



Jersey

TRUSTS (AMENDMENT No. 5) (JERSEY) LAW 201-

Arrangement

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TRUSTS (AMENDMENT No. 5) (JERSEY) LAW 201-

A LAW to amend further the Trusts (Jersey) Law 1984.

Adopted by the States

3rd November 2011

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court

[date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, “principal Law” means the Trusts (Jersey) Law 1984^u.

2 Article 1 amended

In Article 1(1) of the principal Law –

(a) after the definition “personal representative” there shall be inserted the following definition –

“ ‘professional trustee’ means a trustee who is registered under Article 9 of the Financial Services (Jersey) Law 1998^u, by the Jersey Financial Services Commission, to carry on trust company business within the meaning of Article 2(3) of that Law;”;

(b) after the definition “property” there shall be inserted the following definition –

“ ‘purpose’ means any purpose whatsoever, whether or not –

(a) involving the conferral of any benefit on any person; or

(b) consuming or capable of consuming the income or capital of the trust,

including without limitation the acquisition, holding, ownership, management or disposal of property and the exercise of functions;”.

3 Article 9 amended

- (1) In Article 9(1) of the principal Law –
 - (a) in sub-paragraph (d), the word “or” following the semicolon shall be deleted;
 - (b) after sub-paragraph (e) there shall be added the following sub-paragraphs –
 - “(f) the exercise or purported exercise by a foreign court of any statutory or non-statutory power to vary the terms of a trust; or
 - (g) the nature and extent of any beneficial rights or interests in the property,”.
- (2) In Article 9(2)(b) of the principal Law, the words “to the settlor” shall be deleted.
- (3) After Article 9(2) of the principal Law there shall be inserted the following paragraph –
 - “(2A) Subject to paragraph (2), paragraph (1) –
 - (a) does not validate any disposition of property which is neither owned by the settlor nor the subject of a power of disposition vested in the settlor;
 - (b) does not affect the recognition of the law of any other jurisdiction in determining whether the settlor is the owner of any property or the holder of any such power;
 - (c) is subject to any express provision to the contrary in the terms of the trust or disposition;
 - (d) does not, in determining the capacity of a corporation, affect the recognition of the law of its place of incorporation;
 - (e) does not affect the recognition of the law of any other jurisdiction prescribing the formalities for the disposition of property;
 - (f) does not validate any trust or disposition of immovable property situate in a jurisdiction other than Jersey which is invalid under the law of that jurisdiction; and
 - (g) does not validate any testamentary disposition which is invalid under the law of the testator’s domicile at the time of his death.”.
- (4) For Article 9(3) of the principal Law there shall be substituted the following paragraphs –
 - “(3) The law of Jersey relating to *légitime* shall not apply to the determination of any question mentioned in paragraph (1) unless the settlor is domiciled in Jersey.
 - (3A) The law of Jersey relating to conflict of laws (other than this Article) shall not apply to the determination of any question mentioned in paragraph (1).”.

(5) For Article 9(4) of the principal Law there shall be substituted the following paragraph –

“(4) No –

- (a) judgment of a foreign court; or
- (b) decision of any other foreign tribunal (whether in an arbitration or otherwise),

with respect to a trust shall be enforceable, or given effect, to the extent that it is inconsistent with this Article, irrespective of any applicable law relating to conflict of laws.”.

(6) In Article 9(6) of the principal Law, for the definition “personal relationship” there shall be substituted the following definition –

“ ‘personal relationship’ includes the situation where there exists, or has in the past existed, any of the following relationships –

- (a) any relationship between a person and the settlor or a beneficiary, by blood, marriage or adoption (whether or not the marriage or adoption is recognised by law);
- (b) any arrangement between a person and the settlor or a beneficiary such as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parent and child or husband and wife; or
- (c) any relationship between –
 - (i) a person who has a relationship mentioned in either of paragraphs (a) and (b) with the settlor or a beneficiary, and
 - (ii) a third person who does not have a relationship mentioned in either of paragraphs (a) and (b) with the settlor or a beneficiary.”.

4 Article 9A amended

For Article 9A(2)(e) of the principal Law there shall be substituted the following sub-paragraph –

- “(e) to appoint or remove any trustee, enforcer or beneficiary, or any other person who holds a power, discretion or right in connection with the trust or in relation to trust property;”.

5 Article 26 amended

After Article 26(1) of the principal Law there shall be inserted the following paragraph –

- “(1A) Despite paragraph (1), where the terms of a trust are silent as to his or her remuneration, a professional trustee shall be entitled to reasonable

remuneration for services that the professional trustee provides after this paragraph comes into force.”.

6 Article 31 amended

After Article 31(2) of the principal Law there shall be added the following paragraph –

“(3) Subject to this Law (including in particular Articles 21 and 23), but despite any other enactment or rule of law to the contrary, a person may in the capacity of a trustee of one trust enter into a contract or other arrangement with himself or herself in the person’s capacity as a trustee of one or more other trusts.”.

7 Article 34 amended

After Article 34(2) of the principal Law there shall be inserted the following paragraph –

“(2A) If the provision for security to which paragraph (2) refers is extended or renewed by a contract, or other arrangement, to which the trustee who resigns, retires or is removed is not party, and –

- (a) the contract or other arrangement expressly provides that the trustee may in his or her own right enforce a term of the contract or other arrangement; or
- (b) a term of the contract or other arrangement purports to confer a benefit on the trustee,

and in either case the contract or other arrangement expressly identifies the trustee, the trustee may enforce that term in his or her own right.”.

8 Article 57 amended

In Article 57 of the principal Law, for the paragraphs following paragraph (1) there shall be substituted the following paragraphs –

“(2) Where paragraph (1) does not apply, the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is 3 years from –

- (a) the date of delivery of the final accounts to the beneficiary; or
- (b) the date on which the beneficiary first has knowledge of the breach of trust,

whichever is earlier.

(3) Where paragraph (1) does not apply but, when the breach occurs the beneficiary –

- (a) is a minor;

- (b) is an interdict; or
- (c) is under any other legal disability,

the period to which paragraph (2) refers shall not begin to run before the beneficiary ceases to be a minor or interdict or under that other legal disability (as the case may be), or sooner dies.

- (3A) Where paragraph (1) does not apply, the period within which an action founded on breach of trust may be brought against a trustee by an enforcer is 3 years from –
 - (a) the date of delivery of the final accounts to the enforcer; or
 - (b) the date on which the enforcer first has knowledge of the breach of trust,whichever is earlier.
- (3B) Where paragraph (1) does not apply, the period within which an action founded on breach of trust may be brought against a former trustee by a trustee is 3 years from the date on which the former trustee ceased to be a trustee.
- (3C) Where paragraph (1) does not apply, no action founded on breach of trust may in any event be brought against a trustee by any person after the expiry of the period of 21 years following the occurrence of the breach.
- (4) This Article does not apply to a foreign trust whose proper law is the law of a jurisdiction to which the Convention on the law applicable to trusts and on their recognition, signed at The Hague on 20th October 1984, for the time being extends.”.

9 Citation and commencement

- (1) This Law may be cited as the Trusts (Amendment No. 5) (Jersey) Law 201-.
- (2) This Law shall come into force 7 days after it is registered.

^[1]chapter 13.875

^[2]chapter 13.225