

Disclosure of information and documents to beneficiaries under Jersey law

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Jersey is widely recognised as a trusted jurisdiction by UHNW/HNW families for the establishment of trusts due to its robust, well-developed legal system, and its experienced professional trustee and corporate services industry.

Jersey law governs the formation, administration, and enforcement of Jersey trusts. Jersey trust law is principally governed by the Trusts (Jersey) Law 1984 (the **TJL**). The TJL is supported by a substantial body of case law, developed by the Jersey courts over many years.

Under Jersey law, a trust is a fiduciary relationship in which the trustee holds property for the benefit of beneficiaries (or objects in the case of a charitable or purpose trust). Trustees owe fiduciary and other duties; these duties include a duty of loyalty, the duty to act prudently, and the duty to act in good faith.

A key element of being a trustee under Jersey law is accountability for the stewardship of the trust's assets. That principle of accountability is buttressed by the ability of beneficiaries to seek, and be provided with, relevant information and documents regarding the trust's administration.

This article outlines the principles of disclosure, judicial oversight and enforcement, and some practical considerations for settlors.

General principle of disclosure by trustees

A beneficiary is entitled to request certain information or documentation from the trustee pertaining to the administration of the trust in which they have an interest. The issue of what information or documents beneficiaries are entitled to seek from their trustee is an area where disputes can often arise. That is because the scope and extent of the trustee's obligation to respond to those requests are not absolute and must be balanced against the trustee's other duties, such as its duty to maintain the confidentiality of the trust.

Even the trustee's duty to maintain confidentiality is not absolute and disclosure of confidential information held by trustees is permitted in certain circumstances, including whether to maintain that confidence would put the trustee in breach of the criminal law, where there is a conflicting legal obligation (such as to provide tax disclosures) or pursuant to a Court order.

The Jersey courts have emphasised that while beneficiaries are entitled to seek information about their trust, this entitlement is not unlimited. Trustees have a broad discretion about the information and documents they can provide to beneficiaries. Trustees are not required to provide beneficiaries with all the documents or information they may want.

Statutory and judicial principles of disclosure

The provisions governing disclosure of information and documents are set out in Article 29 of the TJL, as supplemented by case law. The following principles govern the extent and scope of disclosure from Jersey trustees:

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A beneficiary's right to information

A beneficiary of a Jersey trust has no automatic entitlement to documents and information per se. However, some information and documents are more likely to be disclosed than others. Put another way, there are some categories of information and documents that are more difficult for a trustee to withhold.

Jersey law recognises that beneficiaries generally have the right to know the existence and nature of a trust of which they are beneficiaries. This includes information on the identity of the trustee, the nature of and management of the trust assets, and the terms of the trust.

The limits of disclosure are based on the beneficiary's legitimate interest in the trust and the trustee's judgment of what information is genuinely relevant to them to be able to monitor that legitimate interest.

Trustee's discretion

Under Jersey law, trustees have a broad discretion to determine what information and documents they disclose to beneficiaries. Trustees are usually expected to provide information that enables beneficiaries to understand how the trustee has administered the assets of the trust and ensure that their rights and interests are protected.

Just as the beneficiary's right to request information and documents is not an unlimited one, the trustee's discretion to refuse disclosure is not absolute either. They must act in good faith when exercising their discretion. Ultimately whether a specific request for information or documents fails to be answered by a trustee, can be resolved by an application to court.

Just as there are categories of documents and information that a trustee would have more difficulty in justifying withholding from a beneficiary, certain categories of documents and information can more easily be withheld. These include:

- material that evidences or goes to the basis or reasons upon which a trustee has decided to exercise its powers. This is to afford the trustee a 'safe space' free from constant surveillance and interference by beneficiaries;
- material that is confidential to the trustee. This includes material provided to the trustee by third parties which are subject to a duty of confidentiality. This would also include communications between the trustee and other beneficiaries. In practice, this often means that trustees are not required to disclose certain sensitive or private documents such as a settlor's letter of wishes to the trustees; and
- material that would, were it disclosed, cause harm to the trust's assets or otherwise undermine the trust's administration. The context in which this might arise is in a divorce involving a beneficiary of the trust, where disclosure is sought by a divorcing spouse about the trust and its assets for the purposes of making a claim to them.

Additionally, a trustee who takes legal advice paid for from the trust concerning the administration of that trust cannot deny a beneficiary sight of the said legal advice on the basis of legal professional privilege alone. They may however withhold disclosure on other grounds, for example to protect the trust's interests in keeping legal advice confidential.

Judicial oversight and enforcement

Where there is a dispute about the extent of disclosure, the trustee or the beneficiaries can apply to court to resolve the matter. Beneficiaries can seek judicial assistance to compel disclosure from trustees. Trustees may also seek guidance from the court about

disclosure if they are concerned about what they are being asked to disclose, for example in the context of a divorce involving a beneficiary.

Whatever the terms of the trust concerning a beneficiary's right to disclosure, the court ultimately retains an overarching power to order the disclosure of trust documents and information to a beneficiary even in the face of objection from the trustee.

The court may intervene if it considers that a trustee is withholding information and documents unreasonably or is not acting in accordance with the terms of their duties under the terms of the trust. In such cases, the court will weigh the interests of the beneficiaries and the interests of the trust as a whole, including the trustee's duties to maintain confidentiality, and to act reasonably, responsibly and in good faith.

Such applications can involve some very fine judgments and the likely merits of getting the court's intervention to force a trustee to give disclosure is highly fact-specific.

The court retains a discretion to order costs against a party who has maintained an unreasonable position in a dispute about disclosure from a trust. It is therefore important to seek advice at an early stage about the likely risks of the court ordering or not ordering the relevant materials to a beneficiary.

Practical considerations for UHNW families

For settlors setting up or involved in Jersey law trusts, it is essential to understand the following key considerations:

Confidentiality

Jersey is a jurisdiction that respects and upholds the importance of confidentiality in the administration of trusts and in the trustee-beneficiary relationship.

The legal framework

Whatever the terms of the trust instrument about the provision of documents and information to beneficiaries, the court retains an overarching discretion to resolve a disagreement about what information and documents the trustee can legitimately withhold from beneficiaries. That dynamic should be clearly understood when establishing the terms of the trust.

Beneficiary rights

Beneficiaries have the right to request information and there is a strong presumption in favour of disclosure of certain documents and information (particularly those relating to the trust's assets and accounts) while recognising the limitations on these rights. There is an equally strong presumption against the disclosure of certain important documents and information relating to the administration of the trust such as letters of wishes and material relevant to a trustee's deliberations.

Litigation risk

Beneficiaries who feel their rights to documents and information are being unfairly denied may apply to court, but a beneficiary that takes an unreasonable position may be penalised in costs if their application fails. The cost risk is asymmetric to that of the trustee.

How can Collas Crill help?

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In Jersey, the balance between transparency and confidentiality in trust administration has to be delicately managed. Collas Crill has decades of experience helping beneficiaries and trustees to do this.

Most disputes about disclosure can be resolved through negotiation and by working with trustees to establish a clear understanding of what information will be disclosed and how. Where a solution cannot be negotiated and the court's intervention is required, Collas Crill's trust disputes team has considerable experience navigating the litigation process to a rapid conclusion.

If you need any guidance or advice in this area, please do not hesitate to contact us.

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