

STATES OF JERSEY

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DRAFT TRUSTS (AMENDMENT NO. 4) (JERSEY) LAW 200-

**Lodged au Greffe on 14th March 2006
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT TRUSTS (AMENDMENT No. 4) (JERSEY) LAW 200-

European Convention on Human Rights

The Assistant Minister for Economic Development has made the following statement –

In the view of the Assistant Minister for Economic Development the provisions of the Draft Trusts (Amendment No. 4) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Connétable G.W. Fisher of St. Lawrence**

REPORT

The Amendment is the most significant amendment to the Trusts (Jersey) Law since that Law came into force in 1984. The purpose of the Amendment is to clarify and simplify the existing Law, and to bring greater certainty to key questions concerning the validity of Jersey trusts and the powers that may be retained by the settlor of a Jersey trust. In addition, the Amendment will remove a number of provisions in the principal Law which were perceived as being a barrier to the use of Jersey trusts and Jersey trust companies.

The proposals in the Amendment were the subject of public consultation and are expected to be warmly welcomed by both trusts practitioners in the Island and by those key intermediaries evaluating which jurisdiction best meets the needs of their clients.

Financial and manpower implications

The Draft Law when enacted will not have any financial or manpower implications for the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 13th March 2006 the Assistant Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Assistant Minister for Economic Development the provisions of the Draft Trusts (Amendment No. 4) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

This Draft Law, if passed, will make a series of miscellaneous amendments to the Trusts (Jersey) Law 1984.

Article 1 defines “principal Law” to mean the 1984 Law.

Article 2 replaces Article 9 of the principal Law with modified provisions concerning the applicability of Jersey law and the non-applicability of foreign law to Jersey Trusts. These provisions apply to trusts whenever constituted or created. The Article also adds a new Article (9A) providing that the validity of a trust is unaffected by the settlor reserving any beneficial interest or certain specified powers to himself or herself. Nor is a trustee who acts in accordance with the exercise of any such power, in breach of trust. There is a power for the States to amend the list of powers by Regulations.

Articles 3 and 4 replace the provisions in Article 10 of the principal Law concerning the disclaimer of a beneficiary’s interest with a simpler new Article (10A). This provision enables a disclaimer to be for a limited period only and to be of all or part of the beneficiary’s interest, irrespective of any benefit already received. The disclaimer may be revoked if this is allowed by the terms of the trust.

Article 5 replaces Articles 15 and 16 of the principal Law. The new Article 15 enables a Jersey trust to exist in perpetuity and provides that unless the trust provides to the contrary, it is permissible to transfer assets, etc to another trust even if that other trust may continue in existence for longer than the first trust. The new Article 16 now requires a trust to have at least one trustee (previously it was two), and provides that a trust shall not fail for having fewer trustees than required by the Law or the terms of the trust. The provisions there concerning the appointment of new trustees when the number falls below the minimum and preventing trustees from acting other than to preserve the trust property were previously in Article 20, itself repealed by *Article 8*.

Article 6 revises the wording of Article 17 of the principal Law concerning the appointment of new or additional trustees. Provision is now made for appointment, in the absence of there being any other power to do so, not just where the terms of the trust do not provide for the appointment but also where the power of appointment has lapsed or failed or where the person who has the power is not capable of exercising it.

Article 7 slightly modifies Article 19 of the principal Law to cater for where several trustees might resign at the same time resulting in there being no trustee. The provision whereby a resignation given in order to facilitate a breach of trust shall have no effect is replaced by one to the effect that a trustee who resigns in order to facilitate such a breach is liable for the breach as if he or she had not resigned. This is inserted into Article 30 of the principal Law by *Article 10*.

Article 9 revises Article 25(1) of the principal Law to make it clear that a trustee may delegate any of his or her trusts or powers and the delegate may further delegate them, in each case if permitted by the terms of the trust.

Article 11 revises Article 32 of the principal Law and is concerned with the situation where a trustee is a party to a transaction or matter affecting the trust. Where the other party knows that the trustee is acting as trustee, the action will be against the trustee in the trustee’s capacity as trustee and can only extend to the trust property. But if he or she did not know the trustee was acting as trustee the claim may be against the trustee personally, and while the trustee may be indemnified from trust property this does not limit the trustee’s personal liability. In neither case is the trustee’s liability for breach of trust affected.

Article 12 removes Article 35(3) and (4) of the principal Law which required provisions in trusts requiring a beneficiary’s interest to be held on a spendthrift or protective trust to be construed as a requirement to subject the beneficiary’s interest to restriction, diminution or termination.

Article 15 inserts a new Article 47A into the principal Law, which sets out the court’s powers in the case of a trust for charitable or non-charitable purposes where the donor’s intention can no longer be fulfilled. It enables the property to be held for other purposes. The minor amendments to Articles 37 and 42(2) brought about by *Articles 13 and 14* are a consequence of this new provision.

Article 16 repeals Article 56 of the principal Law, which provided for directors of Jersey corporate trustees to be liable as guarantors in the event of a breach of trust by the corporate trustee.

Article 17 inserts a new provision into Article 57 of the principal Law on limitation of actions. It requires any action founded on breach of trust brought by a trustee against a previous trustee to be made within 3 year of the previous trustee ceasing to be a trustee.

Article 18 is the usual citation and commencement provision.



Jersey

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Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 9 replaced</u>
<u>3</u>	<u>Article 10 amended</u>
<u>4</u>	<u>Article 10A inserted</u>
<u>5</u>	<u>Articles 15 and 16 substituted</u>
<u>6</u>	<u>Article 17 amended</u>
<u>7</u>	<u>Article 19 amended</u>
<u>8</u>	<u>Article 20 repealed</u>
<u>9</u>	<u>Article 25 amended</u>
<u>10</u>	<u>Article 30 amended</u>
<u>11</u>	<u>Article 32 replaced</u>
<u>12</u>	<u>Article 35 amended</u>
<u>13</u>	<u>Article 37 substituted</u>
<u>14</u>	<u>Article 42 amended</u>
<u>15</u>	<u>Article 47A inserted</u>
<u>16</u>	<u>Article 56 repealed</u>
<u>17</u>	<u>Article 57 amended</u>
<u>18</u>	<u>Citation and commencement</u>



Jersey

DRAFT TRUSTS (AMENDMENT No. 4) (JERSEY) LAW 200-

A LAW to amend further the Trusts (Jersey) Law 1984.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Trusts (Jersey) Law 1984.^[1]

2 Article 9 replaced

For Article 9 of the principal Law there shall be substituted the following Articles –

“9 Extent of application of law of Jersey to creation, etc of a trust

- (1) Subject to paragraph (3), any question concerning –
 - (a) the validity or interpretation of a trust;
 - (b) the validity or effect of any transfer or other disposition of property to a trust;
 - (c) the capacity of a settlor;
 - (d) the administration of the trust, whether the administration be conducted in Jersey or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment or removal; or
 - (e) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment and the validity of any exercise of such powers,shall be determined in accordance with the law of Jersey and no rule of foreign law shall affect such question.
- (2) Without prejudice to the generality of paragraph (1), any question mentioned in that paragraph shall be determined without consideration of whether or not –
 - (a) any foreign law prohibits or does not recognise the concept of a trust; or
 - (b) the trust or disposition avoids or defeats rights, claims, or interests conferred by any foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any

foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests.

- (3) The law of Jersey relating to –
 - (a) *légitime*; and
 - (b) conflicts of law,shall not apply to the determination of any question mentioned in paragraph (1) unless the settlor is domiciled in Jersey.
- (4) No foreign judgement with respect to a trust shall be enforceable to the extent that it is inconsistent with this Article irrespective of any applicable law relating to conflicts of law.
- (5) The rule *donner et retenir ne vaut* shall not apply to any question concerning the validity, effect or administration of a trust, or a transfer or other disposition of property to a trust.
- (6) In this Article –

‘foreign’ refers to any jurisdiction other than Jersey;

‘heirship rights’ means rights, claims or interests in, against or to property of a person arising or accruing in consequence of his or her death, other than rights, claims or interests created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of his or her property;

‘*légitime*’ and ‘*donner et retenir ne vaut*’ have the meanings assigned to them by Jersey customary law;

‘personal relationship’ includes the situation where there exists, or has in the past existed, any of the following relationships between a person and the settlor –

 - (a) any relationship by blood, marriage or adoption (whether or not the marriage or adoption is recognised by law)
 - (b) any arrangement between them such as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parent and child or husband and wife; or
 - (c) any personal relationship between the person or the settlor and a third person who in turn has a personal relationship with the settlor or the person as the case may be.
- (7) Despite Article 59, this Article applies to trusts whenever constituted or created.

9A Powers reserved by settlor

- (1) The reservation or grant by a settlor of a trust of –
 - (a) any beneficial interest in the trust property; or
 - (b) any of the powers mentioned in paragraph (2),shall not affect the validity of the trust nor delay the trust taking effect.
- (2) The powers are –
 - (a) to revoke, vary or amend the terms of a trust or any trusts or powers arising wholly or partly under it;
 - (b) to advance, appoint, pay or apply income or capital of the trust property or to give directions for the making of such advancement, appointment, payment or application;
 - (c) to act as, or give binding directions as to the appointment or removal of, a director

or officer of any corporation wholly or partly owned by the trust;

(d) to give binding directions to the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property;

(e) to appoint or remove any trustee, enforcer, protector or beneficiary;

(f) to appoint or remove an investment manager or investment adviser;

(g) to change the proper law of the trust;

(h) to restrict the exercise of any powers or discretions of a trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust.

(3) Where a power mentioned in paragraph (2) has been reserved or granted by the settlor, a trustee who acts in accordance with the exercise of the power is not acting in breach of trust.

(4) The States may make Regulations amending paragraph (2).”.

3 Article 10 amended

Paragraphs (4) to (9) of Article 10 of the principal Law shall be repealed.

4 Article 10A inserted

After Article 10 of the principal Law there shall be inserted the following Article –

“10A Disclaimer of interest

(1) Despite the terms of the trust, a beneficiary may disclaim, either permanently or for such period as he or she may specify, the whole or any part of his or her interest under a trust if he or she does so in writing.

(2) Paragraph (1) applies whether or not the beneficiary has received any benefit from the interest.

(3) Subject to the terms of the trust, if the disclaimer so provides it may be revoked in accordance with its terms.”.

5 Articles 15 and 16 substituted

For Articles 15 and 16 of the principal Law there shall be substituted the following Articles –

“15 Duration of a Jersey trust

(1) Unless its terms provide otherwise, a trust may continue in existence for an unlimited period.

(2) No rule against perpetuities or excessive accumulations shall apply to a trust or to any advancement, appointment, payment or application of assets from a trust.

(3) Except where the terms of a trust provide to the contrary, any advancement, appointment, payment or application of assets from that trust to another trust shall be valid even if that other trust may continue after the date by which the first trust must terminate.

16 Number of trustees

- (1) Subject to the terms of the trust, a trust must have at least one trustee.
- (2) A trust shall not fail on grounds of having fewer trustees than required by this Law or the terms of the trust.
- (3) If the number of trustees falls below the minimum number required by paragraph (1) or if greater, by the terms of the trust, the required number of new trustees must be appointed as soon as practicable.
- (4) While there are fewer trustees than are required by the terms of the trust, the existing trustees may only act for the purpose of preserving the trust property.”.

6 Article 17 amended

For Article 17(1) of the principal Law there is substituted the following paragraphs –

- “(1) Paragraph (1A) applies if –
 - (a) the terms of a trust do not provide for the appointment of a new or additional trustee;
 - (b) any such terms providing for any such appointment have lapsed or failed; or
 - (c) the person who has the power to make any such appointment is not capable of exercising the power,and there is no other power to make the appointment.
- (1A) A new or additional trustee may be appointed by –
 - (a) the trustees for the time being;
 - (b) the last remaining trustee; or
 - (c) the personal representative or liquidator of the last remaining trustee.”.

7 Article 19 amended

For Article 19(3) of the principal Law there shall be substituted the following paragraph –

- “(3) If two or more trustees purport to resign simultaneously, the effect of which would mean that there would be no trustee, the resignations shall have no effect.”.

8 Article 20 repealed

Article 20 of the principal Law shall be repealed.

9 Article 25 amended

In Article 25 of the principal Law –

- (a) for paragraph (1) there shall be substituted the following paragraph –
 - “(1) Subject to the terms of the trust, a trustee may delegate the execution or exercise of any of his or her trusts or powers (both administrative and dispositive) and any delegate may further so delegate any such trusts or powers.”;
- (b) in paragraph (3) for the words “paragraph (2)” there shall be substituted the words “this Article”.

10 Article 30 amended

After Article 30(3) of the principal Law there is inserted the following paragraph–

“(3A) A trustee who resigns in order to facilitate a breach of trust shall be liable for that breach as if he or she had not resigned.”.

11 Article 32 replaced

For Article 32 of the principal Law there shall be substituted the following Article –

“32 Trustee’s liability to third parties

- (1) Where a trustee is a party to any transaction or matter affecting the trust –
 - (a) if the other party knows that the trustee is acting as trustee, any claim by the other party shall be against the trustee as trustee and shall extend only to the trust property;
 - (b) if the other party does not know that the trustee is acting as trustee, any claim by the other party may be made against the trustee personally (though, without prejudice to his or her personal liability, the trustee shall have a right of recourse to the trust property by way of indemnity).
- (2) Paragraph (1) shall not affect any liability the trustee may have for breach of trust.”.

12 Article 35 amended

Article 35(3) and (4) of the principal Law shall be deleted.

13 Article 37 substituted

For Article 37 of the principal Law there shall be substituted the following Article –

“Variation of terms of a trust

Without prejudice to any power of the court to vary the terms of a trust, a trust may be varied in any manner provided by its terms.”.

14 Article 42 amended

For Article 42(2) to (4) of the principal Law there shall be substituted the following paragraphs –

- “(2) An application to the court under this Article may be made by the Attorney General.
- (3) In paragraph (1) ‘settlor’ means the particular person who provided the interest or property affected as mentioned in that paragraph.”.

15 Article 47A inserted

After Article 47 of the principal Law there shall be inserted the following Article –

“47A Trusts for charitable or non-charitable purposes

- (1) Where trust property is held for a charitable or non-charitable purpose and any of the circumstances mentioned in paragraph (2) apply, the court may, on the application of a trustee or the Attorney General, declare that the property or the remainder of the property, as the case may be, shall be held for such other charitable or non-charitable purpose, as the case may be, as the court considers to be consistent with the original intention of the settlor.
- (2) The circumstances are that –
 - (a) the purpose has, as far as is reasonably possible, been fulfilled, has ceased to exist or is no longer applicable;
 - (b) the purpose cannot be carried out having regard to the directions given by the settlor or the spirit of the gift;
 - (c) the purpose provides a use for only part of the trust property;
 - (d) the property, and any other property applicable for a similar purpose, can more effectively be applied to a common purpose, regard being had to the spirit of the gift;
 - (e) the purpose was laid down by reference to an area that is no longer a unit for that purpose, or by reference to a class of persons or to an area that is no longer appropriate, regard being had to the spirit of the gift or the practicality of administering the gift;
 - (f) the purpose has been adequately provided for by other means;
 - (g) in the case of a trust for charitable purposes, the purpose has ceased for what ever reason to be charitable; or
 - (h) the purpose has ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift.
- (3) Where trust property is held for a charitable or non-charitable purpose the court may, on the application of a trustee or the Attorney General, approve any arrangement that varies or revokes the purposes of the trust or enlarges or modifies the powers of management or administration of the trustees, if it is satisfied that the arrangement –
 - (a) is suitable and expedient; and
 - (b) is consistent with the original intention of the settlor and the spirit of the gift.
- (4) The court shall not approve an arrangement under paragraph (3) unless it is satisfied that any person with a material interest in the trust has had an opportunity to be heard.”.

16 Article 56 repealed

Article 56 of the principal Law shall be repealed.

17 Article 57 amended

After Article 57(3) of the principal Law there shall be inserted the following paragraph –

- “(3A) Save as provided in paragraph (1), the period within which an action founded on breach of trust may be brought against a former trustee by a current trustee is 3 years from the date on which the former trustee ceased to be a trustee of the trust.”.

18 Citation and commencement

This Law may be cited as the Trusts (Amendment No. 4) (Jersey) Law 200 and shall come into force 7 days after its registration.

