

## Trust Essentials: December 2022

Newsletters - 16/12/2022

We round out 2022 against a backdrop of significant challenges for many economies, as a result of high inflation and the ongoing fallout of the pandemic and the war in Ukraine. The picture is not uniform across the globe however, and neither is the impact upon private clients.

Whatever the particular circumstances of a client, times of significant change and disruption can often prompt conversations about the bigger picture. With the great wealth transfer already underway, these conversations are inevitably including considerations about succession planning, and the next gen's attitudes towards wealth. Our lead article this month provides an overview of some key things to consider in this area, and our team will be examining this momentous shift in greater depth as part of our next gen series, which we'll be rolling out over the coming months.

For now we hope you enjoy this last edition of Trust Essentials for 2022. Season's greetings from Ogier's Trusts Advisory Group, and all the very best for 2023.

[Read Trust Essentials online.](#)

### | Conversations with the next gen

More and more clients and advisers have been discussing the "next gen", be they Millennials, Gen Z or even the future Gen A. So, why is this a topic raised arguably more than in previous decades, and what considerations should advisers be ready to discuss over the coming years? [Continue reading ...](#)

### | The substratum rule: does it matter?

Over the past few years, offshore courts have been grappling with whether an overarching equitable concept known as the "substratum principle" exists. The substratum principle is explored further in this briefing, however the essence of the principle is that absent special circumstances, a trustee is precluded from making changes to how a trust operates if doing so will change the very

fabric of the trust. [Continue reading ...](#)

## Cayman Privy Council provides important clarification of the rights of the trustees

The Cayman Islands' Privy Council in a consolidated decision of two unconnected Court of Appeal cases from Jersey and Guernsey, clarified the method of dealing with a trust which has insufficient assets to settle its liabilities (colloquially referred to as an "insolvent trust"), in: *Equity Trust (Jersey) Ltd (Respondent) v Halabi (in his capacity as Executor of the Estate of the late Madam Intisar Nouri) (Appellant)*; and *ITG Ltd and others (Respondents) v Fort Trustees Ltd and another (Appellants)* [2022] UKPC 36. [Continue reading ...](#)

## We all make mistakes - but will the Jersey Royal Court have sympathy?

The law of mistake in Jersey is well established. The authorities make it clear that the Court will consider an application to set aside a trust and/or transfers onto trust on the grounds of mistake against three questions:

1. Was there a mistake on the part of the settlor in relation to the establishment of the trust or the transfers of assets into trust?
2. Would the trust or transfers into trust not have been made but for the mistake?
3. Was the mistake of so serious a character as to render it just for the Court to make a declaration? [Continue reading ...](#)

## Jersey Royal Court clarifies and affirms the Jersey test for rectification

In the recent decision of *The Representation of Vistra Fiduciary Limited* [2022] JRC 164, the Royal Court moved away from the Court of Appeal's preferred test for rectification of a trust instrument set out in *B&C v Virtue Trustees (Switzerland) AG* [2018] JCA 219, and reaffirmed the well-established three stage test in *Walbrook Trustees v Amethyst Trust* [2002] JRC 186 and *R.E. Sesemann Will Trust* [2005] JLR 421. In doing so, the Royal Court considered that it was not "bound by the propositions of law" referred to by the Court of Appeal as they were not the subject of argument by the parties before the court. [Continue reading ...](#)

## Snapshot: Jersey's impounder restrictions in relation to discretionary trusts

In the recent decision of the Master of the Royal Court in *Patel & Ors v JTC Trust Company Limited* [2022] JRC089, the Court confirmed that it does not possess the power under Article 46 of the Trusts (Jersey) Law 1984 to impound the interest of a beneficiary of a discretionary trust. In this Snapshot, partner Damian Evans, senior associate Matthew Davies, and trainee solicitor Paola Sequeira consider the arguments for and against. [Continue reading ...](#)

## Families investing in the future: the Guernsey Private Wealth team look ahead

Ogier was proud to be a headline sponsor for this year's We are Guernsey Private Wealth Forum. This year's topic, Families Investing in the Future, explored the importance of looking ahead; through succession planning, long-term investing or engaging with the next generation. Ultimately, by preparing for and staying up to speed with possible developments, families and their advisers will be able to move with the times and be ready for what may come, even if that seems difficult to predict at the moment. In this briefing, we set out just a few of the ways Ogier has seen this in practice and how Guernsey's robust legislative and regulatory framework helps the island to provide a stable, modern and forward-thinking environment in which to plan for and invest in the future. [Continue reading ...](#)

## Guernsey introduces a summary civil forfeiture procedure: what does this mean for trustees?

Guernsey has expanded its anti-money laundering arsenal by introducing a summary civil forfeiture procedure along similar lines to Jersey's. The summary procedure will apply where assets in a Bailiwick bank account have been the subject of "no consent" for at least a year. [Continue reading ...](#)

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### 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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## Meet the Author



[Catherine Moore](#)

Partner

[Guernsey](#)

E: [catherine.moore@ogier.com](mailto:catherine.moore@ogier.com)

T: [+44 1481 752364](tel:+441481752364)

## Key Contacts



[Christopher Levers](#)

Partner

[Cayman Islands](#)

E: [christopher.levers@ogier.com](mailto:christopher.levers@ogier.com)

T: [+1 345 815 1747](tel:+13458151747)



Anthony Partridge

Partner

Cayman Islands

E: [anthony.partridge@ogier.com](mailto:anthony.partridge@ogier.com)

T: [+1 345 815 1810](tel:+13458151810)



Deborah Barker Roye

Partner

Cayman Islands

E: [deborah.barkerroye@ogier.com](mailto:deborah.barkerroye@ogier.com)

T: [+1 345 815 1779](tel:+13458151779)



Jordan Constable

Senior Associate

Cayman Islands

E: [jordan.constable@ogier.com](mailto:jordan.constable@ogier.com)

T: +1 345 815 1808



Gavin Ferguson

Partner

Guernsey

E: [gavin.ferguson@ogier.com](mailto:gavin.ferguson@ogier.com)

T: +44 1481 752307



Matt Guthrie

Partner

Guernsey

E: [matt.guthrie@ogier.com](mailto:matt.guthrie@ogier.com)

T: +44 1481 752342



Chris Hards

Managing Associate

Guernsey

E: [chris.hards@ogier.com](mailto:chris.hards@ogier.com)

T: [+44 1481 752306](tel:+441481752306)



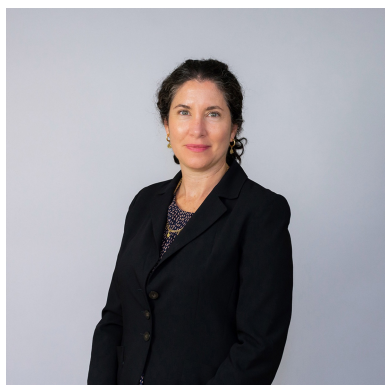
Sophie Denman

Managing Associate

Guernsey

E: [sophie.denman@ogier.com](mailto:sophie.denman@ogier.com)

T: [+44 1481 752347](tel:+441481752347)



Diana Rodriguez

Senior Associate

Guernsey

E: [diana.rodriguez@ogier.com](mailto:diana.rodriguez@ogier.com)

T: [+44 1481 752236](tel:+441481752236)





Tehya Morgan

Associate

Guernsey

E: [tehya.morgan@ogier.com](mailto:tehya.morgan@ogier.com)

T: [+44 1481 752230](tel:+441481752230)



Marcus Leese

Partner

Guernsey

Hong Kong

E: [marcus.leese@ogier.com](mailto:marcus.leese@ogier.com)

T: [+44 1481 737152](tel:+441481737152)



James Campbell

Partner

Jersey

E: [james.campbell@ogier.com](mailto:james.campbell@ogier.com)

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





Damian Evans

Partner

Jersey

E: [damian.evans@ogier.com](mailto:damian.evans@ogier.com)

T: [+44 1534 514378](tel:+441534514378)



Josephine Howe

Partner

Jersey

E: [josephine.howe@ogier.com](mailto:josephine.howe@ogier.com)

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



Rebecca McNulty

Partner

Jersey

E: [rebecca.mcnulty@ogier.com](mailto:rebecca.mcnulty@ogier.com)

T: +44 1534 514495



Katherine Neal

Head of Employee Incentives, Private Wealth Jersey  
Jersey

E: katherine.neal@ogier.com

T: +44 1534 514272



Matthew Davies

Senior Associate  
Jersey

E: matthew.davies@ogier.com

T: +44 1534 514132

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