VOISIN LAW

Some welcome amendments to the Trusts Law | 1

A series of amendments to the Trusts (Jersey) Law 1984 (the "Law") are expected to be brought into force by early autumn this year helping to ensure that Jersey remains at the forefront of the trust industry across the world.

Rights of beneficiaries to information

On the one hand it is understandable that a settlor or trustee may wish to limit access to information, for example to prevent a young beneficiary discovering the provision which has been made for him until he has matured and pursued a career of his own. On the other hand, it is of course right that someone should have the ability to hold a trustee to account for his trusteeship and in order to do so they must be able to possess the relevant information.

The revised drafting of the Law has reflected case law that has developed in this area and will be amended to clarify that a trust instrument can restrict the information which is provided to beneficiaries and that a trustee is entitled to refuse to comply with a request for information if the trustee is satisfied that it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole to refuse. However, the beneficiary will have an overriding right to apply to court for a determination of the extent of disclosure either generally or in a particular case.

Powers reserved or granted by settlors

The Law has helpfully been amended to clarify that (i) the reservation or grant of *all* of the listed powers in Article 9A of the Law is permitted; and (ii) that the reservation or grant of a beneficial power does not of itself constitute the settlor or the person to whom the power or interest is granted, a trustee.

Retention and accumulation of income

Previously, there was no guidance in the Law as to the permissible period before income is to be accumulated or distributed and if the trust instrument were silent there could be issues. The amendments to the Law have therefore sought to broaden the options available to the trustee so that, for example, income can be accumulated and added to capital for any period or be retained as income for any period or distributed.

Indemnity provisions

Amendments to the Law clarify that an indemnity can be provided to the employees of a trustee who can enforce the indemnity in their own right, even if not a party to the contract or arrangement thus reflecting current market practice.

Power of court to vary

The Law has been helpfully amended to allow the court to approve a variation of a trust on behalf of beneficiaries, who despite reasonable efforts cannot be found and in cases where the number of beneficiaries in the class makes it unreasonable for every beneficiary to be contacted. Previously the court's power of variation had been limited to providing consent on behalf of those who cannot consent for

themselves.

These updates provide some helpful and welcome amendments to the Law. However, some areas of potential concern are yet to be dealt with, for example, the proposed removal to references in the Law which preserves *légitime* for Jersey residents and clarification that a trust requires a beneficiary at all times. It will be interesting to see if these issues are addressed at a later date.