

Disclosure of trust information to beneficiaries – a practical Jersey guide

Briefing Summary: This briefing is intended to be a practical guide to Jersey trustees when faced with requests for information from beneficiaries of the fund.

Service Area: Trusts and Private Wealth, Private Trust Structures, Private Client, Regulation of Trust Company Business

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It is a fundamental and well-known principle of trusts law that a trustee is liable to account to its beneficiaries for its trusteeship. Accordingly, a trustee must maintain accounts and (save in special circumstances) provide information and explanations as to the investments of, and dealings with, trust property. However, in some cases, it may be inappropriate for a trustee to disclose certain information, especially where there is a genuine concern as to the effect of disclosing that information.

What information can/should a trustee disclose?

It is a fundamental and well-known principle of trusts law that a trustee is liable to account to its beneficiaries for its trusteeship. Accordingly, a trustee must maintain accounts and (save in special circumstances) provide information and explanations as to the investments of, and dealings with, trust property[1]. However, in some cases, it may be inappropriate for a trustee to disclose certain information, especially where there is a genuine concern as to the effect of disclosing that information. This briefing is intended to be a practical guide to trustees when faced with requests for information from beneficiaries.

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What information can/should a trustee disclose?

Article 29(1) of the Trusts (Jersey) Law 1984, as amended (the "**Trusts Law**")^[2] provides that:

"Subject to any order of the court, the terms of a trust may –

1. *confer upon any person a right to request the disclosure of information or a document concerning the trust;*
2. *determine the extent of the right of any person to information or a document concerning the trust; or*
3. *impose a duty upon a trustee to disclose information or a document concerning the trust to any person."*

So the first port of call for any trustee faced with a request for disclosure of trust information or documentation is the trust instrument. The trustee should consider who is making the request (e.g. are they a beneficiary) and what the trust instrument provides in terms of who the trustee is authorised or required to disclose information to and what information it is authorised or required to disclose.

In addition, Article 29(2) of the Trusts Law provides that, subject to any order of the court and the terms of the trust, beneficiaries (including named charities) and enforcers of purpose trusts *"may request disclosure by the trustee of documents which relate to or form part of the accounts of the trust"*. This begs an important question: what categories of document fall within the *"accounts of the trust"*?

What are the "accounts of the trust"?

The Royal Court has, on a number of occasions, considered the categories of documents that fall within *"the accounts of the trust"* for the purposes of Article 29 of the Trusts Law (prior to its amendment in 2018).

The Court has determined that there is a strong presumption that the beneficiaries are entitled to disclosure of the trust instrument (and supplemental deeds of appointment), in addition to those documents which evidence the financial position of the trust (such as trust accounts, financial statements, ledgers and so on) and documents that provide details of the trust assets (including details of distributions and dealings with the trust property)^[3]. The Court has also held that it would be reasonable for a trustee to provide a beneficiary with correspondence between the trustee and the beneficiary seeking disclosure (but not correspondence between the trustee and any of the other beneficiaries)^[4].

When disclosing trust documents, the trustee may redact any information in those documents which has been provided to the trustee by any other party in confidence or in circumstances which might reasonably suggest that the other party expected the trustee not to disclose such information without the other party's prior notice and consent.

When can a trustee refuse to disclose information?

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