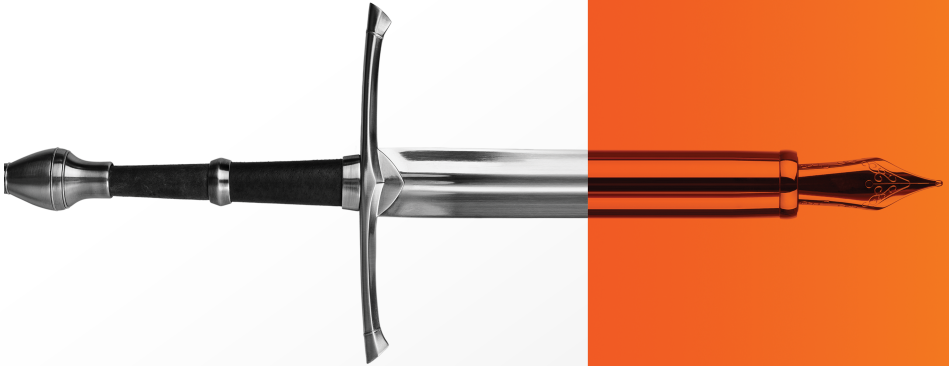


Jersey Trust **Litigation**



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Introduction

This guide provides an overview of trust litigation in Jersey. It summarises the important aspects of Jersey trust law and civil procedure.

It is not intended to be comprehensive or provide detailed answers to complex questions. The purpose of this guide is to set out the various types of trust dispute which can come before the Jersey Courts. Not all legal proceedings commenced before the Royal Court are hostile proceedings in which the trustee is being sued or criticised for fault. The vast majority of trust proceedings in Jersey are commenced by trustees, seeking guidance from the Court in its supervisory capacity in which there is no suggestion of criticism of the trustee.

If you require legal advice or assistance you are encouraged to contact our contentious trusts team, the details of which can be found at the end of this guide.

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Relationship with English Law

Despite its geographical proximity to England, Jersey trust law and English trust law are not the same [although they do share some common features].

Jersey trust law is principally governed by the **Trusts (Jersey) Law 1984 ('TJL')** - a statute that does not apply in England, nor is it derived from an English equivalent. In a number of important areas, some of which are discussed later in this booklet, Jersey trust law has developed in a different, and often more flexible way, than England. Care must be taken when applying English principles to a dispute involving a Jersey trust.¹

Powers and Duties of Trustees

A trustee is an office endowed with fiduciary obligations.

At the core of the trustee's duties are the obligation to act with utmost good faith and loyalty towards the beneficiaries as a whole. The trustee also owes other duties, such as duties of care and skill, but these are not fiduciary duties. As a fiduciary, a trustee must act in the best interests of the beneficiaries [or trust purpose where there are no beneficiaries] of the trust, and ensure that he or she puts those interests ahead of their own and any third party's interests.

Art 21 TJL imposes the following core duties upon a trustee:

- i. A trustee shall act with due diligence and prudence, to the best of the

trustee's ability and skill, and with the utmost good faith.

- ii. Subject to the TJL, a trustee shall administer the trust in accordance with its terms.

- iii. Subject to the terms of the trust, a trustee shall, so far as is reasonable, preserve and enhance the value of the trust property.

- iv. Except with the permission of the Court or as permitted by the TJL or expressly provided by the terms of the trust, a trustee is not permitted to:

- a. directly or indirectly profit from their trusteeship;
- b. cause or permit any other person to profit directly or indirectly from such trusteeship;
- c. on the trustee's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.

- v. A trustee shall keep accurate accounts and records of the trustee's trusteeship.

- vi. A trustee shall keep trust property separate from the trustee's personal property and any other property of which he or she is a trustee.²

A breach of any of these core obligations prescribed in **Art 21 TJL** is actionable as a breach of trust.³ In relation to **Art 21 TJL (4)(iii)** above, while Jersey law does allow a trustee to contract with itself in their capacity as a trustee of another trust, the trustee still owes these core duties.⁴

Art 23 TJL requires that where a trust has more than one beneficiary or purpose, subject to any contrary provision in the terms of the trust, the trustee must remain impartial in its administration of the trust. In reality, most Jersey trusts are discretionary and the trustee can exercise their powers to benefit one beneficiary over another.

¹ Re B[2012] JRC 2 29

² Art 21 TJL

³ Midland Bank Trust Co v Federated Pension Services 1994 JLR 276

⁴ Art 31(3) TJL

Trustees also owe a duty of confidentiality to beneficiaries in relation to trust matters. However, this duty is not absolute and disclosure of confidential information by trustees is permitted in certain circumstances including where to maintain that confidence would put the trustee in breach of the criminal law,⁵ where there is a conflicting legal obligation [such as to file a tax return] or pursuant to a Court order. The issue of what information or documents a trustee must or may disclose can be affected by the terms of the trust and is an area where disputes can often arise.

It is possible that a conflict may arise between duties a trustee owes by law, such as those arising under Anti-Money Laundering or Proceeds of Crime legislation, and its duties to the beneficiaries. In such circumstances a trustee is able to commence proceedings for directions from the Court as to what to do.⁶ Proceedings for directions may similarly be instituted where the trustee finds itself in a position where its interests [or more usually its obligations] in one capacity conflict with its obligations in another capacity.

Trustees' Powers and Rights

There are two principal types of power exercised by trustees; administrative and dispositive.

Generally speaking administrative powers are used to manage the trust assets and dispositive powers are used to make distributions. The TJL contains a number of provisions which potentially affect the powers of a trustee. The scope of and restrictions upon a trustee's powers are governed by the terms of the trust itself. Subject to such provision, the exercise of the trustee's powers is subject to the duties in **Art 21 TJL** above and **Art 24 TJL**.

Art 24 TJL provides a broad power that, subject to the terms of the trust, allows trustees to have all the same administrative powers over trust property as would be enjoyed by a beneficial owner, although such powers must be exercised in accordance with the interests of the beneficiaries and the terms of the trust. **Art 47 TJL** provides a mechanism to broaden the trustee's administrative powers

by Court order if it is expedient to do so where the trust instrument does not provide for such a power.

The dispositive powers of trustees will be set out in the trust instrument but are supported by a number of statutory provisions. **Art 38 TJL** sets out a framework which, subject to the terms of the trust, prescribes the operation of the trustee's powers of accumulation and advancement. **Art 39 TJL** also confirms that a trust deed can contain a power of appointment and provides a definition of such a power. A trust instrument may require a trustee to obtain the consent of some other person in order to exercise a power or discretion.⁷ Where there is more than one trustee, the trustees can only exercise powers unanimously, unless the terms of the trust provide otherwise.⁸

Dispositive powers tend to be drafted in very broad terms and often refer to conferring a 'benefit' on a beneficiary. This term has been given broad scope by the Courts to include steps such as paying the debts of a beneficiary from trust funds⁹. If a trustee exercises a power to further a purpose other than that for which it is intended, this may be considered a fraud on a power. This is not to say that every incident in which a power is exercised for a purpose beyond its intention will amount to a fraud on a power.¹⁰

The trust instrument may reserve or confer specific powers that would otherwise be exercisable by the trustee alone, on a third party such as a protector, settlor or principal beneficiary. Sometimes a legal dispute can arise that requires the intervention of the Court, where a power vested in a trustee or third party is exercised improperly. This may occur where the powers are exercised subject to a conflict of interest or where its exercise breaches the duties in **Art 21 TJL**.

In some circumstances it is possible for the beneficiaries [and the trustee] to challenge or revisit the exercise of a power. **The Trusts (Amendment No. 6) (Jersey) Law 2013** enables the Court to set aside decisions of the trustee or settlor where relevant considerations have not been taken into account and/or irrelevant considerations have been taken into account - and had this not

⁷ Art 24 TJL

⁸ Art 22 TJL

⁹ Re Esteem Settlement 2001 JLR 7

¹⁰ See Re X Trusts 2002 JLR 377 in which a distribution to a beneficiary for the purpose of paying a judgment debt to his ex-wife [who was not a beneficiary] was not held to be a fraud on a power.

⁵ Re B, Bv7 Guernsey Court eg Appel 35/2012

⁶ Re Representation Caversham Trustees Ltd [2010] JRC 054.

been the case the trustee would have made a different decision. The scope to revisit and reset decisions vitiated by an operative mistake is very valuable to trustees, settlors and beneficiaries. The rule is often invoked to avoid adverse tax consequences occasioned when setting up a trust or by the decisions of the trustee in administering trust. It is a considerably wider jurisdiction than that which now exists in English law following the case of **Pitt v Holt** in the UK Supreme Court.

A Jersey trustee is entitled under **Art 26 TJL** to reasonable remuneration for the services it provides. Where a dispute over fees arises, it is possible to issue proceedings for the Court to fix what it considers to be reasonable remuneration.

A Jersey trustee is also entitled to reimburse itself out of the trust fund for costs that it reasonably incurs on behalf of the trust. This is known as the trustee's indemnity (**Art 26 TJL**). In some circumstances, a Jersey trustee is also entitled to the benefit of limited liability towards third parties it deals with on behalf of the trust, (**Art 32 TJL**). Jersey has been at the forefront of resolving disputes where the trust assets are insufficient to pay the trustee's indemnity.

Rights of Beneficiaries

A beneficiary of a Jersey trust is entitled to commence legal proceedings in order to safeguard their rights and hold trustees to account.

A beneficiary is entitled to request certain information or documentation from the trustee pertaining to the administration of the trust. The issue of what information or documents beneficiaries are entitled to seek from the trustee is an area where disputes can often arise. A beneficiary's right to seek disclosure provides the beneficiary with a mechanism to find out if there are grounds to pursue further legal proceedings.

As is stated above, **Art 21 TJL** requires a trustee to maintain accurate accounts and records of his trusteeship. In concert with this provision **Art 29(d) TJL** confers an obligation upon a trustee to disclose material to a beneficiary which relates to, or forms part of the accounts of the trust. This term has been

interpreted very broadly¹¹ however the scope of discovery is subject to the Court's overriding discretion and has been narrowed in some cases to exclude certain types of documents relating to the trust such as the financial records of companies owned by the trust. A further limitation is that, save in exceptional circumstances, a beneficiary may only request documents which date from the period when he or she was a beneficiary.¹²

While **Art 29(d) TJL** entitles a beneficiary to seek certain documents, **Art 29(a)-(c) TJL** set out other categories of document which, subject to the terms of the trust and the discretion of the Court, a trustee is entitled to withhold from the beneficiaries. These are documents which:

- i. disclose 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 him or her;
- ii. disclose the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason was based;
- iii. relate to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.

There are numerous situations in which it will be difficult for a trustee to determine whether they should disclose documents or not. Not all documents that may be disclosed will fall neatly into one of the above categories. For example, a document may appear to fall within trust accounts but may also disclose why a trustee exercised their discretion in a particular way. The Court retains a broad discretion to order disclosure if it is in the interests of all the beneficiaries. There are now many judgments which provide guidance as to the approach the Court is likely to take in certain circumstances, however in the event of a dispute beneficiaries have the right to bring an application to Court. If a trustee is found to have made a serious error in unreasonably refusing to disclose material to a beneficiary, they may be made personally liable for the beneficiaries' legal costs of the application, and may have to pay their own legal costs.

¹¹ West v Lazard Brothers (Jersey) Ltd 1987-88 JLR 414

¹² U Limited v B and others, re the W Settlement [2011] JRC 131

The Jurisdiction of the Royal Court

Art 5 TJL gives the Royal Court jurisdiction over a trust where:

- i. the trust is a Jersey trust (i.e. the proper law of the trust is Jersey);
- ii. a trustee of a foreign trust is resident in Jersey (i.e. even where the proper law of the trust is not Jersey);
- iii. any trust property of a foreign trust is situated in Jersey; or
- iv. administration of any trust property of a foreign trust is carried on in Jersey.

The breadth of this provision reflects the importance of trust administration to Jersey as a financial centre and the desirability for trusts that have a connection with Jersey to be subject to the jurisdiction of its Courts. In the event that none of the jurisdictional gateways in **Art 5 TJL** are engaged, the ordinary principles of jurisdiction and service of proceedings will apply.

A trust instrument will usually prescribe the proper law of the trust and the Courts to which disputes under it may be brought. In order to ensure that such clauses are effective, it is imperative that they are clearly drafted so as to leave no scope for dispute as to their intended meaning.¹³ Recent decisions of the Jersey Courts have been of help in establishing the correct approach to interpreting such clauses and when they will be binding.

Applications Relating to the Administration of the Trust

The Court has wide powers to make determinations

and to give directions in relation to the administration of trusts.

While it is not feasible to provide an exhaustive list within the scope of this guide, there are a number of circumstances which commonly give rise to applications under **Art 51 TJL**:

- i. Disputes as to the construction of the trust
- ii. Disputes concerning the disclosure of documents and information by trustees to beneficiaries
- iii. Disputes concerning the removal or appointment of trustees
- iv. The blessing by the Court of certain momentous decisions of trustees
- v. Decisions on behalf of a trustee who has surrendered its discretion to the Court
- vi. Resolving conflicts of interest
- vii. Disputes concerning the proposed or past exercise of the trustee's powers.

Art 51 TJL is an important and flexible mechanism through which the power of the Court can be invoked to aid the administration of a trust. In particular, it enables trustees to obtain the protection of the Court in circumstances where they are unable to make a proper decision or cannot make a decision for fear that their decision could lead to a claim being made against them. This is not a power the Court exercises lightly and the Court will expect the trustee to be full and frank with it if the trustee expects the Court's assistance to direct it to the correct decision. Proceedings commenced under **Art 51 TJL** are often termed 'friendly' proceedings in that while there may be a dispute, they are not hostile in the sense that there has been any allegation of breach of duty or misconduct against the trustee. This can have important consequences for the way in which the legal costs of such proceedings fall to be determined. While **Art 51 TJL** proceedings can be used to resolve disputes, they are not the appropriate method to commence hostile litigation such as claims for breach

¹³ See *Crociani v Crociani* [2014] 089

of trust. Such proceedings may be heard in private. However, the Court will not allow a privacy order to protect a trustee from embarrassment or criticism if there has been wrongdoing.

To enable it to enforce its rulings against recalcitrant parties (who may be outside Jersey) the Court has power under **Art 52 TJL** to execute any document that may be necessary to give effect to its orders.

In certain circumstances a party to proceedings outside Jersey can apply to enforce a judgment of a foreign Court in Jersey over trust assets or against a Jersey Trustee. Such cases have commonly involved orders by English Courts for payments from or variations of Jersey trusts, pursuant to UK ancillary relief proceedings. It is for the Jersey Court to decide whether, as matter of Jersey law, to give effect to such a judgment. This can be achieved either through its inherent supervisory jurisdiction or by giving directions to the trustee pursuant to **Art 51 TJL**. However, the Court has no power to direct the trustee to do anything the trustee, by itself would have no power to do. The Court is restrained in its ability to give effect or enforce a foreign judgment by **Art 9 TJL** which protects Jersey trusts against decisions made under foreign law in foreign Courts. The regime is such that no foreign judgment relating to a range of issues relevant to a Jersey trust can be given effect to in Jersey unless the foreign Court applied Jersey law in its determination of those issues.

Variation of a Trust

There are three principal mechanisms by which the terms of a trust may be varied.

The first is pursuant to a provision in the trust instrument. The TJL provides that such powers are valid as a matter of Jersey law.¹⁴ The second mechanism occurs when all those who could possibly benefit agree that the trust property should be held on different terms. If the trustee agrees, the terms of the trust may be varied accordingly.

Thirdly, a variation can take place where the law confers a specific power to

¹⁴ Art 37 TJL

vary the terms of a trust. An example is **Art 27 TJL** of the Matrimonial Causes [Jersey] Law 1949, which empowers the Court to vary a nuptial settlement.

Art 47 TJL enables the Court to agree to a proposed variation of a Jersey trust on behalf of certain beneficiaries¹⁵ who cannot, by reason of their legal incapacity, supply consent themselves, such as minor, incapacitated, unborn or unascertained beneficiaries. In approving any such variation the Court must be satisfied that it will be to the benefit of such beneficiaries. This is a concept which has been interpreted widely in Jersey to include variations such as insertion of a trustee remuneration clause.

Construction, Interpretation and Rectification of Trust Instruments

The principles applicable to the construction and interpretation of a trust instrument are the same as those which apply to other documents such as a contract or a will.

Again this is an area of law which has been developed through a number of decided cases. In summary, where there is dispute or uncertainty as to the meaning of a trust document, the Court must interpret the document objectively while taking into account the surrounding circumstances.¹⁶ To reach an objective determination the Court will consider matters which were known to the maker of the document, at the time it was made, and which would have affected the way the document would have been understood by a reasonable person.¹⁷ In contrast evidence of subjective intention, such as drafts and negotiations, will not normally be admissible. The same is true of evidence which postdates the

¹⁵ Art 47 TJL

¹⁶ Re Representation Trustees of the H Settlement [2005] JRC 077

¹⁷ Re Internine and Intertraders Trusts 2005 JLR 236

execution of the document.¹⁸

The general rule of evidence discussed above can cause a problem where the Court determines the trust document to have a meaning contrary to the intentions of the parties to that document. The Court has the power to rectify a trust document so that the language properly reflects what the parties intended. A classic case for rectification was where a deed of exclusion mistakenly excluded the wrong person as a beneficiary.¹⁹

The Court will apply a three part test to determine whether it should rectify a trust document. Firstly, it must be satisfied by evidence that a genuine mistake has been made which renders the document contrary to the intention of the parties. Secondly, the applicant has a duty of full and frank disclosure to the Court. Thirdly, there should be no other practical remedy available.

It is permissible to apply for rectification in order to take advantage of a legitimate tax benefit, as long as that was the intention of the parties at the time.²⁰ This can only happen where the document in question does not achieve the transaction which the parties intended. If the document achieves the intended transaction, but in doing so fails to achieve the desired tax advantage then rectification will be refused. By way of example in **Re Sesemann Will Trust**²¹ the settlor was excluded as beneficiary in order to obtain a tax advantage. He subsequently realised that to obtain the relevant tax advantage his wife also needed to be excluded. The Court refused rectification because the instrument reflected the party's intention at the time it was drafted.

Breach of Trust Actions

When a trustee breaches any duty imposed by the TJL or the terms of the trust, this can give rise to a claim in breach of trust.

¹⁸ For a more detailed analysis of this distinction see the discussion in *Re Internine and Intertraders Trusts* 2005 JLR 236 at 62.

¹⁹ *Re Representation Abacus CI Ltd, re MM Patel Settlement* [2003] JRC 096

²⁰ *Re Moody Jersey 'A' Settlement* 1990 JLR 264

²¹ [2005] JRC 151, 2005 JLR 421.

As a result of this broad definition of what may amount to a breach of trust, there are numerous situations in which a breach of trust may arise. To be actionable, a breach of trust must ordinarily cause loss to the trust fund. A profit that the trustee makes for itself or is conferred upon a third party at the expense of the trust will also amount to an actionable breach of trust.

A breach of trust claim is a hostile claim and is usually brought by a beneficiary, except in the case of a non-charitable purpose trust, when it is made by the enforcer. A breach of trust claim can also be brought by a co-trustee or by a new trustee against a former trustee.

Liability for breach of trust is framed by **Art 30 TJL**. A successful claim will leave the trustee personally liable to make good any loss (or depreciation in value) of the trust fund due to the breach, and/or any profit which the trust property would have generated if the breach had not occurred. A trustee can also be ordered to provide an account of the trust fund, so that the scope of the liability can be established. The extent of the account that the trustee will be required to provide will depend on the facts of the case in question.

It is possible for a person to be held liable as if they were a trustee – even if they are not formally appointed as a trustee. This concept is known as constructive trusteeship. **Art 33 TJL** provides that where a person makes or receives any profit, gain or advantage from a breach of trust that person shall hold that benefit on trust and must deliver up the relevant property to the person properly entitled to it. Jersey has sophisticated and practical remedies to identify and then recover misappropriated trust funds even if they are held by a third party. Jersey, unlike England, has endorsed the possibility of 'backwards tracing' in order to assist in the vindication of proprietary rights.

Where there has been a breach of trust, it may also be possible to bring a claim against a third party who assists in the breach of trust but with whom the beneficiary has no formal relationship. In circumstances where the assistant's knowledge of the transaction in which they assisted was such as to render their participation contrary to normally acceptable standards of honest conduct, they will be a dishonest assistant. Such a person can be held personally liable to the same extent as the trustee for the loss arising from the breach of trust.

A trustee will not be liable for a breach of trust which occurs prior to their appointment, however if the trustee becomes aware of a breach of trust then

under **Art 30(9) TJL** it assumes a duty to take all reasonable steps to ensure that that breach is remedied. Similarly, where there is more than one trustee and a co-trustee commits a breach of trust, the other trustee(s) will not incur liability unless they were aware or ought to have been aware of it or of the intention of the co-trustee to commit a breach of trust. A trustee will not be liable for the actions of a co-trustee unless the trustee actively conceals such breach or such intention and fails to take proper steps within a reasonable time to protect or restore the trust property or prevent the breach of trust. A trustee shall not be liable for loss to the trust arising from a delegation by the trustee (such as to an investment advisor) where the trustee acts in good faith and without neglect. However, a trustee who resigns from office in order to facilitate a breach of trust shall be liable as if they had not resigned.²² Where two or more trustees are held liable in breach of trust, their liability is joint and several.

The liability of a trustee for breach of trust can be limited, or excluded altogether, by the terms of the trust. The only limit to such exemption clauses is that **Article 30(1) TJL** makes it impossible for the terms of the trust to exclude a trustee's liability for breach of trust which arises from the trustee's own fraud, wilful misconduct or gross negligence. A beneficiary may expressly relieve or indemnify a trustee against liability for breach of trust provided that they have legal capacity, full knowledge of all material facts and are not improperly induced by the trustee to do so²³.

The Court has additional powers to excuse trustees from liability. **Article 45 TJL** provides the Court with a discretion to relieve a trustee from liability for breach of trust where the trustee has acted honestly and reasonably.²⁴

Removal and Appointment of Trustees

The removal or retirement and appointment of trustees is usually a non-contentious process,

²² Art 30(3A) TJL

²³ Art 30(6) – (7) TJL

²⁴ Art 45(1) TJL

achieved pursuant to powers in the trust instrument.

However, in circumstances where a trustee conducts itself in such a manner so as to negatively affect the administration of the trust but who nevertheless refuses to step aside, it may be necessary to seek the Court's intervention to remove the trustee. The Court retains an inherent jurisdiction to remove a trustee and appoint a new trustee in its place. The Court has a similar power to remove a protector or other power holder. Proceedings to remove or replace a trustee by Court order can be commenced, as of right, by a trustee, a beneficiary or an enforcer or any other person provided that they have obtained the leave of the Court to make the application. The guiding principle for the Court will be whether the removal of the trustee is in the best interests of the beneficiaries and the sound administration of the trust.

Limitation in Trust Disputes

Art 57 TJL governs limitation in hostile trust disputes.

A breach of trust claim is normally subject to a three year limitation period. This period starts to run from the date of delivery of the final accounts of the trust, or the date on which the beneficiary acquires knowledge of the breach of trust²⁵, whichever is earlier. The concept of knowledge is interpreted objectively to mean knowledge that would have caused a reasonable person to conclude that a breach of trust had occurred.²⁶

Art 57 TJL sets out two situations to which no limitation period will apply. This applies where a trustee is privy or party to fraud²⁷ or where an action is brought to recover property from the trustee which is in the trustee's possession, under their control or previously received by them.²⁸

If the beneficiary is a minor, an interdict or under a legal disability, the limitation

²⁵ Arts 57(2)(a) and (b) TJL

²⁶ *West v Lazard Bros & Co [Jersey] Ltd* 1993 JLR 165

²⁷ Art 57(1)(a)

²⁸ Art 57(1)(b)

period of three years will only begin when the beneficiary becomes of age, legally able, or dies,²⁹ except in cases of fraud or an action to recover trust property as discussed above.

There is a long-stop provision in **Art 57(3C) TJL** which provides that all breach of trust claims will be prescribed after 21 years from the breach of trust, except those based on fraud or to recover property from the possession of a trustee.³⁰

Trustees' and Beneficiaries' Legal Costs

Under **Art 53 TJL** the Court has very wide powers to make any order as to the costs of any proceedings commenced under the **TJL**.

This includes the power to order that such costs be paid from trust assets rather than by the parties personally.

Art 26(2) TJL entitles a trustee to an indemnity from the trust fund covering all expenses and liabilities reasonably incurred in connection with the trust. In a litigation context **Art 53 TJL** enables the Court to make orders in relation to trustees' costs, including that payment be made from the trust assets. As a result trustees may receive their costs in litigation from the trust fund where such costs are deemed to have been reasonably incurred in the interests of the trust.

The question of whether costs are reasonably incurred and reasonable in amount will differ depending upon the nuances of each case. An important distinction that is relevant to the issue of costs is whether the proceedings are hostile or not. Where for example a trustee reasonably seeks the direction of the Court concerning an ambiguity as to the meaning of the trust, those will be proceedings commenced under the administrative jurisdiction and provided the trustee has not acted unreasonably, the Court can normally be expected to order that the trustee's costs of the proceedings be paid from the trust fund. If the trustee appeals a direction it normally does so at its own risk as to costs in

the event that it loses the appeal. Alternatively, where a trustee is sued in hostile proceedings for breach of trust, the usual rule is that the loser pays and the trustee's costs will not normally be paid from the trust fund under the principle that the trustee should not use trust assets to defend itself from criticism.³¹ Where the trustee wishes to issue proceedings, whether in Jersey or elsewhere, on behalf of the trust, it is usually prudent for the trustee to seek the Jersey Court's advanced blessing for it to do so in the event that the trustee loses the litigation and may be ordered to pay another party's costs. This type of application is known as a Beddoe application. A Beddoe decision enables the trustee to proceed as directed by the Court safe in the knowledge that their legal costs can be paid from the trust assets in advance of the conclusion of the litigation in which they become involved.

The position of a beneficiary is different when it comes to legal costs. A beneficiary has no right to be indemnified out of the trust fund. In the event that an award of costs is made in favour of a beneficiary, then under **Art 53 TJL** the Court may order that such costs are paid from the trust fund. In an exceptional case, usually in circumstances where the trustee is unable to act and the beneficiary has to prosecute a claim on behalf of the trust as if it were the trustee (known as a derivative claim), the Court has the power to make a pre-emptive order that the costs of the beneficiary should be paid for from trust assets on the same basis as a Beddoe order.³²

²⁹ Art 57[3]

³⁰ As per Art 57[1] TJL

³¹ See for example *Parujan v Atlantic Western Trustees Ltd* [2003] JRC 045.

³² In the matter of the X Trust [2012] JRC 171.

Conclusion

Well-regulated trust administration remains an extremely important part of Jersey's financial services industry.

However, when disputes do arise, Jersey's mature legal system and internationally respected judges, mean the Island remains one of the leading jurisdictions in which to resolve high value and complex trust litigation. Jersey's Royal Court remains at the cutting-edge of fashioning modern, practical remedies for both trustees and beneficiaries.

Jersey's robust AML regime is matched by its sophisticated approach to remedies which use trust law principles to prevent its financial services industry being abused as a safe harbour to shelter nefarious funds and their proceeds.

Baker & Partners continues to be involved in some of the most legally and factually complex trust litigation in Jersey. Whether you require advice or representation as a trustee, a protector, a beneficiary or a third party in relation to any contentious issue involving a Jersey trust, we are happy and ready to assist.

Our Team

Baker & Partners has unparalleled experience in bringing and defending major international fraud claims and asset recovery actions before the Jersey Courts.

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