

A rare case indeed: The matter of the representation of the C Trust

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For only the second time the Jersey Royal Court heard an application recently under the Foundations (Jersey) Law 2009 (the “Foundations Law”).

In the matter of the representation of the C Trust concerned an application by a trust company as the sole council member of five Jersey foundations (the “Foundations”). It is a welcomed case which confirms the supervisory powers of the Court in relation to Jersey foundations.

Here, the Foundations held the assets of the estate of a deceased husband and father that were formerly held in trusts. The Foundations were established in response to tax advice received by the deceased's two daughters. The purpose of the establishment of the Foundations was to mitigate tax in light of substantial changes to the law of the foreign jurisdiction in which the daughters resided relating to the taxation of trusts. It transpired that the advice was flawed and a significant liability to tax was likely to arise in the foreign jurisdiction. The trust company sought directions as to whether it could amend certain provisions of the Foundations' constitutional documents. The ultimate intention was for the Foundations to be dissolved.

The Court considered Article 46 of the Foundations Law which provides that the Court can give directions on various matters including the meaning and effect of a provision in the charter or regulations of the foundation and the manner in which the foundation council is required to carry out the foundation's objects. The Court confirmed that in considering Article 46 it was appropriate to have regard to the similar supervisory jurisdiction which the Court has in relation to trusts. The Court considered that:

- the trust company did have power to make the desired changes and ultimately to dissolve the Foundations;
- the acts proposed to be taken in relation to the Foundations were made in good faith;
- the trust company was acting as a reasonable council member would;
- these acts had not been vitiated by any actual or potential conflict; and
- the trust company was not seeking to surrender its discretion to the Court.

Accordingly, the Court blessed the proposals. In reaching its decision, it was an important factor in doing so was that the family and the guardian supported the changes. Further, the Court went so far as to state that, even if the constitutional documents of the Foundations did not permit the trust company to make the requested changes, it would have been minded to exercise its powers under its powers under the Foundations Law.

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