

Application to vary a trust under article 47 of the Trusts (Jersey) Law 1984

Insights - 27/08/2015

Application to vary a trust under article 47 of the Trusts (Jersey) Law 1984

Introduction

In Representation of X Trustees Limited [2015] JRC 136, the Court was asked to approve variations to a settlement on behalf of the Settlement's minor, unborn and unascertained beneficiaries in accordance with the Trusts (Jersey) Law 1984 (the Law).

Background

Article 47 of the Law provides that the Court may approve certain actions, including variations, on behalf minor, unborn and unascertained beneficiaries where the action appears to the Court to be for the benefit of the relevant beneficiaries.

Facts

The Trustee wished to vary the Settlement in order to:

- (i) extend the trust period of the Settlement which was due to expire in 2016; and
- (ii) give the Trustee greater powers to accumulate income for the beneficiaries.

Both variations had the support of the Settlement's adult beneficiaries.

Conclusion

It was for the Court to decide whether these variations were in the interests of the minor, unborn and unascertained beneficiaries of the Settlement in accordance with Article 47(2).

In relation to the first variation, the Court considered that, were the Settlement to expire in 2016, a capital gains tax charge would be triggered and the assets would fall within the scope of UK inheritance tax as the beneficiaries are resident in the UK.

Having considered In the matter of the DDD Settlements [2011] JRC 243, where tax planning was found to be a benefit, the Court held it was for the benefit of the minor, unborn and unascertained beneficiaries to allow the Settlement to continue to grow outside of the UK and that this could be achieved by extending the trust period.

In relation to the second variation, the Court noted that the assets of the Settlement consisted of shares in an underlying company, meaning there was no income accumulation. While allowing income accumulation might not result in any immediate benefit to the relevant beneficiaries, the Court considered that such a change would allow the Trustee to manage the Settlement more efficiently for the future.

It was therefore held that by removing the current inflexibility on income accumulation, the Trustee could control the flow of income in a planned way for the benefit of the minor, unborn and unascertained beneficiaries.

Finding that both variations were for the benefit of the relevant beneficiaries, the Court therefore gave its approval in accordance with Article 47.

Comment

Previous case law has found that “benefit” for the purposes of Article 47 is to be construed widely and is not limited to financial interests. This case demonstrates that tax planning and management of trust funds may also be considered “benefits” when asking the Court to approve variations to Settlements under Article 47.

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.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



James Campbell

Partner

Jersey

E: james.campbell@ogier.com

T: [+44 1534 514230](tel:+441534514230)

Key Contacts



Josephine Howe

Partner

Jersey

E: josephine.howe@ogier.com

T: [+44 1534 514201](tel:+441534514201)

Related Services

Private Wealth

Related Sectors

Trusts Advisory Group