

A brief summary of major developments affecting trusts and associated topics (tax, company and regulatory affairs etc) to give an indication of the extent that there have been changes in the jurisdiction in the last year (or thereabouts) and possible future developments.

1. Trust law

- What new legislation/regulations and case decisions concerning trusts, or of interest to trustees, have appeared in the last 12 months?
- What new legislation/regulations are expected or are under discussion for introduction in the future?
- What is the basis on which trusts are recognised and enforced?

2. Anti-money laundering

- What is the status of your jurisdiction with the FATF?
- What reporting or other requirements are imposed on trustees under anti-money laundering roles when:
 - accepting appointments to a new trust?
 - Administering an existing trust?

3. What measures are there to combat the abuse of trusts procured to conceal assets?

- Civil concealment from creditors, estranged spouses, tax authorities etc;
- Criminal concealment from police, customs, courts etc?
- Position with the OECD and their treaty on Exchange of Information and other developments relating to reducing the degree of confidentiality in respect of identity and interests of beneficiaries.

4. Asset protection trusts

- What measures are there to protect assets in a trust subject to your laws from claims by interested parties by, for example, specific asset protection legislation?
- To what extent may asset protection trusts be set aside because of fraud of the settlor?
- Does the existence of "fraud" constitute an exception to the rule relating to legal privilege on documents?

5. Shams

- What protection is granted to defeat claims from outside the jurisdiction that a trust is a "sham"?
- What are the consequences of an arrangement being found to be a sham in your jurisdiction?

6. Forced heirship

Are there provisions which protect trust assets from forced heirship claims originating from a different jurisdiction, or to what extent are claims recognised?

7. Protectors

- What specific rules are there relating to protectors: if none, how does general law treat them?
- Are protectors regarded as fiduciaries and thereby liable to beneficiaries if care is not exercised?

8. Purpose trusts

- Can non-charitable purposes trusts be set up?
- What rules govern an enforcer or other persons with responsibility for seeing that trustees comply with the directions in a trust deed setting up a purpose trust?
- If purpose trusts are not allowed, are there any particular types of trust which overcome this situation?

9. Tracing of trust assets

Can beneficiaries and others pursue a claim:

- When the assets of a trust are mixed with other assets by the trustee, or
- When the identity of the trust assets merges with others?

10. Attacking trusts

- Can the creditors attack the trust assets directly instead of taking action against the trustees?
- What measures have been enacted to frustrate action by "trustbusters"?

11. Ensuring trustees' performance

- Are there any standards of care laid down in law to measure the performance of trustees?
- What criteria, if any, are laid down in the law regulating trustees and how are they regulated?
- If a trustee fails to take a relevant matter into account in administering the trust can an appeal be made to the court to put matters right?
- Does the court have any discretion in the event of a breach of trust to mitigate the consequences?

12. Conflict

- What rules relate to the migration of trusts and changes in the proper law?
- Can trusts migrate and change their proper law?
- Has the Hague Convention been ratified and have there been any cases in which the Hague Convention has featured?

13. Succession

When a trust inter vivos is used as an alternative to a will what precautions must be observed to prevent the trust deed being regarded as an invalid will and defeating the trust?

14. Trustees' powers of investment

- Do trustees have complete freedom to invest trust funds at their discretion in the absence of specific instructions in the trust instrument?
- To what extent are trust investments regulated?

15. Trading trusts

To prevent trustees incurring personal liability for commercial cases, what precautions should be taken by trustees for trusts which:

- Trade directly?
- Trade by way of a company where the shares are held by the trustees?

16. Taxation

- Is capital gains tax levied on the settlor when assets are passed to a trustee to be held in trusts?
- Is the settlor ever deemed to be taxable on the trust income?
- Are beneficiaries ever deemed to be taxable when not actually in receipt of the income?
- Is stamp duty or a similar tax imposed when property is passed to a trustee?
- What significant developments relating to the use of trusts for tax planning have occurred in the last year?

17. Trustees' obligations to disclose trust information

What are the rights of beneficiaries and others to obtain accounts, copies of the trust deed and other documents from the trustees?

18. OECD, FATF, IMF and counter-terrorism

- What is the status of your jurisdiction under the criteria put forward by the OECD, FATF and IMF?
- What measures have been taken to implement the OECD's recommendations of 31st October 2001 to counter terrorists' finances?

19. Commercial trusts

- Are there special duties for trustees when they are directors of companies held in trust (the local version of the *Bartlett v Barclays Bank* case)?
- Duties of trustees to protect the interest of holders of mutual funds (this should cover relationship of trustees and managers and mutual funds; and
- Special responsibilities of trustees in respect of pension funds.

20. Regulation of corporate and trust service providers

What regulation or control is there over corporate and trust service providers and are there any guidelines issued to these providers? (please quote website if detailed legislation and guidelines are on the internet.)