

## Disclosure of trust information to beneficiaries – a practical guide

Service area / [Trusts and Private Wealth](#)

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It is a fundamental and well-known principle of trusts law that a trustee is liable to account to its beneficiaries for its trusteeship. Accordingly, a trustee must maintain accounts and (save in special circumstances) provide information and explanations as to the investments of, and dealings with, trust property<sup>1</sup>. However, in some cases, it may be inappropriate for a trustee to disclose certain information, especially where there is a genuine concern as to the effect of disclosing that information. This briefing is intended to be a practical guide to trustees when faced with requests for information from beneficiaries.

### What information can/should a trustee disclose?

Article 29(1) of the Trusts (Jersey) Law 1984, as amended (the “Trusts Law”)<sup>2</sup> provides that:

“Subject to any order of the court, the terms of a trust may –

- (a) confer upon any person a right to request the disclosure of information or a document concerning the trust;
- (b) determine the extent of the right of any person to information or a document concerning the trust; or
- (c) impose a duty upon a trustee to disclose information or a document concerning the trust to any person.”

So the first port of call for any trustee faced with a request for disclosure of trust information or documentation is the trust instrument. The trustee should consider who is making the request (e.g. are they a beneficiary) and what the trust instrument provides in terms of who the trustee is authorised

or required to disclose information to and what information it is authorised or required to disclose.

In addition, Article 29(2) of the Trusts Law provides that, subject to any order of the court and the terms of the trust, beneficiaries (including named charities) and enforcers of purpose trusts “may request disclosure by the trustee of documents which relate to or form part of the accounts of the trust”. This begs an important question: what categories of document fall within the “accounts of the trust”?

### What are the “accounts of the trust”?

The Royal Court has, on a number of occasions, considered the categories of documents that fall within “the accounts of the trust” for the purposes of Article 29 of the Trusts Law (prior to its amendment in 2018).

The Court has determined that there is a strong presumption that the beneficiaries are entitled to disclosure of the trust instrument (and supplemental deeds of appointment), in addition to those documents which evidence the financial position of the trust (such as trust accounts, financial statements, ledgers and so on) and documents that provide details of the trust assets (including details of distributions and dealings with the trust property)<sup>3</sup>. The Court has also held that it would be reasonable for a trustee to provide a beneficiary with correspondence between the trustee and the beneficiary seeking disclosure (but not correspondence between the trustee and any of the other beneficiaries)<sup>4</sup>.

<sup>1</sup> *Schmidt v Rosewood Trust Limited* [2003] 2 AC 709, as followed and approved by the Royal Court of Jersey in *Re Y Trust* [2014] (1) JLR 199.

<sup>2</sup> Article 29 was amended in its entirety by the Trusts (Amendment No 7) (Jersey) Law 2018, which came into force on 8 June 2018.

<sup>3</sup> *In Re Rabaioiti Settlement* [2000] JLR 173; *In the Matter of the Avalon Trust* [2006] JLR Note 19.

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When disclosing trust documents, the trustee may redact any information in those documents which has been provided to the trustee by any other party in confidence or in circumstances which might reasonably suggest that the other party expected the trustee not to disclose such information without the other party's prior notice and consent.

### When can a trustee refuse to disclose information?

Article 29(3) of the Trusts Law helpfully provides that, subject to any order of the court, a trustee may refuse to comply with any request for disclosure "where the trustee in the exercise of its discretion is satisfied that it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole, to refuse the request."

So, even if the terms of the trust confer on a person a positive right to receive trust information, the trustee may refuse to disclose such information if it thinks such disclosure would be detrimental to one or more of the other beneficiaries. Examples of where this may be the case are where a beneficiary seeks disclosure to attack the validity of the trust<sup>5</sup>, to protect confidentiality<sup>6</sup> or where the costs of disclosure would be disproportionate.

In addition, Article 29(4) of the Trusts Law provides that, subject to the terms of the trust and to any order of the court, a trustee is not required to disclose its deliberations, reasons or materials upon which decisions may be based (e.g. letters of wishes).

### Powers of the Royal Court

The court retains ultimate power regarding disclosure, so that it can overrule the trustee's decision and override the terms of the trust concerning disclosure, either in relation to a particular instance or more generally. Its jurisdiction is, however, limited to cases where disclosure is sought by a beneficiary (or other interested person e.g. protector) in their capacity as such. It does not enable a stranger to the trust to obtain disclosure as a form of pre-action disclosure for use in hostile proceedings against the trustee<sup>7</sup>.

When considering such applications, the Court is not concerned with determining whether the trustee was correct to refuse disclosure, or whether the beneficiary was correct to make an application for disclosure. Instead the court will exercise its discretion afresh, as part of its inherent discretion to supervise and, where necessary, intervene in the administration of trusts.

### Data Protection

In some jurisdictions, such as England and Wales, a beneficiary of a trust (as a data subject) may be entitled under local data protection legislation to access their personal data where it is held and processed by a trustee (as a data controller).

<sup>4</sup> *In the Matter of the Avalon Trust*.

<sup>5</sup> *Re the L and M Trusts* [2003] JRC 002A.

<sup>6</sup> *In the matter of HHH* [2011] JRC 235.

<sup>7</sup> *Internine and Azali Trust* [2006] JCA 093.

However, this is not generally the case in Jersey as the Data Protection (Jersey) Law 2018 contains a specific exemption in respect of Jersey proper law trusts, to the extent the personal data consists of information which is permitted to be withheld by Article 29 of the Trusts Law or disclosure of which is prohibited under Jersey law. There is also an exemption in respect of trusts whose proper law is a jurisdiction other than Jersey, where withholding such information would be permitted under that foreign law, or disclosing such information would be prohibited under that foreign law.

### Conclusion

The issue of disclosure of trust information can be an extremely difficult one for trustees, particularly if there are differing views among the beneficial class as to what information should be disclosed and to whom. The disclosure of information to one or more beneficiaries must be weighed against the interests of the beneficiaries as a whole. Although there is a strong presumption in favour of disclosing those documents which constitute "trust accounts" to beneficiaries, if a trustee forms the view in good faith that disclosure of documents to which a beneficiary would normally be entitled would be prejudicial to the interests of the beneficiaries, it may refuse disclosure. That said, a trustee that forms such a view may be well advised to seek directions from the Court in order that the Court can determine whether, in the particular circumstances, disclosure should be refused or granted.

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