



## Trust Essentials: January 2022

Newsletters - 20/01/2022

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As families grow and become more multi-national and globally mobile, it's imperative that trusts can adapt to accommodate new circumstances in the interest of ensuring the purposes of the trust are fulfilled.

In their lead article, global senior partner Rachael Reynolds QC and partner Anthony Partridge discuss a recent case before the Grand Court of the Cayman Islands in which they successfully argued for a STAR trust to be reformed consistently with the general intent of the trust - resulting in the first decision of its kind in Cayman.

We hope you enjoy this edition of Trust Essentials. To discuss any of these private wealth topics further, please reach out to your regular Ogier contact or any member of the Trusts Advisory Group.

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### **Reforming a STAR trust**

*CIBC Bank and Trust Company (Cayman) Limited v T & S* (unreported 16 July 2021), is the first decision of the Grand Court of the Cayman Islands dealing with the variation of trusts established under the Special Trusts (Alternative) Regime.

A STAR trust is a form of statutory trust which was introduced into Cayman Islands law to overcome some of the difficulties arising with the use of more conventional offshore trusts. For example, unlike conventional trusts, STAR trusts can be established without a perpetuity period, and for the benefit of persons, purposes or both. [Continue reading](#)

## Read our At A Glance Guides

- [At A Glance Guide to registering a Jersey charity](#)
- [At A Glance Guide to asset protection trusts in Jersey](#)
- [At A Glance Guide to Guernsey blessing applications](#)

### [Ogier succeeds for BDO and Creditforce Limited in securing a multi-million fraud judgment against a trustee found to have misappropriated trust assets](#)

In its judgment in *Cohen & Crooks as Joint Administrators of the Estate of James Donald Hanson & Anor v Arbitrage Research and Trading S.A. & Ors*, the Royal Court has made findings of fraud against the former trustee of a Jersey trust. The Royal Court has also revisited the test for determining whether a trust is a sham and also considered, for the first time, when it might be appropriate to exercise its statutory jurisdiction to save a trust which is wholly or partially unlawful. [Continue reading](#)

### [Is Jersey part of the UK for probate purposes?](#)

The recent judgement of *Partington v Rossiter*, which was handed down in October 2021, may cause a level of confusion as, on the face of it, a will in which Mr Rossiter (who was domiciled in Russia and left assets in Jersey) defined his 'estate' as his property, money and investments in 'the UK' was found to also cover his assets which were situated in Jersey. Trust and estate practitioners in Jersey and in the UK are well versed at advising clients the opposite however – that Jersey does **not** form part of the UK. [Continue reading](#)

### [History repeating: a trustee de son tort in Jersey](#)

Becoming a trustee, or ceasing to act in that capacity, is one which will be familiar to all professionals in the offshore trust industry. It is vital that the process is carried out in a manner which is consistent with the interests of the beneficiaries, and complies with the relevant mechanism for the retirement and appointment of trustees. Those mechanics can be found either in the trust instrument itself, or if the trust instrument is silent and governed by Jersey law, in Article 17 of the Trusts (Jersey) Law 1984. The dangers of getting the procedure wrong are exacerbated when the appointment of a new trustee is carried out in-house, so that there is no third party to review the procedure. If a trustee acts without being properly appointed for a long

period of time, it may well mean a "lot" and not just a "little" bit of history repeating to remedy the position. [Continue reading](#)

### **Divorce proofing trusts - a step too far?**

The trustees of four trusts, known as the Y, V, W and X Trusts (together the **Trusts**) approached the Jersey Royal Court to seek its blessing in respect of a momentous decision to (i) exclude from the beneficial class the future spouses, widows and widowers of beneficiaries of the Trusts and (ii) to establish a separate trust in which spouses, widows and widowers would be included in the beneficial class. The Trusts had been subject to a history of litigation involving wider family members and it was in this context that the trustees of the Trusts sought the Court's blessing for its decision to amend the terms of the Trusts to mitigate the risks of further litigation for the benefit of current and future beneficiaries. [Continue reading](#)

### **In the matter of the Piedmont Trust & Riviera Trust: the role of Protectors and letters of wishes**

The trustees of two trusts, the Piedmont Trust and the Riviera Trust, approached the Royal Court to seek its approval regarding the distribution of assets upon the termination of the trusts. However, before the Court could make a determination on whether approval should be granted, the Court was required to consider three issues of notable interest: firstly, whether the trustees were disqualified from making their decision because of a conflict of interest and whether this conflict should require them to surrender their discretion to the Court; secondly, the significance that should be attached to letters of wishes by the trustees; and lastly the role to be played by the protector of the trusts in matters and decisions relating to the trusts. [Continue reading](#)

### **Jersey Royal Court concludes there is no substratum rule that applies to Jersey trusts**

The Royal Court has recently clarified the Jersey law position of whether a trust is able to lose its substratum. Following analysis of the recent decision of the Bermuda Court of Appeal in *Grand View Private Trust Company Limited v Wong & Ors*, the Royal Court concluded that there was no substratum rule which applied to Jersey trusts and that powers of addition or exclusion contained within Jersey trusts should be given their natural meaning. [Continue reading](#)

### **Are there threats to offshore trusts? A Guernsey perspective**

A quick flick through the pages of the States of Guernsey Revenue website shows the full extent of the international tax, regulatory and automatic exchange of information measures which Guernsey has introduced to ensure it remains one of the leading international finance centres. These range from base erosion and profit shifting, common reporting standards, foreign account tax compliance act, and mandatory disclosure rules to tax information exchange agreements and economic substance. The Group of Seven's consideration of a global corporate minimum tax being yet the latest of these initiatives designed to ensure that multinational businesses are paying tax in the jurisdictions where the economic activity is carried out. [Continue reading](#)

### **Revision of fiduciary regulatory legislation in Guernsey**

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (as amended) has been repealed and replaced with the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020. This took effect from 1 November 2021.

Although the revision of laws project has taken time to complete and has resulted in a number of new laws, rules and guidance, the intention has not been to fundamentally alter the regulatory regime in Guernsey but rather to modernise, future proof and consolidate legislation resulting in a position which should minimise the administrative burden on licensees, avoid duplication of efforts or unhelpful inconsistency and continue to provide an efficient and well-regulated fiduciary regime. [Continue reading](#)

### **Why HNW Middle Eastern families are looking to the Channel Islands for structuring**

Jersey and Guernsey have been ranked within the four most favoured jurisdictions by advisers to Middle Eastern families seeking wealth management and succession solutions outside the region. Why is this?

Jersey and Guernsey are jurisdictions with a well-established history for providing high net-worth families with bespoke solutions for succession planning and family governance. Jersey and Guernsey have well-developed trust laws, and courts experienced in dealing with all manner of trust disputes as well as providing direction to trustees on key issues relating to the administration of trusts where circumstances arise. [Continue reading](#)

### **About Ogier**

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services

to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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