

## TRUST UPDATE

## TRUSTS

**Validation of Powers Reserved by Settlor**

The Trusts (Amendment No 4) Jersey Law 2006 (“the Amendment”) became law in Jersey with effect from 27 October 2006. That amendment to the law marked the first major change to the trust law in Jersey since the introduction of non-charitable purpose trusts in May 1996.

Broadly, a threefold effect was brought about by the Amendment. Firstly the Amendment consolidated the application of Jersey law to override the impact of foreign laws, including in particular those concerning the disposition of property by settlors to Jersey trusts and in the context of deceased estates. Secondly, the Amendment provides a greater deal of flexibility to allow enhanced control by settlors over trust assets. Thirdly, a significant change is made as regards the maximum period for the duration of non-charitable trusts.

**Overriding of Foreign Laws**

Article 9 (1) extends the application of Jersey law as regards:

- The validity or interpretation of a trust;
- The validity or effect of the transfer into trust;
- The capacity of a settlor;
- The administration of the trust (in Jersey or elsewhere) including questions as to the powers, obligations, liabilities and rights of trustees and their appointment and removal;
- The existence, extent and validity of powers conferred or retained, including powers to vary or revoke and powers to appoint.

Article 9(2) provides that a number of foreign matters will be determined without recourse to foreign laws regarding recognition of trusts, rights of persons related to settlors, heirship rights and matters of enforcement. These changes are particularly useful in international aspects in relation to matrimonial disputes.

Certain rules of Jersey customary law now have no effect as regards the determination of the validity, effect or administration of a trust or as regards the disposition made to a trust.

**Validation of Powers Reserved by Settlor**

The second strand of the Amendment strengthens and confirms the ability of a settlor to reserve certain powers in relation to a trust without affecting the validity of that trust both as regards its creation and its subsequent administration.

Article 9 A (1) provides that the reservation or grant by a settlor of any beneficial interest in the trust property or of the list of specific powers defined in Article 9 (2) does not affect the validity of the trust, and in circumstances where such powers are reserved to settlors, they will not be acting in breach of trust.

These specific powers include:

- The power to revoke, vary or amend the terms of the trust;
- The power to advance, pay or apply trust property;
- The power to direct the trustee to advance, pay or apply trust property; and
- The power to give directions to the trustee in connection with the purchase, retention, sale and administration of trust property.

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**Removal of Limits to Duration of Trusts**

The third important change brought about by the Amendment is the removal of the 100 year maximum duration period previously applicable to non-charitable trusts. Jersey law trusts can now be formed either with no fixed maximum duration or having a fixed duration, which can exceed 100 years if required.

**The Future**

Jersey is at an advanced stage in the drafting of the law for a Jersey Foundation.

Amendment no 5 of the Jersey law of trusts, which is anticipated to be published in the latter half of 2009, is likely to include a further tightening of rules overriding foreign laws; provisions allowing for the reservation or grant to another person by a settlor of trust powers; the strengthening of the position of retiring trustees with a possible statutory non-possessory lien over the trust property; the clearing up of uncertainties concerning purpose trusts; the delegation by power of attorney of trustee powers and duties; and clarification on disclosure of information to beneficiaries.