

## Jersey approves changes to update law surrounding property inherited by minors

Insights - 24/08/2016

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The States of Jersey have approved reforms to the Island's customary law and rules regarding the governance and administration of property belonging to minors by adoption of the Children's Property and Tuteurs (Jersey) Law 2016 (the **New Law**).

In this briefing we discuss how the New Law changes the previous regime of *Tutelles*

#### The 1862 regime

The original legislation on the governance and administration of property belonging to minors dated back to 1862. It provided that minors (those under 18) were not considered legally competent to manage their own property.

In the event that a minor inherited, acquired or was gifted property, a mechanism called a *Tutelle* had to be formed to manage the minor's property. A *Tutelle* (a form of guardianship committee) consisted of seven individuals (generally four from the paternal side and three from the maternal side); one of these assumed the role of *Tuteur* whilst the other members were the *Electeurs*. The *Tuteur's* job (supported by the *Electeurs*) was to administer and protect the minor's financial interests until the minor reached the age of majority when the property would be handed over to the minor.

The 1862 Law had a number of drawbacks which included:

- *Electeurs* assuming potential liability (being liable for the defaults of the *Tuteur*) without having any real control over his or her actions;
- gathering together seven members to form a *Tutelle* is administratively burdensome;

- no clear process for a *Tuteur* to resign or be removed from office; and
- no consideration as to the suitability of the person nominated for the appointment of *Tuteur*

## What changes has the New Law brought in?

### *Abolition of role of Electeurs*

The New Law abolished the office of *Electeurs* but retains the office of *Tuteur*.

The *Tuteur* is still appointed by the Royal Court and an application may only be made by one of the following individuals:

1. a parent or relative of the minor;
2. a guardian of the minor;
3. a creditor of the minor;
4. the Attorney General; or
5. any other person who obtains the leave of the Royal Court.

A *Tuteur* can only be an individual, so corporate bodies cannot be appointed as *Tuteurs*. If the Royal Court considers it appropriate, it may appoint more than one person to act as *Tuteur*.

The appointment takes effect once the appointed individual takes the following oath:

*You swear and promise before God that you will well and faithfully discharge the duties of tuteur in relation to the property of [Name of Minor] in respect of which you have been appointed; that you will administer and safeguard such property with equal or event greater concern than you would manifest for your own; that you will deliver good and faithful accounts to whomsoever may be entitled to demand the same; and that you will generally discharge all the duties appertaining to the said office.*

Once appointed, the *Tuteur* acts alone and has the sole responsibility for administering and protecting the minor's assets. The *Tuteur* is entitled to remuneration (at a rate specified in the rules of court) and reimbursement for reasonably incurred expenses.

The *Tuteur* continues in this role until the minor attains the age of majority (currently 18 years under Jersey law), the minor dies, or the *Tuteur* is removed from office by the Royal Court. When the minor reaches the age of majority or dies, the *Tuteur* must take all necessary steps to transfer the administration of the minor's property to the minor or to the executor of the minor's estate.

### *Clear criteria as for property requiring a Tutelle*

A *Tutelle* is only necessary where a minor inherits:

1. movable property over £25,000
2. immovable property of any value.

A *Tuteur* need not be (but can be) appointed if the value of the movable property is less than £25,000 or, if the property is already administered by an administrator, executor or trustee.

### *Introduction of statutory duties on Tuteurs*

The New Law introduces certain duties which a *Tuteur* must carry out, which include:

- delivering an inventory of the minor's property to the Judicial Greffier (an officer of the Royal Court) within 90 days of appointment as *Tuteur*;
- preparing and submitting annual accounts to the Judicial Greffier; and
- delivering accounts to the Judicial Greffier and all other relevant persons upon cessation of the *Tuteur's* position.

### *Offences*

Failure to comply with any of the duties mentioned above, without reasonable excuse, they will have committed an offence which could result in them receiving a fine of up to £2,000.

The New Law also makes it an offence for any person to administer a minor's property where a *Tuteur* should be appointed and for any person (other than a person employed by a *Tuteur*) to administer the minor's property. Breach can result in an unlimited fine and/or imprisonment of up to 12 months.

### *The Royal Court's Role*

The New Law grants the Royal Court a supervisory role and the power to issue directions to in respect of:

- the administration of the property;
- imposing restrictions on the *Tuteur's* powers;
- the administration of the minor's property regardless of whether a *Tuteur* has been appointed;
- transferring the administration of the property from a *Tuteur* to another person; or
- removing a *Tuteur* from office.

The right to apply to the Royal Court for directions vests in the *Tuteur*, the Attorney General and any other person who has the leave of the Royal Court to make such an application.

## Transitional Provisions

As a transitional measure, the States have adopted the Children's Property and Tuteurs (Transitional Provisions) (Jersey) Order 2016. The Order provides that, where a *Tutelle* is in existence immediately before the New Law, the 1862 law will remain applicable to the *Tuteur*. The role of the *Electeur* is not preserved, and a *Tuteur* appointed under the 1862 Law will carry out his or her duties without further involvement from the *Electeurs*, save for the approval of accounts for a period before the introduction of the New Law.

Any right of action against an existing *Tuteur* or *Electeur* of a *Tutelle* which has accrued at the commencement date of the New Law remains applicable.

The Order permits an application to be made to the Royal Court for the appointment of a *Tuteur* in respect of a *Tutelle* existing before the commencement date of the New Law.

## Comment

The introduction of the New Law is a welcome update to this area of law and practice. It simplifies the process by having only one individual in charge of administering the *Tutelle* and should maintain a good level of protection for minors in a more cost effective and streamlined way.

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