Collas Crill explains... Termination of a trust

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How does a trust come to an end?

There are a number of ways in which a trust might terminate:

- By operation of law for lack of assets – the trustee (or settlor if he/she holds a reserved power under the trust instrument) may make an appointment of the whole of the trust fund to one or more of the beneficiaries, resulting in no remaining assets in the trust (at which point the trust fails).
- A settlor's power of revocation is exercised, revoking the trust.
- On the occurrence of a particular event or circumstance, for example: the satisfaction of the purposes or cessation of circumstances for which the trust was established.
- The end of a set trust period (a period dictated by law, if one, or period set under the terms of a particular trust). Note that there is no limit set for the duration of Guernsey law trusts created after the commencement of the Trusts (Guernsey) Law, 2007 ("**Trust Law**"), which may continue to be valid and enforceable in perpetuity. A trust created prior to the commencement of the Trust Law will terminate on the expiration of 100 years form the date of its creation unless (a) it is a trust for charitable purpose, or (b) it is terminated sooner.[1]
- Beneficiaries ending the trust – the rule in *Saunders v Vautier* [2] / section 53(3) Trust Law.

The above methods of termination are all relatively self-explanatory except perhaps the final point, from which much commentary arises and so is worthy of further brief discussion. Pursuant to the rule in *Saunders v Vautier* (which has a statutory equivalent in Guernsey under section 53(3) Trust Law) the beneficiaries of a trust between them wholly entitled to the trust property, as long as legally capable, not minors and in agreement, may direct the trustees to end the trust and transfer the trust property to themselves as beneficiaries absolutely. Recently, it was determined that this remains the case even in circumstances where a broad power to add further (unspecified) beneficiaries exists.[3]

What happens when a trust comes to an end?

On the termination of a trust the trust property shall be distributed by the trustees within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.[4]

Protecting trustees on the termination of a trust

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The termination of trust is an important event, both for those beneficially entitled under the trust and for the trustees. Once assets are paid out and the trust is terminated, trustees no longer have any assets to call upon to meet any liabilities arising. Therefore, trustees may, as a matter of law, require that they be provided with reasonable security for liabilities (existing, future, contingent or otherwise) before distributing the trust property.[5]

Considerations on the termination of a trust

The method of termination a trust will likely impact what the primary considerations are for the various parties involved. Therefore, it is not possible to set out a comprehensive list to suit all circumstances. Perhaps the most common method for terminating a trust is by the trustee exercising its dispositive powers and making an appointment out of the remaining trust assets to the beneficiaries. So what must a trustee consider in these circumstances?

A trustee must consider what powers it has pursuant to the trust instrument and the requirements for exercising same. For example, is an instrument in writing required? Is protector consent required? If it is not a simple purely discretionary trust, the trust instrument may also dictate how trust assets are to be distributed amongst the beneficiaries.

The trustee must also consider the intended recipient of the trust assets. This may be quite clear and straightforward, where there are only a couple of named beneficiaries and each is to receive equally, for example. However, where there is a broad class of beneficiaries and only one is to receive all of the assets, or where there is family disharmony amongst the beneficial class, this should raise a red flag for a trustee.

There are a number of ways risk might be mitigated. For example, ensuring clear and detailed records (e.g. trustee resolutions) setting out the relevant background and decision making process. Good communication with the beneficiaries (where this is possible) and consideration of any letters of wishes should also assist the trustee in forming its decision and mitigating beneficiary issues arising. The trustee should also ensure it makes reasonable investigations if the scope of the beneficial class is unclear, to make sure (so far as possible) all potential recipients have been identified and so form part of the decision making process.

The trustee should consider any existing tax advice surrounding the trust (and ensure this is refreshed, if necessary) and make sure the tax position of the recipient beneficiary is properly considered.

Trustees should also take all necessary practical steps to wrap up matters surrounding the trust, such as:

- Preparing final financial statements.
- Settle any outstanding debts and liabilities.
- Obtaining appropriate reasonable security (as described above).
- Ensuring assets are legally transferred to the recipient beneficiaries – the method and requirements will depend on the asset.
- Ensuring there is a record of the termination, whether that be by formal instrument executed by the trustee (and any other necessary parties), or by trustee resolution.
- Consider whether the trustee has any reporting obligations on termination of the trust, for example to tax authorities where returns have previously been filed.

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A final, but important, consideration is whether the trustee should make an application to the Royal Court to bless its decision to terminate the trust. The Royal Court of Guernsey has the power to sanction a "momentous decision" [6], which can include the appointment of assets themselves and the termination. This can give the trustee much comfort, particularly when there are any contentious issues surrounding the trust or disharmony with or amongst the beneficiaries. If Court approval is obtained, it would prevent beneficiaries from disputing the trustee's decision and alleging breach of trust.

[1] Section 16 Trusts (Guernsey) Law, 2007
[2] (1841) 4 Beav. 115
[3] *Molard International (PTC) Limited and Pullborough Int. Corp v Rusnano Capital AG (in liquidation)*
[4] Section 53(1) Trusts (Guernsey) Law, 2007
[5] Section 53(2) Trusts (Guernsey) Law, 2007
[6] Pursuant to section 69 Trusts Law, the Court has power to make orders in respect of the execution, administration and enforcement of a trust. Also known as a Public Trustee & Another v Cooper & Ors [2001] application.

About this guide

This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

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For more information please contact:

Angela Calnan

Partner // Guernsey

t:+44 (0) 1481 734233 // *e:*angela.calnan@collascrill.com

Cerisse Fisher

Group Partner // Guernsey

t:+44 (0) 1481 734882 // *e:*cerisse.fisher@collascrill.com

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