

Trusts (Amendment No.7) (Jersey) Law 2018 now in force

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The Trusts (Amendment No.7) (Jersey) Law 2018 (**Amendment No. 7**) came into force on 8 June 2018.

Although Amendment No.7 will not make fundamental changes to the Trusts (Jersey) Law 1984 (as amended) (the **Trusts Law**) as a whole, in addition to introducing various new provisions it does provide very welcome clarity in certain areas which it is hoped will be welcomed by trustees and advisers alike.

The Trusts Law is widely regarded as the international standard for offshore trust legislation, and Amendment No.7 will further strengthen this view and help maintain Jersey's position as a leading offshore jurisdiction in the ever-changing private wealth and fiduciary landscape.

The five key Changes contained within Amendment No. 7 are as follows:

- **Reserved Powers (Article 9A)** – in addition to clarifying that all of the powers listed in Article 9A(2) (now widened to include certain powers relating to underlying entities wholly, partly, directly or indirectly held by the trust) may be reserved to or granted by the settlor, the amendments to Article 9A helpfully confirm that the reservation to or the granting of such powers by the settlor shall not have the effect of constituting the relevant powerholder as a trustee.
- **Disclosure (Article 29)** – the current Article 29 of the Trusts Law is replaced in its entirety by a new Article 29 that, subject to any order of the court, confirms the terms of a trust may confer a right to request disclosure of trust information or documentation upon any person, determine the extent of such right and impose disclosure duties on a trustee. It also sets out who may request disclosure, and the circumstances in which a trustee may refuse to comply with a disclosure request. This additional flexibility conferred on the draftsman when it comes to disclosure is to be welcomed.
- **Accumulation and Advancement (Article 38)** – the amendments to Article 38 provide that the terms of a trust may direct or authorise the accumulation of income (with either the addition of such accumulated income to capital or its retention as income) – and that, subject to the terms of the trust, there is no time limit within which these powers, or the power to distribute income, must be exercised. Further, where the terms of a trust are silent as to the accumulation of income, trustees now have a statutory power to accumulate any undistributed income. The statutory power of advancement under Article 38(5) has also been widened so as to apply to "all or part" of a beneficiary's future interest in the relevant trust property.
- **Security (Article 43A)** – the new Article 43A reflects current industry practice in Jersey and confirms a trustee's right to "reasonable security" where such trustee resigns, retires, is removed or otherwise ceases to be trustee, where a trustee distributes trust property or

upon the termination or revocation (either in whole or in part) of a trust. Further, where "reasonable security" is provided in the form of a contractual indemnity, Article 43A sets out the classes of persons in whose favour such indemnity may be provided as well as the ability of such persons to enforce such indemnity notwithstanding that they may not have been a party to it.

- **Variation (Article 47)** – the amendments made to Article 47 serve to extend the scope of the court's powers to approve trust arrangements in circumstances where "despite reasonable effort" members of a beneficial class cannot be traced or where, given the size of the beneficial class, it would be unreasonable for such members to be contacted.

The five next steps for professionals in relation to Amendment No 7 are:

- Familiarise yourself with the provisions of Amendment No. 7 and, where relevant, ensure that your teams are aware of its potential implications for them in their day to day roles.
- When establishing or taking on new structures consider (amongst other matters) any reserved power and disclosure provisions in light of Amendment No. 7, and whether any such provisions are appropriate or whether they require revision.
- Review pre-existing structures that you administer or advise on, in light of Amendment No. 7, and consider whether any amendments are necessary or would be desirable.
- Consider reviewing your internal policies and procedures regarding the handling of disclosure requests (pursuant to the new Article 29).

Contact a member of our highly rated Private Client & Trusts team if you would like any advice regarding the implications of Amendment No. 7 on any new or pre-existing trust structures, or if you have any general trust or private wealth queries.

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