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## The 2026 Trusts (Jersey) Law Amendment: what practitioners need to know

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The Trusts (Jersey) Amendment Law 2026, which came into force on 20 March 2026, has made a number of clarificatory changes to the Trusts (Jersey) Law 1984 (the TJL). This marks the eighth amendment to the TJL.

While the latest changes are mostly technical clarifications, they address areas of uncertainty. Two key changes stand out:

- **Article 43** – Clarifying the limits on beneficiaries' ability to terminate a trust under Article 43 TJL or the rule in *Saunders v Vautier*.
- **Article 43A** – Confirming the priority of claims as between trustees and secured lenders.

### Article 43: Who can call for termination of a Jersey trust?

Article 43 of the TJL has been revised to make explicit that the existence of a power to add beneficiaries prevents the beneficiaries from compelling the trustee to terminate the trust.

#### Background – the rule in *Saunders v Vautier*

It had been a widely held view that Article 43 TJL was Jersey's statutory equivalent to the English rule in *Saunders v Vautier*<sup>1</sup>, namely that where all beneficiaries have been ascertained and none are interdicts or minors, they may require the Trustee to terminate the trust and distribute the assets before the date of termination as stipulated in the trust deed.

Up until recently, it had been commonly understood that where a trust instrument contained a power of addition or any other similar power that could expand the beneficial class, the beneficiaries' interests were not "absolute" and early termination under Article 43 TJL was not permitted.

#### The Rusnano problem

The Guernsey Court of Appeal's 2019 decision in *Rusnano Capital AG*<sup>2</sup> disrupted the settled view. In that case Rusnano, as the sole beneficiary of the trust, was allowed to compel the trustee to terminate the trust despite there being a continuing power of appointment under the trust instrument.

The relevant Guernsey provision mirrored Article 43 TJL, and although the decision is not binding in Jersey, the Guernsey judgment posed a problem of interpretation in Jersey given the similarity of the statutes in question.

#### The amendment

Jersey has confirmed the position by inserting some clarificatory language to Article 43 TJL (amendments shown in bold):

#### **43 Termination of a Jersey trust**

- (1) *On the termination of a trust the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.*
- (2) *Notwithstanding paragraph (1), Article 43A applies on the termination of a trust.*
- (3) *Without prejudice to the powers of the court under paragraph (4) and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are interdicts or minors they may require the trustee to terminate the trust and distribute the trust property among them.*

[1] *Saunders v Vautier* [1841] 6 WLUK 43

[2] *Rusnano Capital AG v Mollard International* [2019] GCA077

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- (3A) But paragraph (3) does not apply in relation to a trust –**
- (a) if there are any other persons who could become beneficiaries in accordance with the terms of, or pursuant to the exercise of any power under, the trust; or**
  - (b) if the terms of the trust provide for the disposition of trust property for a charitable or non-charitable purpose.**
- (4) The court may –
- (a) require the trustee to distribute the trust property;
  - (b) direct the trustee not to distribute the trust property; or
  - (c) make such other order as it thinks fit.
- (5) [Repealed]**
- (6) An application to the court under this Article may be made by any person referred to in Article 51(3).

The amendments are intended to prevent a *Rusnano*-type outcome from occurring in Jersey and realign Article 43 TJL with the *Saunders v Vautier* principle.

Most trust documents contain a power to change the beneficial class, so practically speaking the rule will only be engaged in very narrow and specific circumstances.

### Article 43A: Trustee liens v secured creditors

Article 43A now clarifies the ranking of claims between a current or former trustee and secured lenders.

#### Background – the Z Trusts

The long-running *Z Trust* litigation<sup>3</sup> explored the rights of trustees of insolvent trusts. In particular, the nature of a trustee's lien and the ranking of claims between current and former trustees. The case made clear that a trustee's lien was proprietary in nature and that a former trustee's claim under their right of indemnity would rank *pari passu* with that of the current trustee.

However, the court did not determine how such liens rank against external secured creditors.

#### The amendment

Art 43A TJL now provides as follows (amendments shown in bold):

#### **43A Security**

- (1) A trustee –
- (a) who –
    - (i) **resigns, retires, is removed or otherwise ceases to be a trustee, or**
    - (ii) **distributes trust property; or**
  - (b) **of a trust that is terminated or wholly or partly revoked,**

*may, before distributing or surrendering trust property, as the case may be, require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise.*

- (1A) No account is to be taken of any lien arising by operation of law in considering a trustee's right to require to be provided with reasonable security under paragraph (1).**

- (2) Where security required to be provided under paragraph (1) is in the form of an indemnity, the indemnity may be provided in respect of –
- (a) the trustee or a person engaged in the management or administration of the trust on behalf of the trustee;
  - (b) any or all of the present, future or former officers and employees of the trustee or person engaged in the management or administration of the trust on behalf of the trustee; and
  - (c) the respective successors, heirs, personal representatives or estates of the persons mentioned in sub-paragraphs (a) and (b),

and any person in respect of whom the indemnity is provided under this paragraph may enforce the terms of the indemnity in their own right (whether or not they are party to the contract or other arrangement providing the indemnity).

- (3) If an indemnity to which paragraph (2) refers is extended or renewed by a contract or other arrangement and that contract or other arrangement provides an indemnity in respect of any of the persons referred to in paragraph (2), any such person may enforce the terms of the indemnity in their own right (whether or not they are party to that contract or other arrangement).
- (4) **An interest in or over trust property, granted or created at any time by the trustee of the trust, that secures the payment or performance of an obligation (including an obligation owed to a trustee or former trustee) takes priority over any lien arising in favour of the trustee or former trustee by operation of law, unless the secured party agrees otherwise.**
- (5) **For the purposes of paragraph (4), it is immaterial whether the interest is granted or created under the law of Jersey or another jurisdiction.**

The new provisions confirm what many practitioners have assumed: that secured creditors claims outrank trustee liens.

The changes ensure that trustees cannot rely on their lien to defeat properly granted security. Any consideration of the trustee's lien, that arises by operation of law is irrelevant to the question of what amounts to "reasonable security" for the purposes of the rest of Art 43A TJL. This provides clarity for lenders, trustees and advisors dealing with distressed or insolvent trust structures.

### Conclusion

Although the majority of the changes are technical in nature, the 2026 amendments to the TJL deliver welcome certainty in two critical areas: the rights of beneficiaries to terminate a trust and the ranking of trustee and lender claims.

If you have queries about how these changes may affect your trust arrangements or require advice or representation regarding a Jersey trust, please do get in touch.

[3] *ETJL v Halabi*; *ITGL v Fort Trustees* [2022] UKPC 36



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