



Jersey

**TRUSTS (AMENDMENT No. 7) (JERSEY) LAW 2018****Arrangement****Article**

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**TRUSTS (AMENDMENT No. 7) (JERSEY) LAW 2018**

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

*Adopted by the States*

*22nd March 2018*

*Sanctioned by Order of Her Majesty in Council*

*23rd May 2018*

*Registered by the Royal Court*

*1st June 2018*

**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<sup>1</sup>.

**2 Article 1 amended**

In Article 1(1) of the principal Law, after the definition “minor” there shall be inserted the following definition –

“ ‘officer’ means –

- (a) in the case of a foundation, a member of the council of the foundation;
- (b) in the case of an incorporated limited partnership, a general partner or a limited partner who is participating in the management of the partnership;
- (c) in the case of any corporation other than those mentioned in sub-paragraph (a) and (b), a director, manager, secretary or other similar officer of the corporation;
- (d) in the case of a limited liability partnership, a partner;
- (e) in the case of a separate limited partnership or any partnership with a separate legal personality, except a limited liability partnership, a general partner or a limited partner who is participating in the management of the partnership; or
- (f) in any case other than those mentioned in sub-paragraphs (a), (b), (c), (d) and (e), any other person

purporting to act in a capacity described in any of sub-paragraphs (a), (b), (c), (d) and (e);”.

### 3 Article 9 amended

In Article 9(2A) of the principal Law, for sub-paragraph (d) there shall be substituted the following sub-paragraph –

“(d) does not, in determining the capacity of a corporation or other person having legal personality, affect the recognition of the law of its place of incorporation or establishment, as the case may be;”.

### 4 Article 9A amended

In Article 9A of the principal Law –

- (a) in paragraph (1) –
  - (i) in sub-paragraph (b) after the word “any” there shall be inserted the words “or all”,
  - (ii) after the word “effect” there shall be added the following words –

“and in construing the terms of the trust, if the trust is not expressed to be a will or testament or to come into effect upon the death of the settlor, it shall be presumed that the trust shall take immediate effect, except as otherwise expressed”;
- (b) in paragraph (2) –
  - (i) for sub-paragraph (c) there shall be substituted the following sub-paragraph –

“(c) to act as, or give directions as to the appointment or removal of –

    - (i) an officer of any corporation, or
    - (ii) an officer of a limited liability partnership, separate limited partnership or any other partnership having separate legal personality,

in which the trust holds an interest whether or not such interest in the corporation or partnership is wholly, partly, directly or indirectly held by the trust;”
  - (ii) in sub-paragraph (d) the word “binding” shall be deleted,
  - (iii) in sub-paragraph (e), after the word “right” there shall be inserted the words “, or who acts”;
- (c) after paragraph (3) there shall be inserted the following paragraph –

“(3A) The reservation or grant by a settlor of a trust of –

  - (a) any beneficial interest in the trust property; or
  - (b) any or all of the powers mentioned in paragraph (2),

shall not of itself constitute the settlor or the person to whom the power or beneficial interest is granted, a trustee.”.

**5 Article 29 substituted**

For Article 29 of the principal Law there shall be substituted the following Article –

**“29 Disclosure**

- (1) Subject to any order of the court, the terms of a trust may –
- (a) confer upon any person a right to request the disclosure of information or a document concerning the trust;
  - (b) determine the extent of the right of any person to information or a document concerning the trust; or
  - (c) impose a duty upon a trustee to disclose information or a document concerning the trust to any person.

- (2) Subject to the terms of the trust and to any order of the court –
- (a) a beneficiary under the trust not being a charity;
  - (b) a charity which is referred to by name in the terms of the trust as a beneficiary under the trust; or
  - (c) an enforcer,
- may request disclosure by the trustee of documents which relate to or form part of the accounts of the trust.

- (3) Subject to any order of the court, a trustee may refuse to comply with –
- (a) a request for disclosure of information or a document concerning the trust under paragraph (1)(a) or any document which relates to or forms part of the accounts of the trust under paragraph (2); or
  - (b) any other request for disclosure of information or a document concerning the trust,

where the trustee in the exercise of its discretion is satisfied that it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole, to refuse the request.

- (4) Notwithstanding paragraphs (1), (2) and (3), subject to the terms of the trust and to any order of the court, a trustee shall not be required to disclose to any person information or a document which –
- (a) discloses the trustee’s deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty conferred or imposed upon the trustee;
  - (b) discloses the reason for any particular exercise of a power or discretion or performance of a duty referred to in subparagraph (a), or the material upon which such reason shall or might have been based; or

(c) relates to the exercise or proposed exercise of a power or discretion, or the performance or proposed performance of a duty, referred to in sub-paragraph (a).

(5) Notwithstanding the terms of the trust, on the application of the trustee, an enforcer, a beneficiary or, with leave of the court any other person, the court may make such order as it thinks fit determining the extent to which any person may request or receive information or a document concerning the trust, whether generally or in any particular instance.”.

## **6 Article 30 amended**

Article 30(11) of the principal Law shall be repealed.

## **7 Article 34 amended**

In Article 34 of the principal Law –

- (a) in paragraph (1), for the words “resigns, retires or is removed” there shall be substituted the words “resigns, retires, is removed or otherwise ceases to be a trustee”;
- (b) for paragraph (2) there shall be substituted the following paragraph –

“(2) Article 43A applies where a trustee resigns, retires, is removed or otherwise ceases to be a trustee.”;
- (c) paragraph (2A) shall be repealed;
- (d) in paragraph (3) for the words “resigns, retires or is removed” there shall be substituted the words “resigns, retires, is removed or otherwise ceases to be a trustee”.

## **8 Article 38 amended**

In Article 38 of the principal Law –

- (a) for paragraphs (1) and (2) there shall be substituted the following paragraphs –

“(1) Subject to Article 15, the terms of a trust may direct or authorize –

  - (a) the accumulation, for any period, of all or part of the income of the trust and its addition to capital; or
  - (b) the retention, for any period, of all or part of the income of the trust in its character as income.

“(2) Subject to Article 15, the terms of a trust may direct or authorize the distribution of all or part of the income of the trust and whilst the trust continues in existence and for so long as and to the extent that –

  - (a) the income of the trust is not distributed or required to be distributed in accordance with the terms of the trust;

- (b) no trust to accumulate income and add it to capital, or to retain income in its character as income, applies; and
- (c) no power to accumulate income and add it to capital, or to retain income in its character as income, is exercised,

the income of the trust shall be retained in its character as income.

(2A) Subject to the terms of the trust, whilst the trust continues in existence, there shall be no time period within which a power to accumulate income and add it to capital, to retain income in its character as income or to distribute income must be exercised.”;

- (b) in paragraph (3)(A) after the word “beneficiary” there shall be inserted the words “and add it to capital or retain it in its character as income”;
- (c) in paragraph (5), for the word “part” there shall be substituted the words “all or part”;
- (d) in paragraph (6), for the words “Any part” there shall be substituted the word “All”;
- (e) in paragraph (7), for the words “No part of the trust” there shall be substituted the word “Trust” and after the word “shall” there shall be inserted the word “not”.

## 9 Article 40 amended

In Article 40 of the principal Law, after paragraph (5) there shall be inserted the following paragraph –

“(6) Notwithstanding paragraphs (3) and (4), Article 43A applies where a trust is wholly or partly revoked.”.

## 10 Article 43 amended

In Article 43 of the principal Law, for paragraph (2) there shall be substituted the following paragraph –

“(2) Notwithstanding paragraph (1), Article 43A applies on the termination of a trust.”.

## 11 Article 43A inserted

After Article 43 of the principal Law there shall be inserted the following heading and Article –

*“Security*

### 43A Security

- (1) A trustee –
  - (a) who –

- (i) resigns, retires, is removed or otherwise ceases to be a trustee, or
    - (ii) distributes trust property; or
  - (b) of a trust that is terminated or wholly or partly revoked, may, before distributing or surrendering trust property, as the case may be, require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise.
- (2) Where security required to be provided under paragraph (1) is in the form of an indemnity, the indemnity may be provided in respect of –
- (a) the trustee or a person engaged in the management or administration of the trust on behalf of the trustee;
  - (b) any or all of the present, future or former officers and employees of the trustee or person engaged in the management or administration of the trust on behalf of the trustee; and
  - (c) the respective successors, heirs, personal representatives or estates of the persons mentioned in sub-paragraphs (a) and (b),
- and any person in respect of whom the indemnity is provided under this paragraph may enforce the terms of the indemnity in their own right (whether or not they are party to the contract or other arrangement providing the indemnity).
- (3) If an indemnity to which paragraph (2) refers is extended or renewed by a contract or other arrangement and that contract or other arrangement provides an indemnity in respect of any of the persons referred to in paragraph (2), any such person may enforce the terms of the indemnity in their own right (whether or not they are party to that contract or other arrangement).”.

## 12 Article 47 amended

In Article 47 of the principal Law –

- (a) after paragraph (1)(b) there shall be inserted the following sub-paragraphs –
  - “(ba) any person, if the court is satisfied that despite reasonable effort to find such person, the person cannot be found;
  - (bb) any person, if the court is satisfied that the person falls within a class of beneficiary and that because of the number of persons falling within that class it is unreasonable for the person to be contacted;”;
- (b) in paragraph (2), for the words “or (c)” there shall be substituted the words “, (ba), (bb) or (c)”.



**13 Citation and commencement**

This Law may be cited as the Trusts (Amendment No. 7) (Jersey) Law 2018 and shall come into force 7 days after it is registered.

**L.-M. HART**

*Deputy Greffier of the States*

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<sup>1</sup> *chapter 13.875*