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Letter from America: Jersey's Royal Court orders trust information to be revealed under a letter of request

Service area / [Dispute Resolution and Litigation, Trusts and Private Wealth](#)

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Will a Jersey trustee be compelled to reveal otherwise confidential trust information to a foreign court where that foreign court issues a letter of request asking for the information? Even if the trustee objects that disclosure of the information is not in its beneficiaries' best interests?

The Royal Court has done exactly that in a case where assisting a foreign court to obtain all relevant material to the issues it had to decide was considered to outweigh the beneficiaries' interests in keeping the information confidential.

Background

The case arose from divorce proceedings taking place in Missouri, USA. During the course of those proceedings the wife – who was not a beneficiary of the trust – obtained a letter of request from the Missouri Court. The letter asked that personnel from a Jersey trust company be required to answer questions on oath as to whether it was trustee of any trust in which the husband had any interest, and if so, what interest he had. The letter of request also required disclosure of far-reaching documentation concerning the trust including the trust instrument and supplemental instruments, letters of wishes and correspondence with the settlors and beneficiaries which might bear on the husband's interests under the trust.

Whether or not a trustee ought to exercise its discretion to release information concerning a Jersey trust and a divorcing litigant's interest in it has been well ventilated in Jersey case law. That issue has generally arisen in applications by or against a trustee for directions under Art 51 of the Trusts (Jersey) Law 1984 where the issue has been how the trustee should exercise its powers or discretions as granted by the trust instrument or general law. As a result the question for the Court (as it is for the trustee) is what would be in the best interests of the beneficiaries. Such proceedings are heard in private and the trustee provides full and frank information so that the Court is put in the same position as the trustee to evaluate that question.

While those cases have often sanctioned the provision of otherwise confidential trust information – usually to the beneficiary spouse so that they can provide the same to the other spouse and the matrimonial court – the basis for the Court's decision has been that it would be in the best interests of the beneficiaries to provide the information and therefore that it would be an appropriate exercise of the trustee's discretion to provide it.

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Letter of request

The *J v K* case was novel because the trust information was sought not through the exercise of the trustee's discretion but by letter of request. The trustee decided that it was in its beneficiaries' interests to object to providing information. The Court accepted that whether the trustee was right or wrong in so deciding was not the question. While the Court could not rule out ever being able to look behind a trustee's decision as to what was in its beneficiaries' best interests, the Court also accepted that it was not deciding an Article 51 application, and so it did not have all the information and evidence to evaluate the trustee's decision and beneficiaries' interests that it would have on such an application for directions under Article 51. Indeed, the Court had no information before it as to who had established the trust, the beneficial interests under the Trust nor the factors that the trustee took into account in reaching the conclusion that it had. The Court also accepted that had the wife, not being a beneficiary, made an application in Jersey under Article 51 for the trustee to be directed to disclose the information then her prospects of success would be slim.

However, despite that, the Court ordered that the information be provided. It did so out of judicial comity – the mutual duty of respect and co-operation a Court owes to foreign Courts and their processes. In particular, international agreement as to how letters of request are to be dealt with is enshrined in a Hague Convention and related domestic legislation putting it into effect. The Court considered these enshrined that duty of comity, and referred to previous Jersey case law on letters of request as to the public importance of Courts having the evidence to investigate the full truth of the matters before them.

Balancing exercise

The key point in the case was whether the competing interest of maintaining the confidence of information concerning a Jersey trust could take precedence over the Court's usual imperative of comity, which required it as far as possible to give effect to letters of request. The Court accepted that confidentiality can indeed override comity and that trust information is confidential. Whether or not the interests of maintaining confidentiality are to be preferred requires the competing interests to be balanced.

In a previous case (*Re the C Trust* [2010] JRC 001) a letter of request had been rejected where the information sought by the foreign Court concerned papers filed in Article 51 directions proceedings which had been heard in private – there the Court concluded that the interests of allowing trustees and beneficiaries to make full and frank disclosure in the course of an application for directions would be undermined if disclosure of the material could be compelled under a letter of request.

In the present case, the balancing exercise adopted by the Court appears to have concluded that, while confidential information with no apparent bearing on the foreign proceedings could be withheld even if within the scope of the letter of request, confidential information that was foreseeably relevant to the foreign proceedings would be disclosed.

It had been submitted that Jersey's so-called firewall legislation – which prevents foreign judgments (including judgments in matrimonial proceedings) from being enforced or given effect in Jersey if not decided in accordance with Jersey law regardless of whether the trustee has submitted to the jurisdiction of the foreign Court – indicates a public policy applicable to Jersey trusts whereby the interests of beneficiaries are to be promoted even where there are countervailing considerations of comity. That public policy extended, it was argued, to refusing disclosure in the circumstances of this case where the trustee had formed the conclusion that disclosure of information for use in the matrimonial proceedings was not in the best interests of the beneficiaries.

The Court did not accept that the public policy extended in this way to as to prefer confidentiality – while a foreign order seeking to vary a Jersey trust contrary to Jersey law would not be enforced by a Jersey Court, no different approach to disclosure of information was warranted. In particular, the existence of trust assets in Jersey from which the husband could benefit could influence how the matrimonial assets might be allocated between him and his wife. It was felt that the fact that the Jersey Courts act in comity with foreign Courts was the reason why those Courts would respect the trust jurisdiction that the Jersey Courts exercise.

A further submission that giving effect to the letter of request was unnecessary and should be declined as the husband could be required to give evidence in the foreign proceedings as to the extent of his interest under the trust was also rejected.

Comment

In its judgment in this case, the Royal Court came out firmly in favour of disclosure of otherwise confidential information to comply with a letter of request. It remains to be seen perhaps whether the court would form any different view in a future case if specific and significant detriment to the beneficiaries from disclosure is demonstrated.

Andreas Kistler and Richard Holden acted for the trustee in this case.

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