

# Proposed amendments to the Trusts (Jersey) Law 1984

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April 2018

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Amendment No. 7 proposes a number of useful changes:

- A new definition of "Officer" which will mean:
  - a foundation council member;
  - in respect of an incorporated limited partnership or a separate limited partnership, a general partner or limited partner participating in the management of the partnership;
  - a director, manager, secretary or other similar officers of a corporation;
  - a partner of a limited liability partnership; and
  - any other person purporting to act in any of the above capacities.
- Various clarificatory amendments to Article 9A, which deals with settlor reserved powers, including confirming the ability to reserve *all* the powers set out in the article, and confirming that the holding of a reserved power does not of itself constitute the holder a trustee.
- Article 29, which deals with the provision of information relating to a trust to beneficiaries, is to be reworded to remove the double negative and to clarify that a trust instrument may (i) confer a right to request disclosure of information, (ii) determine the extent of the right to information, and (iii) impose a duty upon a trustee to disclose information to any person. Subject to the terms of the trust, a beneficiary may also request documents which relate to or form part of the accounts. Further, subject to any court order, a trustee may refuse a request for information where it is satisfied that it is in the interests of one or more, or all, of the beneficiaries to do so.
- Article 38 permits the accumulation of trust income if authorised by the trust instrument, and any income not so accumulated must be distributed. It will in future be permissible to provide that all or part of the income may be accumulated for any period and added to capital, or to retain all or part of the income for any period in the character of income. The default position will be that income will retain its character as income.
- A new Article 43A will give statutory recognition to the industry practice that upon ceasing to be a trustee, distributing trust property or the trust being terminated or revoked, the trustee is to be entitled to "reasonable security" for liabilities and where this is in the form of an indemnity, it may be in respect of the trustees, its officers (see new definition above) and

employees and respective successors, and may be enforced by third parties such as employees even though they are not party to the indemnity.