

## DEVELOPMENTS IN THE JERSEY LAW OF TRUSTS

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This Brief is intended to provide a brief update as to the latest developments in relation to Jersey Trusts.

### Recent Developments

Jersey has developed its own law of trusts and, some would argue, leads in the field of continuing development of the principles of offshore trust law. The Trusts (Jersey) Law, 1984 (the "Trusts Law") is the beacon which has provided other jurisdictions a guiding light in relation to trusts. The Trusts Law has recently undergone its fourth amendment (20 October 2006), introducing concepts such as the unlimited duration of a trust, the ability of a beneficiary to disclaim a trust, reserving powers to the Settlor of a trust, without the trust being declared invalid, and the reserving of the application of Jersey Law to determine issues concerning the validity of a Jersey Law trust.

The amending provisions can be seen in full at the following IP address:

<http://www.jerseylegalinfo.je/law/display.aspx?url=lawsinforce%2fhtm%2flawFiles%2f2006%2fL-21-2006.htm>

We shall concentrate on the effects most likely to be of influence to the prospective settler. The headline amendments are set out below:

- **Jersey Law prevails**

in relation to any question concerning: the validity or interpretation of a trust, a disposition of property or transfer of property to a trust, the capacity of a settlor, the administration of a trust, the validity and extent of powers granted under the trust, all of the above are to ignore any foreign rule of law, conflict of law or foreign judgment. This amendment is designed to ensure that Jersey Law Trust issues are determined in accordance with Jersey Law and that foreign law concepts do not infect and affect the disposition of assets onto trusts.

- **Settlor's powers**  
Or rather the reserving of certain powers to the Settlor shall not affect the validity of a trust notwithstanding the retention of a beneficial interest in the trust property. Such powers as may be reserved are set out in full in the Trusts Law but include revocation of the trust or amendment of its terms, making appointments out or giving directions to the trustees in relation to the same, appointing or removing directors of underlying companies, dealing with trust property, appointing, removing or restricting the powers of the trustees.
- The effect of this amendment should be to make a Settlor much more comfortable with the concept of the trust and control of its trustees. Of course it is important to note that reservation of some or all of these powers should also be considered in light of the settlor's jurisdiction of residence notwithstanding this amendment and that discussed above.
- **A beneficiary may disclaim**  
his or her interest in a Trust notwithstanding the terms of it. This amendment means that notwithstanding the terms of some trust instruments which do not allow or are silent as to a beneficiary disclaiming his or her interest, irrevocably or otherwise, such disclaimer is now permitted. This can have enormously beneficial consequences when considering the plight of beneficiaries located, for example, in the United States.
- **Trust may continue indefinitely**  
even if the trust from which the property is decanted is determinable by reason of the rule against perpetuities or because of its terms. This amendment removes the maximum time period previously applicable to Jersey trusts and still applicable in other jurisdictions.
- **New Trustees may be appointed**  
even if there are none in existence, by the last remaining trustee or their personal representative and a trust shall not fail by reason of there being no trustee so long as one is appointed as soon as practicable.
- **Court may apply trust property to nearest purpose**  
in the case of Charitable or Non-Charitable Purpose Trusts where that purpose or direction has ceased or is not possible to comply with.
- **Reduces the Limitation Period**  
In relation to an action for breach of trust by a new trustee against a former trustee to three years from the date the former trustee ceased to be a trustee.

The recent changes to the Trust Law seek to bolster both the flexibility and rigidity of the Jersey Trust.

## **European Trustees**

European is an independent trust company that works closely with the law firm of BoisBois whose partners own European.

European provides services to a broad range of clients, both private and corporate. Because it is partner owned there is no turnover of principals and clients can be assured of a long lasting professional relationship with principals whose experience ranges from aviation to property development.

Because of its independence European is able objectively to identify opportunity and because its board comprises lawyers expert in commercial and trust litigation is able to identify and manage risk.