



# The new Guernsey Trusts Law

The Trusts (Guernsey) Law, 2007, became effective from Monday 17 March 2008. It replaces the Trusts (Guernsey) Law, 1989, as amended.

## **Non-Charitable Purpose Trusts**

It has introduced non-charitable Purpose Trusts. Under the legislation it is made perfectly clear that trusts established to hold property or to exercise functions without conferring benefit to any person are valid.

Purpose Trusts are commonly employed to incorporate Private Trust Companies (PTC's) which in turn act as trustees to specific trusts (or group of trusts).

## **Removal of limits on the length of a trust's duration**

The Trusts (Guernsey) Law, 1989, limited the duration of Guernsey trusts to 100 years even though the rules against perpetuities had never formed part of Guernsey law. The new law reverts to the status quo ante and removes the previous 100 year time limit for Guernsey trusts, allowing perpetual trusts to be created.

It will of course be possible for the draftsman of a trust to provide for a limited trust period where, for example, it is necessary to consider the application of a foreign rule against perpetuities in relation to the transfer of assets from a foreign trust to a Guernsey trust.

The revised legislation also permits assets to be decanted from one trust to another even where the second trust is of a longer duration than the first.

## **Clarification of the Position of Retiring Trustees**

The new law creates a non-possessory lien over trust assets in favour of the retiring trustees and it simplifies the ability of a previous trustee to enforce an indemnity given in its favour where it is not a party to the document by which the indemnity is given. This should facilitate speedy changes of trustee.

## **Clarification of the circumstances under which information has to be given to Beneficiaries**

Under the new regime it is recognised that there can often be good reasons for some beneficiaries to be denied information relating to the trust. The 2007 law has been drafted in such a way that the terms of the trust may expressly exclude discretionary beneficiaries' rights to information but without denying the overriding right of any beneficiary to apply to the court for information. The person seeking the information which the Settlor has taken the trouble to

deny him would have the burden of proving why disclosure was necessary. It remains the case that the trustee must be accountable for his trusteeship.

## **Abolishment of Liability of Directors of Corporate Trustees**

Under the 1989 law, directors of corporate trustees based in Guernsey or acting as trustees of Guernsey law trusts were personally liable as guarantors in respect of damages or costs awarded against the corporate trustee for a breach of trust. The 2007 law repeals this clause in its entirety. Directors will remain personally exposed in relation to any breach of trust claim initiated before the Royal Court prior to the date when the new law came into effect.

## **Limitation Periods and Alternative Dispute Resolution (ADR)**

Changes have been made to the effect that no action founded on breach of trust may be brought against a trustee after the expiration of 18 years immediately following the date of the breach.

Any order, judgement or finding of law or fact of the Court in an action against a trustee founded on breach of trust is binding on all beneficiaries of the trust whether or not yet ascertained or in existence, provided they were represented either personally or as a member of a class. There are similar provisions for ADR procedures.

## **Purpose Trusts in Guernsey**

### *The concept*

Traditionally trusts were established to provide either for beneficiaries or to further a charitable purpose. A Purpose Trust is a type of trust which has no beneficiaries but instead exists for advancing a non-charitable purpose of some kind.

Trusts for charitable purposes are also technically Purpose Trusts, but they are usually referred to simply as Charitable Trusts. People referring to Purpose Trusts normally are usually taken to be referring to Non-Charitable Purpose Trusts.

In most jurisdictions, they are usually unenforceable (there are limited exceptions) but Guernsey has enacted legislation specifically to promote the use of Non-Charitable Purpose Trusts.

When using offshore structures to assist in tax, estate planning or company restructuring, it may be of considerable assistance to create a trust in which no company, or individual, has a beneficial interest.



# The new Guernsey Trusts Law (continued)

## **Guernsey Law**

The terms of a Purpose Trust must define the valid purpose(s) to which the trust fund may be applied. Under Guernsey law a trust for non-charitable purposes must not be so uncertain that its performance is rendered impossible, contrary to public policy, or immoral.

There are no other limitations imposed by law. A trust established to hold assets or to exercise functions is expressly stated to be valid. The law also envisages hybrid trusts where there may be beneficiaries and purposes.

A Purpose Trust must be created in writing to avoid problems caused by incomplete oral gifts.

Without beneficiaries there is no ascertainable person to enforce a Non-Charitable Purpose Trust. Therefore an 'Enforcer' must be appointed to act. A positive duty will be introduced to compel trustees to appoint an Enforcer if there is none in office. Equally if the Enforcer is not capable of acting or alternatively is refusing to act the trustee must initiate action to have the Enforcer replaced.

It is the fiduciary duty of the Enforcer to police the trustees and to enforce the stated purposes of the trust. A trustee cannot also serve as an Enforcer of the same trust but the law does permit employees or associated companies of a trustee to serve as Enforcer.

The new Trusts Law specifies that there is not limit upon the duration of any Guernsey trust, including Purpose Trusts.

## **Guernsey's fiduciary offering**

These legislative developments are further to Guernsey's 50 years experience in providing fiduciary services, which has cultivated a wealth of expertise and a first class infrastructure.

The Island plays hosts to some 140 licensed fiduciaries, ranging from international organisations to independent operations, holding between £200bn and £300bn of assets in trust. The industry's highly skilled workforce is complemented by a network of sophisticated legal, accounting, tax and actuarial advisers, making it an ideal home for Purpose Trusts.