors and beneficiaries.

5. Professional trustee services

Both Jersey and Guernsey offer the gold-standard in well regulated and highly experienced professional fiduciary services, with licensed trustees subject to regulatory oversight by the Jersey Financial Services Commission and Guernsey Financial Services Commission respectively.

6. Flexible planning options

Trusts established under Jersey or Guernsey law can be flexibly structured to include:

- US tax-compliant 'grantor' or 'non-grantor' provisions;
- dynastic or discretionary trust features; and
- a broad range of reserved powers for settlors, trusted advisors and protectors over the trust and its assets.

Reporting considerations

Jersey and Guernsey trustees are experienced in assisting US persons with relevant US considerations, including:

- reporting foreign trusts and transactions under IRS rules;
- understanding the US tax treatment of grantor versus non-grantor trusts;

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- ensuring any income or gains in the trust are properly reported on US tax returns; and
- Understanding when a US Person is reportable under FATCA rules.

Offshore trusts - how can we help?

As with clients during the Arab Spring, these 'lifeboat trusts' can be initially structured with a relatively modest segment of a client's wealth with further assets being added quickly should things change in the US and should the lifeboat need to be deployed.

When properly established and administered, an offshore trust can be a valuable tool for US persons seeking asset protection, succession planning, and risk diversification.

Collas Crill's multi-award winning private wealth team have significant expertise in advising on how to tailor this flexibility to meet a client's strategic requirements.

Collas Crill LLP is an international firm of lawyers with decades of specialist experience advising HNW families globally with structuring their assets and estate planning offshore. We work closely with US and onshore legal and tax advisors to ensure regulatory compliance and to structure trusts effectively to achieve asset protection and peace of mind for present and future generations.

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