

## Is it time for a Public Trustee's office in Jersey? - Representation of Sabba Trust [2014] JRC...

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#### Facts

In this case there had been a succession of fundamental errors in the administration of two Jersey trusts, both given the same name and having the same terms and beneficiaries. The assets of the first Trust were transferred to the second Trust but there was no record showing that this had been done or the basis upon which the assets were to be held. The trustee of the first trust was later struck off. The trustee of the second Trust purported to appoint a replacement protector, but under the terms of the trust, and in the circumstances, that power belonged to the protector for the time being. Another company (albeit apparently having the same directors) then purported to declare itself trustee of the second Trust in replacement of the existing trustee, again without any basis in the terms of the Trust. The original trustee of the second Trust was then wound up and dissolved in a summary winding up. The purported new trustee in due course retired and appointed a Mauritius company as successor and the successor purported to change the proper law of the Trust to that of Mauritius, though it was not a validly appointed trustee at all and a change in proper law required in any event, under the terms of trust, the consent of the protector. The Mauritius company had in turn subsequently retired in favour of a trustee in Dubai. A beneficiary under both trusts sought declarations as to the validity of these various deeds.

#### Decision

- (1) First Trust
  - (a) The trust was without a trustee, the trustee having been struck off and dissolved. Under the

terms of the Trust, power to appoint new trustees vested in the trustees for the time being or the personal representatives or liquidator of the survivor of them. In the circumstances the Court exercised its statutory jurisdiction under Article 51(2)(a)(ii) of the Trusts (Jersey) Law 1984 to appoint a new trustee.

(b) The Court appointed Schindlers Liechtenstein as the new trustee, as had been requested by the representor. The Court commented that it might not be thought ideal that the trustee of a Jersey trust should be beyond the jurisdiction but there was nothing in the law or precedent to prevent it.

## (2) Second Trust

(a) The appointment of the replacement protector by the initial trustee of the second Trust was invalid, since that power did not under the terms of the trust belong to the trustee.

(b) As regards the deed by which another company had then purported to appoint itself as trustee, this was invalid. Accordingly it was never appointed as trustee and therefore all subsequent retirements and appointments of new trustees in relation to the second Trust were invalid. Equally, the purported change of proper law to that of Mauritius was invalid (the latter consequence also following from the fact that the protector's consent was required under the terms of the trust and had not been given).

(c) The original trustee had been dissolved and there was no liquidator, because the company had been summarily dissolved. That ought not to have been the case but it was what had happened. In the circumstances, the Court again exercised its own powers under Article 51(2)(a)(ii) of the 1984 Law in similar fashion by appointing Schindlers Liechtenstein as trustee of the second trust for the same reasons

## Public Trustee

According to the Court, the facts of the case tended to support the desirability of having something equivalent to the office of a Public Trustee in Jersey. This was a role which the Viscount had sometimes fulfilled in order to assist the Court. The Court thought it was appropriate for the relevant authorities to give consideration to the establishment of such an office outside the terms of the Viscount's office.

## Comment

The facts of this case are not noteworthy. However, the Court's comment that it is time for the serious thought to be given to the introduction of a Public Trustee in Jersey is interesting. There have been a number of instances in recent years where the regulator has had to ask the Court to appoint professional trustees to go in and support failing trust companies, and also, one example

where a manager has been appointed by the Court under the Financial Services (Jersey) Law 1998 in respect of an "unfit" trust company. Given the new draft Charities Law which proposes also to give the Court power to intervene in the running of a registered Charity (including the ability to appoint a professional person to step in and run a charity), the need for a Public Trustee would seem to exist; ie. a public body to take over the administration of a failing service provider, or to take on individual trusteeships in cases such as Sabba. Cost had been put up as the reason for not doing it in the past. However, why could the new proposed Charity Commissioner (intended to work 75 days a year) not also take on the role of Public Trustee?

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