

# STATES OF JERSEY



## DRAFT TRUSTS (AMENDMENT No. 7) (JERSEY) LAW 201-

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Lodged au Greffe on 5th February 2018  
by the Chief Minister

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STATES GREFFE





Jersey

## **DRAFT TRUSTS (AMENDMENT No. 7) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Trusts (Amendment No. 7) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

*Chief Minister*

Dated: 26th January 2018

## REPORT

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### **Background and purpose**

The Draft Law seeks to clarify and further develop certain existing provisions of the [Trusts \(Jersey\) Law 1984](#) (the ‘TJL84’) to ensure that Jersey remains at the forefront of the trusts industry across the world. The TJL84, together with its supporting case law, is highly-regarded internationally as well as locally. It is not, and was not intended to be, a codification of the law of trusts in Jersey but a statutory framework, allowing flexibility to reflect developing jurisprudence and evolving industry practice, within appropriate and legitimate parameters.

### **Consultation**

On 11th April 2016 the Chief Minister’s Department published a Consultation Paper on proposed amendments to the TJL84, drawing on the work of the Jersey Finance Trusts Law Working Group, comprising of leading industry practitioners and in light of their practical experience in the operation of the TJL84. The Consultation was open from 11th April to 4th July 2016. The relevant [Consultation Paper](#) and the associated [Response and Policy Paper](#) published in January 2017 are available on the government website.

Responses were received from a number of law firms, the Jersey Association of Trust Companies and individuals, a limited number of trust companies and individuals, and the Chancery Bar Association. Most respondents supported clarification of any uncertainty as to the provisions of the TJL84 with a recognition that the reputation and integrity of the law relating to trusts in the Island was key to the continued growth and stability of the finance industry. There was broad agreement on a number of the proposals and comments have been incorporated into the drafting where appropriate.

### **The Draft Amendments**

#### **Article 2 of the Draft Law (amending Article 1 of the TJL84)**

A new definition of officer is inserted into Article 1 of the TJL84 to support the amendments to Article 9A. There is a need to recognise that other types of entities, such as limited liability partnerships and separate limited partnerships, now exist as well as the ‘body corporate’ envisaged in the definition of “corporation” already in the TJL84.

#### **Article 3 of the Draft Law (amending Article 9 of the TJL84)**

The current paragraph (d) is extended for similar reasons as above, namely to recognise the existence of other entities such as limited liability partnerships and separate limited partnerships.

#### **Article 4 of the Draft Law (amending Article 9A of the TJL84)**

A series of clarificatory amendments is proposed –

- (a) insertion of the words ‘or all’ in paragraph 1 to clarify that the reservation or grant of *all* of the listed powers is permitted order to avoid any suggestion that the reservation of one or some of the list of powers is acceptable but all is not;
- (b) insertion of a presumption of immediate effect at the end of paragraph 1 confirming what was already considered to be the law of Jersey;
- (c) amendment of wording to recognise that there are other types of entity beyond a corporation and thus other officers – and that an entity might be held directly, indirectly, partly or wholly by a trust;

- (d) removal of ‘binding’ in paragraph (d) to avoid any complication in interpretation relating to the duties of a trustee;
- (e) insertion of the words ‘who acts’ in paragraph (2)(e) to widen the class of persons mentioned in the clause;
- (f) insertion of a new paragraph 3A to confirm that the reservation or grant of a beneficial interest or power under Article 9A does not, of itself, constitute the Settlor or the person to whom the power or interest is granted, a trustee. Again this is considered to be the current position but the amendment puts the position beyond doubt.

#### **Article 5 of the Draft Law (amending Article 29 of the TJL84)**

Discussions relating to a need to amend Article 29 (formerly Article 25) of the TJL84 which deals with the rights of beneficiaries to information concerning the trust, have been ongoing for a considerable time. There have been 2 principal aspects to that debate.

First, the point of principle as to how much information a beneficiary should be entitled to have. On the one hand is a perfectly understandable desire by some settlors or trustees to limit access to information, for example, to prevent a young beneficiary learning of the provision made for him or her until he or she has matured and established his or her own career. On the other hand, is the fundamental trust law concept that there must be someone who can hold the trustee to account for his trusteeship and who will only be able to do so with relevant information.

Secondly, there has been criticism of the actual drafting of the Article and a potential ambiguity in the phrasing caused by the use of a double negative.

More recently, it has been noted that case law in this area has developed, beginning with the leading case of *In re Rabaiotti* [2000] JLR 173, and particularly after the Privy Council decision in *Schmidt v Rosewood* [2003] UKPC 256. Whilst this was a case arising from a decision of the Isle of Man court, it has since been applied in Jersey and cited in various cases by the Royal Court. The Privy Council confirmed that no beneficiary has an automatic right to disclosure arising from a proprietary right. It was necessary to weigh up the relevant factors before deciding whether or not to accede to a request for disclosure and where there were issues as to personal or commercial confidentiality, the court may have to balance the competing interests of different beneficiaries, the trustees themselves and third parties.

This approach has been reflected in the redrafting of the Article. Significantly, the trustee is entitled to refuse to comply with a request for information if the trustee is satisfied that it is in the interests of any one or more, or the whole of the beneficiaries to so refuse. The beneficiary (amongst other named parties) has an overriding right to apply to the court for a determination of the extent of disclosure generally or in a particular instance. The Article also confirms that any restriction or extension of rights to documents or information within the trust deed is always subject to the order of the court.

#### **Article 6 of the Draft Law (amending Article 30(11) of the TJL84)**

This is a simple amendment repealing Article 30(11) which refers to Article 56 which was, in turn, repealed in 2006.

#### **Articles 7, 9 and 10 of the Draft Law (amending Articles 34, 40 and 43 of the TJL84)**

Under the TJL84 as currently drafted, a trustee is entitled to seek security and/or an indemnity in certain circumstances which are specified in various Articles. For

example on ceasing to be a trustee, the departing trustee may seek reasonable security for liabilities before surrendering trust property. It was considered more appropriate and effective to have all security/indemnity provisions in one new Article – Article 43A – to ensure that there was no divergence in approach (whether perceived or actual) between the different situations.

Accordingly, the separate sections in each of Articles 34, 40 and 43 of the TJJ84 dealing with the provision of security and/or an indemnity are deleted and references made instead to the new Article 43A. In addition, the words ‘or otherwise ceases to be a trustee’ are added to Article 34 for completeness.

#### **Article 11 of the Draft Law (inserting new 43A into the TJJ84)**

As explained above, under the TJJ84 as currently drafted, a trustee is entitled to seek security and/or an indemnity in certain circumstances which are specified in various separate Articles. It was considered more appropriate and effective to have all security/indemnity provisions in one new Article – Article 43A – to ensure that there was no divergence in approach (whether perceived or actual) between the different situations.

The new Article 43A, therefore, draws together the various circumstances already set out in the Law where security can be sought by the trustee and also explicitly adds in (for the avoidance of doubt) that this would include on the occasion of a distribution from the trust.

In addition, Article 43A opens the opportunity to give an indemnity to the employees of a trustee (or similar others as set out) who can enforce the indemnity in their own right, even if not a party to the contract or other arrangement (containing the indemnity) itself. In normal circumstances, a contract can only be enforced by a party to the contract. Furthermore, the trustee and the employees will be able to enforce the indemnity if it is later extended in a subsequent deed (or other arrangement) even if they are not parties to the said deed or arrangement.

These provisions reflect existing industry practice whereby, for example, a retiring trustee will enter into a deed of retirement and appointment with a new trustee which contains various security and/or indemnity provisions. The indemnity will often be preserved in subsequent deeds of retirement and appointment when there are subsequent changes of trustee.

#### **Article 8 of the Draft Law (amending Article 38 of the TJJ84)**

As currently drafted Article 38 permits the accumulation of trust income if so authorised by the terms of the trust. Any income not so accumulated must be distributed. However, there is no guidance in the TJJ84 as to the permissible period before income is to be accumulated or distributed, nor to whom trust income should be distributed if not accumulated. Whilst most trust instruments deal with this, where the trust instrument is silent, there could be questions, for example, as to for whom the income is held pending distribution. It was, therefore, determined that amendments should be made to avoid any adverse consequences of this uncertainty. The amendments seek to clarify the position and widen the options available to the trustee. It is proposed that the income can be accumulated and added to capital for any period; or be retained as income for any period, or, of course, it can be distributed. The default position, in the absence of provision in the trust deed will be that the income of the trust will be retained in its character as income.

As a separate point, sub paragraph (5) has been amended to clarify that the power of advancement may be exercised for *all* of the trust property rather than only *part* of the trust property (as currently drafted) (up to the limit of a beneficiary’s entitlement).

### **Article 12 of the Draft Law (amending Article 47 of the TJJ84)**

The Royal Court already has certain limited powers to approve an arrangement varying or revoking the terms of the trust or enlarging the administration or management powers of the trustee as set out in Article 47. The Draft Law permits the Court to approve such a variation on behalf of 2 further groups. First, on behalf of beneficiaries who despite reasonable efforts cannot be found. This would cover a situation, for example, where there are several named beneficiaries who all consent to a variation save for one who cannot be found despite attempts to do so. Secondly, on behalf of beneficiaries in a class, where the number of beneficiaries in the class makes it unreasonable for each and every one of the beneficiaries to be contacted. In both cases, it is necessary that the variation must be for the benefit of the particular beneficiary or beneficiaries.

The protection afforded to a person by the European Convention on Human Rights to have a fair hearing may be engaged in this context but the comments of the Law Officers' Department on this point are noted to the effect that the Draft Law is compatible with the Convention on Human Rights.

### **Collective responsibility under Standing Order 21 (3A)**

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

### **Financial and manpower implications**

There are no financial or manpower implications that would arise for the States from the adoption of this Draft Law.

### **European Convention on Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### **Human Rights Notes on the Draft Trusts (Amendment No. 7) (Jersey) Law 201-**

These Notes have been prepared in respect of the draft Trusts (Amendment No. 7) (Jersey) Law 201- (“the **draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The only ECHR right engaged by the draft Law is the right to a fair hearing in Article 6(1) of the ECHR, which provides that –

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”*

Article 6 of the ECHR applies if the civil rights and obligations of the applicant are in issue, there is a dispute as to those civil rights and obligations, and the proceedings are determinative of those civil rights and obligations. Those conditions will not necessarily be present in the context of every trust dispute, but they may be present where, pursuant to the amendment made by Article 12 of the draft Law, the extended power in Article 47 of the Trusts (Jersey) Law 1984 (the “principal Law”) is exercised to change the terms of the trust or the powers of the trustee.

A key requirement of Article 6 of the ECHR is the need for access to a fair and public hearing within a reasonable time “by an independent and impartial tribunal”. The independence in question here is independence from the executive, the parties and the legislature. Access to an independent and impartial tribunal may be granted in two ways: either the decision making body itself complies with the requirement of Article 6(1) of the ECHR, or the decision making body is subject to control by a body which complies with the requirements of Article 6(1) and which has full jurisdiction.

Article 12 of the draft Law amends Article 47 of the principal Law to include the power for the Royal Court to approve any arrangement varying or revoking all or any of the terms of a trust or enlarging the powers of the trustee of managing or administering any of the trust property on behalf of particular persons. The exercise of this power may engage Article 6 of the ECHR.



The Royal Court, which is the primary decision-making body for the purpose of the powers afforded by Article 12 of the draft Law, satisfies the requirements of Article 6 of the ECHR. Further, there is a right of appeal to the Court of Appeal against a decision of the Royal Court, which is provided for in civil cases by Article 12(2) of the Court of Appeal (Jersey) Law 1961. Therefore, the draft Law is compatible with the ECHR.

## Explanatory Note

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This Law amends the Trusts (Jersey) Law 1984 (the “principal Law” as defined in *Article 1*) to make miscellaneous changes to that Law.

*Article 2* amends Article 1 of the principal Law to add a definition for the term “officer” used in that Law.

*Article 3* amends Article 9 of the principal Law to extend paragraph (2A)(d) of that Article to include a person having legal personality other than a corporation.

*Article 4* amends Article 9A of the principal Law to provide that 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.

*Article 4* also amends Article 9A of the principal Law to include, in the powers that may be reserved or granted by the settlor without affecting the validity of a trust or delay its taking effect, the power to act as, or give directions as to the appointment of a partner 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 partnership is wholly, partly, directly or indirectly held by the trust. The amendment also reflects that the definition “officer” (added in Article 1 of the principal Law by *Article 2*) includes a director of a corporation.

*Article 4* inserts new paragraph (3A) in Article 9A of the principal Law which provides that the reservation or grant by a settlor of a trust of any beneficial interest in the trust property or any or all of the powers mentioned in in paragraph (2) of that Article shall not of itself constitute the settlor or the person to whom the power or beneficial interest is granted, a trustee.

*Article 5* substitutes Article 29 of the principal Law to make provision regarding the disclosure of information or a document concerning the trust and, in particular, regarding the disclosure for information or a document which relates to or forms part of the accounts of the trust.

*Article 6* deletes Article 30(11) of the principal Law to remove the reference to Article 56 of that Law which has been repealed.

*Article 7* amends Article 34 of the principal Law by removing the provision relating to security and by providing for new Article 43A of the principal Law (which provides for security) to be applicable where a trustee resigns, retires, is removed or otherwise ceases to be a trustee.

*Article 7* also amends Article 34 of the principal Law to delete the provision relating to extension or renewal of security by contract or other arrangement and to provide for new Article 43A of the principal Law to apply.

*Article 8* amends Article 38 of the principal Law to provide that, subject to Article 15 of the principal Law, the terms of a trust may direct or authorize the accumulation, for any period, of all or part of the income of the trust and its addition to capital or the retention, for any period, of all or part of the income of the trust in its character as income.

*Article 8* also amends Article 38 of the principal Law to provide that, subject to Article 15 of the principal Law, 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.

*Article 8* further amends Article 38 of the principal Law to provide that, subject to the terms of the trust, whilst the trust continues in existence, there would 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.

*Article 9* amends Article 40 of the principal Law to provide that new Article 43A of the principal Law applies where a trust is wholly or partly revoked.

*Article 10* amends Article 43 of the principal Law by removing the provision relating to security and by providing for new Article 43A of the principal Law to apply on the termination of a trust.

*By Article 11*, new Article 43A is inserted into the principal Law so that, under new Article 43A(1), a trustee who resigns, retires, is removed or otherwise ceases to be a trustee or who distributes trust property, or a trustee 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.

Under new Article 43A(2) of the principal Law, where the security required to be provided is in the form of an indemnity, the indemnity may be provided in respect of the trustee or a person engaged in the management or administration of the trust on behalf of the trustee and 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 their respective successors, heirs, personal representatives or estates. Any person in respect of whom the indemnity is provided 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).

By new Article 43A(3) of the principal Law, if an indemnity 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 Article 43A(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).

*Article 12* amends Article 47 of the principal Law to include the power of the court to approve any arrangement varying or revoking all or any of the terms of a trust or enlarging the powers of the trustee of managing or administering any of the trust property on behalf of –

- (a) any person, if the court is satisfied that despite reasonable effort to find such person, the person cannot be found; or
- (b) 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 under the trust it is unreasonable for the person to be contacted.

*Article 13* sets out the title of this Law and provides for it to come into force 7 days after it is registered.





Jersey

## **DRAFT TRUSTS (AMENDMENT No. 7) (JERSEY) LAW 201-**

### **Arrangement**

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Jersey

## **DRAFT TRUSTS (AMENDMENT No. 7) (JERSEY) LAW 201-**

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

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**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 sub-

- paragraph (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 201- and shall come into force 7 days after it is registered.

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