

Trusts (Amendment No 7) (Jersey) Law 2018

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

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The Trusts (Amendment No 7) (Jersey) Law 2018, which contains a number of amendments to the Trusts (Jersey) Law 1984 (the Trusts Law), came into force on 8 June.

Key provisions of Amendment No.7

1. Clarifying amendments to Article 9A of the Trusts Law (reservation or grant of powers by a settlor).
2. A re-write of Article 29 of the Trusts Law (disclosure of trust information).
3. Important amendments to Articles 34, 40 and 43 of the Trusts Law and the insertion of a new Article 43A (trustee security and indemnities).
4. Substantial amendment to Article 38 of the Trusts Law (accumulation of income and the statutory power of advancement).
5. Amendment to Article 47 of the Trusts Law (the Court's power to vary trusts).

Amendments to Article 9A – reservation or grant of powers by a settlor

Article 9A sets out a list of powers that can be reserved or granted by a settlor without affecting the validity of the trust or delaying the trust taking effect, and provides that a trustee who acts in accordance with the exercise of any reserved or granted powers is not acting in breach of trust.

The amendments to Article 9A have clarified that:

- the reservation or grant by a settlor of **all** of the powers listed in Article 9A(2) (as opposed to just some) will not affect the validity of the trust nor delay the trust taking effect;

- in respect of a trust where powers have been reserved or granted, unless otherwise expressed it shall be presumed that the trust shall take immediate effect – confirming what was already considered to be the law of Jersey;
- the reservation or grant of powers regarding the appointment of officers of underlying entities will not affect the validity of the trust nor delay the trust taking effect – expanding the existing provision which had applied to corporations to include officers of other entities (e.g. limited partnerships); and
- the reservation or grant of powers does not constitute the settlor or the person to whom the power is granted a trustee – this was also considered to be the current position but the amendment puts the position beyond doubt.

Amendment of Article 29 – disclosure of trust information

Amendments to Article 29 have been proposed for some time. The use of a 'double negative' and the potential for ambiguity has been criticised. Further, whilst it is a fundamental principle that it must be possible for a trustee to be held to account for its trusteeship, it may be undesirable or inappropriate to disclose information in certain circumstances, for example to a young or spendthrift beneficiary or where there are genuine concerns as to the effect of disclosing sensitive information.

Article 29 has been redrafted to reflect recent updates to the case law in this area. Article 29 now provides that:

- the terms of a trust may:
 - confer upon any person a right to request disclosure of information or a document concerning the trust;

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- determine (i.e. restrict) the extent of the right of any person to information or documents concerning the trust; and/or
- impose a positive duty upon the trustee to disclose information or documents to any person;
- subject to the above, a beneficiary, enforcer or named charity may **request** disclosure by the trustee of documents which relate to or form part of the accounts of the trust;
- a trustee may refuse to comply with any request for disclosure, if the trustee is satisfied that to give such disclosure is not in the interests of a beneficiary or the beneficiaries as a whole;
- as currently, the Trustee is not required to disclose deliberations, reasons or materials upon which decisions may be based (e.g. letters of wishes) unless the Court so orders; and
- the Royal Court has ultimate power regarding disclosure so that it can overrule the trustee's decision and can override the terms of the trust, either in relation to a particular instance or more generally.

Amendments to Articles 34, 40 and 43 and new Article 43A – trustee security and indemnities

Previously, various Articles set out the circumstances in which a trustee is entitled to require reasonable security (e.g. on ceasing to be a trustee (Article 34) or on the termination of a trust (Article 43)). However, there was no provision explicitly permitting a trustee to require security on a distribution of trust property during the life of the trust or upon revocation of the trust (Article 40) and there was no specific reference to indemnities, even though this is by far the most common form of security taken.

Articles 34, 40 and 43 have all been amended to cross-refer to a new Article 43A, which entitles a trustee to require reasonable security in all scenarios previously provided for and in addition specifically includes the scenario where a trustee distributes trust property.

Article 43A also provides that indemnities may be required in favour of a wide range of persons 'engaged in the management or administration of the trust on behalf of the trustee', thereby including employees (whether employed by the trustee or by a service company within the trustee's corporate group), officers and other agents, who can enforce such indemnities whether or not they are contracting parties. Furthermore, such persons will be able to enforce the indemnity if it is later renewed or extended by contract or other arrangement (i.e. upon a subsequent change of trustee), even if they are not parties to the said contract or other arrangement.

Amendment of Article 38 – powers of accumulation and advancement

Previously, the default position was that any income of the trust which is not accumulated must be distributed. The absence of more detailed provisions created the potential for uncertainty, for example, how long does a trustee have in which to distribute the income before it must be accumulated, and what is the effect of accumulation on whether the income remains as income or is added to capital?

The amendments to Article 38 clarify the position and widen the options available to the trustee. Article 38 now provides that the terms of the trust may direct or authorise:

- the distribution of income;
- the accumulation of income and its addition to capital; and
- retention of income in its character as income.

The new default position is that, unless otherwise provided in the trust instrument, income will be retained in its character as income.

The newly amended Article 38 also provides that, subject to the terms of the trust, there shall be no time period within which the power to accumulate income and add it to capital, to retain income in its character as income, or to distribute income, must be exercised.

As a separate point, the trustee's power of advancement under Article 38(5) has been clarified so that all (not just part) of a beneficiary's interest may be advanced.

Amendment to Article 47(1) – the Court's power to vary trusts

Pursuant to Article 47(1) of the Trusts Law, the Court has the power to approve on behalf of certain categories of beneficiaries who cannot consent for themselves (e.g. minors, unborn persons, persons lacking capacity) any arrangement varying or revoking the terms of the trust, provided such variation appears to be for the benefit of such person.

Article 47(1) has now been widened so that the Court can provide consent for:

- any person who cannot be found despite reasonable effort; and
- any person falling within a large class of beneficiaries where it is unreasonable to contact each member.

Comment

Amendment No. 7 brings welcome clarification and further develops certain existing provisions of the Trusts Law, ensuring that Jersey remains a leading jurisdiction for the establishment and management of trusts.

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FIND US

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900
E jerseyco@careyolsen.com



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Visit our trusts and private wealth team at careyolsen.com



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