

## To see or not to see - Jersey's Royal Court provides guidance to trustees

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The Royal Court of Jersey, in the recently handed down judgment in *M v W Limited & Ors*: [2017]JRC168A, has provided useful guidance for trustees in circumstances, outside the context of discovery in adversarial litigation, where a beneficiary of a trust is seeking disclosure of trust information.

The application was heard in October 2017, and the Royal Court carefully considered the meaning of Article 29 of the Trusts (Jersey) Law 1984 (the Law) (as it was in force at the time). The application was brought by one of the beneficiaries of a trust who was seeking delivery of a broad range of documents including: copies of all trust instruments; the latest accounts for the trust; the most recent financial statements for all underlying companies owned by the trust; and details of all distributions made from the trust.

Since the hearing of the application, Article 29 has been replaced by the Trusts (Amendment No 7) (Jersey) Law 1984 (see link to Ogier's briefing [here](#)). Notwithstanding the revisions to Article 29, the guidance offered by the Royal Court in *M v W Limited* is likely to remain persuasive, and offers trustees a useful reference point when faced with a request for disclosure of trust information from a beneficiary.

The following are the key points for trustees to take away from *M v W Limited*:

- The starting point is that a beneficiary, whether of a fixed or discretionary trust or the object of a mere power, does not have an unqualified right to disclosure of any trust document
- A beneficiary has an equitable interest entitling him or her to invoke the jurisdiction of the Royal Court to require the trustee to disclose any trust documents which the trustee has previously not agreed to disclose
- A beneficiary also has, subject to any contrary order of the Court, a right under Article 29 of the Law to the disclosure of documents relating to, or forming part of, the accounts of the trust. The trust deed may provide to the contrary, but such a restriction will be less persuasive

given the statutory presumption in favour of disclosure of this category of document. A beneficiary should be able to obtain disclosure of documents which show the financial position of the trust, what assets are in the trust, and how the trustee has dealt with those assets

- On an application by a beneficiary for disclosure of trust documents (other than documents relating to or forming part of the trust accounts), the starting point adopted by the Court in exercising its discretion is that the beneficiary may see such documents. In exercising its discretion, the Court may consider a number of factors including:
  - the nature and immediacy of the beneficiary's interest;
  - the extent to which any disclosure might adversely affect the trust to the detriment of the class of beneficiaries as a whole;
  - the likely effectiveness of any measures put in place by the Court to mitigate any detrimental effect or risk of it;
  - the nature of the documents which the beneficiary wishes to see;
  - the extent to which non-disclosure would impede the ability to hold the trustee to account for its trusteeship; and
  - the proportionality of the disclosure request, having regard to the reasons expressed for it.
- When considering applications of this type, the court is not concerned with determining whether the trustee was correct to refuse disclosure, or whether the beneficiary was correct to make an application for disclosure. Instead, the court will exercise its discretion afresh, and as part of its inherent discretion to supervise the administration of trusts
- There is a distinction to be drawn between: i) documents relating to the exercise of dispositive powers by a trustee; and ii) documents relating to the financial position of the trust. The Court will more likely order disclosure of the latter class of documents than it will the former
- There is also a distinction to be drawn between trust documents and company documents. A company document does not become a trust document simply by virtue of being in the hands of the trustee. It is however possible that a document may be regarded as both a company document a trust document. The distinction between trust and company documents may be of particular importance if it can be said that the trustee owes a duty of confidence to the company in respect of a company document which it holds. Generally speaking however, unless the trust and company have been administered as if the distinction between them was of no consequence, the principles of company law will prevail
- While there is no general rule preventing a trustee from disclosing a company document to a beneficiary, the trustee should consider the interests of the company as a whole and consider whether disclosure would harm or aid such interest. This is particularly so given the obligation on the trustee to preserve and enhance the value of the trust assets

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