



Introduction to trusts

信托介绍

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Highlights in our history

- **1922** Ogier & Le Cornu established
- **1995** Merged with Le Masurier Giffard & Poch to form Ogier in Jersey
- **1998** Guernsey office opens to become the first Channel Islands Law Firm
- **2003** London office opens. First Channel Island firm to have London office
- **2004** Merged with Boxalls in the Cayman Islands to become first transatlantic firm
- **2007** Merged with Wsmiths extending the firm's global reach to BVI & Hong Kong / Purchase of structured finance administration business in Ireland
- **2008** Tokyo office / Bahrain office and joint venture with Keypoint Consulting
- **2010** Expansion of Ogier services in Asia. HK office becomes the first to offer service of all four legal offerings (BVI, Cayman, Guernsey and Jersey)
- **2011** Opening of Shanghai, first offshore firm into mainland China

Industry awards 业界成就奖

Ogier has received significant industry recognition. Below is a selection of our recent awards.
近年来奥杰赢取多项行业大奖。以下是一些最近获取的奖项：



International Law firm of the Year, EMEA
2012年度欧洲、中东、非洲地区国际律师事务所

Citywealth Magic Circle Awards
Citywealth Magic Circle 大奖



Offshore Law Firm of the Year 2012
2012年度离岸律师事务所

Chambers Europe Awards for Excellence
钱伯斯欧洲卓越大奖



Best Offshore Law Firm, Cayman
2011及2012年度开曼群岛最佳离岸律师事务所

Hedgeweek Awards
Hedgeweek大奖



Best Offshore Law Firm – Cayman Islands
2012年度开曼群岛最佳离岸律师事务所

HFMWeek European Hedge Funds Services Awards
HFMWeek 欧洲对冲基金服务大奖



Top Tier Firm 2011 & 2012
2011及2012年度顶级事务所

IFLR 1000



International Legal Team of the Year
2012年度最佳国际法律团队

STEP Private Client Award 2012
STEP 私人客户大奖



Best Offshore Law Firm 2012
2012年度最佳离岸律师事务所

The Lawyer Awards
知名律师大奖



Honorable Mention for Alternative Investment Funds Firm of the Year 2012, Hong Kong (including Private Equity)
2012年度香港另类投资基金荣誉律师事务所 (包括私募基金)

ASIAN-MENA COUNSEL



Deal of the Year 2011
2011年度最佳交易项目

ASIAN-MENA COUNSEL



Best Offshore Law Firm 2011
2011年度最佳离岸律师事务所

AsianInvestor Service Provider Awards
AsianInvestor 服务提供者大奖

What is a trust?

什么是信托？

- A trust exists where a person (known as a trustee) holds legal title to property not for his own benefit but:

信托是指一名人士（即受托人）并非为其自身利益，而是：

- » for the benefit of any person (known as a beneficiary) and/or

为了任何人士（即受益人）的利益及 / 或

- » for the attainment of any purpose

为了实现某些目的

而拥有财产的法定所有权

- A trustee must in the exercise of his powers and discretions:

受托人在行使其权力及酌情权时必须：

- » act: 做到：

- with due diligence 恪尽职守

- as would a prudent person 审慎行事

- to the best of his ability and skill and 竭尽所能及

- » observe the utmost good faith 严守诚信

What is a trust?

什么是信托？

- A trustee must administer the trust in accordance with its terms (subject to compliance with mandatory law)
受托人必须根据信托条款管理信托（须遵守强制性法律）
- A trustee must always act in the interests of the beneficiaries or achieving the purposes
受托人必须始终为受益人的利益或为实现信托目的而行事
- A trust is not a legal entity
信托不是法人实体
- A trust is not a contractual arrangement
信托不是合同安排

Parties to a trust

信托各方

- The settlor:
 - 委托人：
 - » Establishes the trust
创建信托
 - » Transfers assets to the trustee to be held on trust
将资产转让予受托人以信托形式持有
 - » Ceases to own the assets after transfer
转让后不再拥有相关资产
 - » May be a beneficiary of the trust
可以是信托的受益人
 - » May be a co-trustee of the trust and
可以是信托的共同受托人及
 - » May retain some control over the trust
可以保留信托的部分控制权

Parties to a trust

信托各方

- The trustee:
受托人:
 - » Holds legal title to the trust assets
拥有信托资产的法定所有权
 - » Must hold the assets in accordance with the law and the terms of the trust for the benefit of the beneficiaries and/or the purpose of the trust
必须根据法律及信托条款，为受益人的利益及 / 或信托目的持有资产
 - » Is responsible for administration of the trust and
负责管理信托及
 - » Has certain minimum obligations
承担一些最小责任

Parties to a trust

信托各方

➤ The beneficiaries:

受益人：

- » Have beneficial interest in the trust assets (or at least a right to be considered for benefit in a discretionary trust)
拥有信托资产的实益权益（或至少于全权信托中拥有受益权）
- » Have a right to enforce the terms of the trust in event of breach of trust by the trustee and
在受托人违反信托时，有权执行信托条款及
- » Their interest in the trust is personal property
信托收益属于个人财产

Parties to a trust

信托各方

- The protector:
 - 保护人：
 - » Is not mandatory
并非信托的必需方
 - » Is appointed to protect the interests of the beneficiaries and
保护受益人的权益及
 - » Is not a trustee
不是受托人

Basic requirements

基本要求

- For a trust to be valid it requires three factors to be sufficiently clear and certain:

要使信托成为有效，以下三个因素必须足够地清晰明确：

 - » Certainty of intention to create the trust
创建信托的意向应当明确
 - » Certainty of objects. It must be possible to ascertain the beneficiaries/purpose. For example, a trust for “my tall friends” would be uncertain and so invalid and
受益对象应当明确。必须能够确定受益人 / 目的。例如，为“我的高个子朋友”创立的信托的受益人并不明确，因此属于无效及
 - » Certainty of subject. It must be possible to ascertain the trust property
信托标的物应当明确。必须能够确定信托财产

Basic requirements

基本要求

- There must be a trustee and beneficiaries
必须有受托人和受益人
- Assets must be transferred to the trustee
资产必须转让予受托人
- A trust generally need not be in writing (but there are some exceptions to this and it is normal for a trust to be in writing)
法律不要求信托必须以书面形式作出（书面形式作出信托也属常见）

Types of trusts

信托的类型

- Trusts are very flexible and there are many different types. Some examples are:

信托形式非常灵活，存在很多不同的类型。以下是一些例子：

- » Unit trusts 单位信托
- » Discretionary trusts 全权信托
- » Fixed interest/life interest trusts 固定利益 / 终身利益信托
- » Purpose trusts 目的信托
- » Charitable trusts 慈善信托
- » Reserved powers trusts 保留权力信托
- » BVI VISTA trusts 英属维尔京群岛VISTA信托
- » Cayman STAR trusts 开曼群岛STAR信托

Myths and misconceptions about trusts

对于信托的一些误解

- The settlor has no control over the trust assets

委托人对信托资产并无控制权

» No

错

- » Just because the settlor transfers the assets to the trustee does not mean that the settlor can no longer have any involvement or control over those assets

仅仅是由于委托人将资产转让予受托人，并不意味着委托人不能再介入或控制这些资产

- » There are numerous ways that settlor can retain some control. These include:

委托人能够以许多方式保留部分控制权。这包括：

- Reserved powers trust - the settlor reserves to himself (or a third party he trusts) power to make decisions on certain issues (e.g. investment of the trust assets)

保留权力信托—委托人为自己（或他所信任的第三方）保留对某些事宜（如信托资产的投资）作出决定的权力。

Myths and misconceptions about trusts

对于信托的一些误解

- BVI VISTA trust - the trust assets are held in a BVI company. The BVI company is owned by the trustee, but is managed and controlled by its directors (who can include the settlor or any other person)

英属维尔京群岛VISTA信托—信托资产由一家英属维尔京群岛公司持有。该英属维尔京群岛公司由受托人拥有，但由其董事（可包括受托人或任何其他人士）管理及控制

- Protector provisions - the terms of the trust can provide that certain trustee decisions (e.g. investment of the trust assets) require consent of the protector (who can be the settlor or any other person)

保护人条款—该信托条款能够规定，受托人的某些决定（如信托资产的投资）须获得保护人（可为委托人或任何其他人士）的同意

- » However, must ensure that retention of control does not invalidate trust or cause other issues

然而，必须确保保留控制权并不会使信托无效或导致其他问题

Myths and misconceptions about trusts

对于信托的一些误解

- The trust can not be changed in the future

信托不能在日后变动

- » No
错

- » The trust deed can be amended in any way, at any time and as many times as permitted by the terms of the trust deed
只要信托契约的条款允许，信托契约可以随时以任何方式，不限次数地修订

- » The trust can be revoked and the assets returned to the settlor if permitted by the terms of the trust deed
如信托契约的条款允许，信托可以被撤销并可将资产返还予委托人

Myths and misconceptions about trusts

对于信托的一些误解

- The trustee could use the trust assets for its own benefit
受托人可为其自身利益利用信托资产
 - » Not legally
不合法
 - » The trustee must act in accordance with:
受托人须依据下列各项行事：
 - trust law
信托法律
 - the trust deed
信托契约
 - the best interests of the beneficiaries
受益人的最佳利益

Myths and misconceptions about trusts

对于信托的一些误解

- » The trustee can not act for its own benefit
受托人不可为其自身利益行事
- » Professional trustees in many countries are regulated (e.g. BVI, Cayman, Guernsey, Jersey)
在许多国家（如英属维尔京群岛、开曼群岛、根西岛、泽西岛），专业受托人会受到监管
- » The beneficiaries have legal rights if the trustee breaches its duties - they can go to court to get a remedy
如受托人违反其责任，受益人拥有合法权利——他们可向法院起诉以获得补救

Myths and misconceptions about trusts

对于信托的一些误解

- The trustee could act contrary to the terms of the trust deed
受托人可不依照信托契约的条款行事
 - » Not legally
不合法
 - » The trustee must act in accordance with:
受托人须依据下列各项行事：
 - trust law
信托法律
 - the trust deed
信托契约
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受益人的最佳利益

Myths and misconceptions about trusts

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Myths and misconceptions about trusts

对于信托的一些误解

- A trust is just like a bank account

信托就像银行账户

»No 错

- »A trust can be used to hold assets like a bank account, but is not a bank account

信托可像银行账户一样用来持有资产，但并非银行账户

- »The parties to a trust (the trustee, settlor and beneficiaries, etc) must comply with the terms of the trust and with trust law when dealing with the trust assets

信托的各方（受托人、委托人和受益人等）在处理信托资产时须遵守信托条款和信托法律

Uses of trusts as part of wealth management

使用信托理财

- Trusts are extremely flexible and can be used in a wide range of ways to assist clients as part of wealth management
信托非常灵活，可通过各种方式使用信托协助客户理财
- Asset holding - Trusts can be used as a vehicle to simply hold assets
资产持有 — 信托可仅用作持有资产的工具

Uses of trusts as part of wealth management

使用信托理财

- Tax efficiency - Depending on the particular country where the settlor and the beneficiaries are resident and the law governing the trust, trusts can potentially be used to reduce taxes. Sometimes by changing the nature of the asset owned or the funds earned. Sometimes by dividing or re-directing income. Sometimes by deferring recognition of income or gains

节税—视委托人和受益人居住所在的具体国家和相关的信托监管法律而定，信托有可能可用于节税。有时通过改变所拥有资产或所赚取资金的性质，有时通过将收入进行拆分或重新部署，有时通过延迟确认收入或收益

- Creditor protection - Trusts can be used to hold assets outside the ownership of the settlor and potentially beyond the reach of the settlor's creditors

债权人保护—信托可用于持有委托人并无所有权且委托人的债权人可能无法申索的资产

Uses of trusts as part of wealth management

使用信托理财

- Succession planning - Trusts can be used as a mechanism to transfer assets to family members in a more effective way than by will **or** by gift. Trusts can allow the transfer to occur gradually and/or at the time which is most appropriate for the family members involved

继承规划—信托可用作将资产转让予家庭成员的一种机制，这比遗嘱和赠送更为有效。信托使资产转让可以逐步及 / 或在对相关家庭成员而言最适当的时间进行

- Avoiding asset fragmentation - Trusts can be used to hold assets and many different family members can benefit from those assets without dividing the assets and distributing them between different family members. For example, a trust can retain a majority holding in a family company and many family members can be beneficiaries of the trust and thereby benefit from the earnings arising from the holding while avoiding fragmenting ownership between the family members and losing the majority control of the family company

避免资产割裂—信托可用于持有资产，使许多不同的家庭成员可从这些资产中受益，而毋需拆分资产并在不同的家庭成员之间分配。例如，信托可保留一家家族企业的多数股权，而许多家庭成员可成为信托的受益人，从而从股权所产生的收益中受益，同时避免所有权在家庭成员之间割裂，以致失去对家族企业的多数控制权

Our Global reach



Over 850 staff including 50 partners, 190+ lawyers and 285 professional administrators across 11 jurisdictions

在11个司法管辖区中，拥有超过850名员工，包括50位合伙人，190多位律师和285位行政专业人士

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