



Shaping the future: 2024 trust law developments across Ogier's offshore jurisdictions

Insights - 06/12/2024

In the continually evolving landscape of trust law, staying informed of changes is important for trustees, advisers and beneficiaries alike. Our expert partners across Ogier's key offshore jurisdictions have gathered and analysed recent legislative and case law developments that have reshaped the trust landscape.

In **Guernsey**, significant strides have been made through regulatory changes and noteworthy case law developments, ensuring the jurisdiction stays ahead of international standards. **Jersey** continues to adapt its trust laws to meet contemporary demands, with proposed amendments aimed at enhancing clarity and flexibility. The **Cayman Islands** have made a landmark move by abolishing the rule against perpetuities for ordinary trusts, allowing for indefinite duration and greater succession planning possibilities. Meanwhile, the **British Virgin Islands** offer practical solutions for non-domiciled international individuals managing their estate assets.

These updates reflect the proactive measures each jurisdiction is taking to maintain their international reputation for excellence in trust administration and governance.

Guernsey's fiduciary advancements and case law developments - Catherine Moore

In recent years, Guernsey has continued to solidify its position as a leading jurisdiction for trust establishment and administration through both regulatory changes and significant case law developments.

Over the past few years we have seen a modernisation of fiduciary regulation in Guernsey, with new legislation and supporting guidance introduced to ensure Guernsey's fiduciary industry stays up to date (or even ahead) of international standards, maintaining confidence and trust in the industry. These changes were followed by the introduction of a new charity regulation framework (pursuant to the Charities etc (Guernsey and Alderney) Ordinance, 2021 and related regulations)

and lending, credit and finance legislation (with the introduction of The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 and related rules) both of which can require trustees, in certain circumstances, to register or obtain a licence. Both are designed to ensure Anti-Money Laundering (AML), and Combating the Financing of Terrorism (CFT) standards and obligations are met by fiduciaries administering trust and other structures which by their nature could be exposed to such risks.

The new charity registration requirements redefine charities and non-profit organisations under Guernsey law, setting out criteria to determine which of them are required to be registered on the Register of Charities and other non profit organisations, and laying out the governance and risk mitigation measures that such organisations are required to implement. The legislation focuses on those charities that receive public donations or operate internationally. The Guernsey Registry is responsible for maintaining the register and has powers necessary to allow it to enforce the requirements of the legislation.

Lending, credit and finance legislation has been introduced, amongst other consumer protection legislation introduced over recent years. The legislation not only replaces existing legislation designed to provide such protection but also goes further to cover those dealing in virtual assets and crowd-funding. The aim of the legislation is to ensure Guernsey meets international standards but also to give confidence to consumers dealing with Guernsey based entities. Given the aims of the legislation, it will not come as a surprise that there are certain exemptions to the legislation, some of which will particularly apply in case of trustees who have lent within a structure they administer. For example, a Guernsey trustee who extends credit to named beneficiaries of the trust from which the credit is sourced and companies which are held within a trust administered by the Guernsey trustee which extend credit to named beneficiaries of that trust are exempt, as are entities which extend credit to their beneficial owners.

On the case law front, the Guernsey courts have delivered several judgments over the last year that underscore the jurisdiction's sophisticated approach to trust litigation aided by members of the judiciary with significant experience in dealing with trust disputes. A number of these cases related to the not uncommon question of whether disclosure of information said to be relevant to a trust should be permitted.

In the case of *M Trusts* [2023] GCA084 the Guernsey Courts considered whether a set of beneficiaries should be ordered to disclose information to another set of beneficiaries of the same trust. In *BX v T Limited* [2004] GCA036 the Court heard arguments for and against disclosure in favour or non-beneficiaries.

In both cases, the Court considered its supervisory jurisdiction in relation to trusts and when it is and is not necessary to intervene for the proper administration of the trust. The Court will not intervene where the result would be a possible invasion of an individual's private rights nor where it is being asked to alter an individual's intention. The Court's role is to ensure a trust is

administered in accordance with its terms and its proper purpose.

These developments demonstrate how Guernsey has and will continue to ensure it stays ahead of the regulatory and economic climate within which the fiduciary industry operates and to focus on maintaining Guernsey's international reputation for good governance and high regulatory standards, supported by a knowledgeable and well-equipped judiciary.

Jersey's proposed trust law amendments and the *Mattas* case - Katherine Neal

Jersey continues to have a proactive and trustee friendly approach to the creation and administration of trusts in the jurisdiction. Our law continues to evolve to meet contemporary legal, economic, and technological demands both through statutory enhancements and case law.

The latest amendment to the Trusts (Jersey) Law 1984 (the Jersey **Trusts Law**) is currently being considered with five areas having gone through industry consultation. It is widely considered that the most important of these areas will be clarity around the priority of claims to a trust fund when there is both a secured creditor to the trust fund and an outgoing trustee wishing to claim a trustee's lien over trust property in light of the *Re Z Trusts* series of insolvent trust cases.

Consideration is also being given to the current provisions in the Jersey Trusts Law relating to the ability for the beneficiaries of a trust to call for the termination of a trust and the trust fund under Article 43 of the Law and/or under the rule in *Saunders v Vautier*. Given recent case law, it is anticipated the amendment will provide clarity on the conditions to be met in order for the beneficiaries, in certain circumstances, to terminate the trust and call for the trust fund and further potentially to amend the trust.

The consultation also considers the creation of "data" trusts. This change seeks to permit the establishment of trusts where the only asset is pure data, which would not usually be recognised as property sufficient to establish a trust. Whilst this change is probably some way off, given the implications for other areas of law it will require wider consultation, it reflects Jersey's awareness of the increased value and complexity of data management in today's landscape for trustees and their beneficiaries.

Turning to the role of the Royal Court in Jersey, the recent case of *Representation of Equiom Trust (CI) Limited Re Mattas* [2024] JRC068 highlights the Court's pragmatic approach to the interpretation of trusts, the application of the Trusts Law and how equitable principles can also be applied. In this case the settlor's will, executed in 1979, created a trust. This trust had no perpetuity period and sought to benefit intelligent young men of Greek Orthodox persuasion who otherwise could not afford to continue in education. The Court considered two key areas, whether a relatively uncertain but charitable purpose could rescue a potentially invalid trust and also whether some aspects of the perpetuity rule might apply in certain scenarios, finding that in

certain situations the English common law rules on perpetuities will apply.

The landscape around trusts will continue to evolve and Jersey's ability to swiftly consider and react to these changes reflects our status as a well-regulated, pro-active jurisdiction for private wealth structuring.

Cayman Islands abolishes the rules against perpetuities - Anthony Partridge

The Cayman Islands has enacted new legislation to remove the rule against perpetuities for ordinary trusts, allowing these to last indefinitely. This adjustment does not affect Cayman Islands STAR trusts, which were already exempt. Previously, Cayman Islands trusts were constrained by a 150-year perpetuity period, mandating distribution of trust assets within this time frame. The Perpetuities (Amendment) Act, 2024, which was gazetted on 22 August 2024 and received Royal Assent on 15 August 2024, eliminates this period for new trusts, excluding those holding Cayman Islands land.

Although not retroactively applied, existing Cayman law trusts can seek Grand Court approval to extend their duration indefinitely. The Perpetuities Act also permits foreign trusts (non-Cayman trusts) of unlimited duration to adopt Cayman Islands law.

This reform enhances Cayman Islands' trust law, catering to the needs of global clients and offering significant advantages for long-term succession planning.

British Virgin Islands wills for non-domiciled individuals - Jennifer Fox and Anthony Partridge

For individuals domiciled outside of the British Virgin Islands, a separate will covering BVI assets can simplify the probate process - as well as providing certainty over who administers the estate, over the distribution of assets on death and offering a cheaper solution.

BVI law distinguishes between movable or personal assets and immovable or real estate assets. Moveable assets include such items as money, furniture, jewellery, cars and paintings as well as intangible assets such as shares and insurance policies.

The moveable assets that most commonly need to be accessed in BVI following the death of a non-domiciled person are shares in BVI companies. If you are domiciled outside of BVI, you do not need to prepare a separate will covering your BVI personal estate if you already have a valid will covering your worldwide personal estate, but there can be significant benefits from doing so.

How Ogier can help

At Ogier, our award-winning Trust Advisory team offers specialised expertise and a dedication to excellence. Our highly skilled experts are adept at navigating the complexities of trust law across multiple jurisdictions, ensuring our clients receive the highest standard of service and advice. With a comprehensive understanding of the offshore trusts' framework and the practical implications of recent developments, we provide tailored solutions to meet your unique needs.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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