

Trustees' Disclosure Obligations in Guernsey and Jersey

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1. All trustees will have experience of dealing with requests by beneficiaries for trust information. Whilst many such requests are no more than routine in nature, they can also be a pre-cursor to complaints about alleged mismanagement of trust assets or as ammunition in a possible divorce and, occasionally, litigation. It is essential that trustees are aware of their obligations in relation to the disclosure of trust information and are aware how these obligations intertwine with their other duties as trustees. Beneficiaries also need to be aware of what they may expect to be provided with (on request) by way of trust information and documentation, and what trustees may legitimately withhold from them. This article revisits the main principles governing this area under Jersey and Guernsey law.
- c. *relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty; or*
- d. *relates to or forms part of the accounts of the trust,*
unless, in a case to which sub-paragraph (d) applies, that person is a beneficiary under the trust not being a charity, or a charity which is referred to by name in the terms of the trust as a beneficiary under the trust or the enforcer in relation to any non-charitable purposes of the trust."
3. Article 29 has been the subject of extensive judicial analysis by the Royal Court of Jersey.

What information must the trustee disclose?

Jersey Law

Article 29, Trusts (Jersey) Law 1984

2. In Jersey, the statutory framework governing a trustee's obligation to disclose trust information is underpinned by Article 29 of the Trusts (Jersey) Law 1984 (the TJL), which states:
"Subject to the terms of the trust and subject to any order of the court, a trustee shall not be required to disclose to any person, any document which:
 - a. *discloses the trustee's deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty conferred or imposed upon him or her;*
 - b. *discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based;*

4. A question that has repeatedly come before the Courts is what information Article 29 requires a trustee to disclose. This question is now largely considered to be settled.
5. The opening words of Article 29, *"subject to the terms of the trust"*, indicate that the first port of call for any trustee faced with a request for trust information is the trust instrument itself. The extent of a trustee's obligation to disclose trust information may be set out in the trust instrument. Trustees should be wary, however, of taking the terms of the trust at face value. For example, where the trust instrument contains a provision purporting to restrict a trustee's obligation to disclose trust accounts, it could well be argued that the provision so cuts across the purpose of the presumptive entitlement of a beneficiary to such information (namely so that the trustee may be held to account) that it ought not to be enforced. Accordingly, a trustee who wishes to decline to provide

trust accounts will need to give careful thought as to whether it is appropriate, irrespective of the terms of the trust instrument (which will often only purport to exclude a trustee's obligation to provide information, thus still leaving the trustee with the ability to do so) and whether in any event it ought to be seeking directions from the Court in this regard.

6. Subject to the terms of the trust or any order of the Court, Article 29 imposes only one positive obligation on trustees and that is the obligation (under Article 29(d)) to disclose trust accounts to a (non-charity) beneficiary or a charity named as a beneficiary, or the enforcer of a non-charitable purpose trust. The TJL does not differentiate between different interests that beneficiaries may have and, therefore, on the face of it any person "entitled to benefit under a trust or in whose favour a direction to distribute property held on trust may be exercised" is entitled to the trust accounts.
7. In *West v Lazard Brothers* [1987-88] JLR 414, the Court took a very wide view of what constitutes trust accounts and ordered the disclosure of "all accounts, vouchers, coupons, documents, and correspondence relating to the administration of the trust property or otherwise to the execution of the trust, including a full inventory of the trust assets and all dealings relating to any real property".
8. Whilst it is open to question whether the Court was suggesting that such a wide range of documents are to be considered as falling within the meaning of "accounts", subsequent cases have made it clear that a beneficiary is normally entitled to see documents such as the accounts of the trust, the trust instrument and any supplemental deeds of appointment and details of distributions which have been made (see, eg, *In the Matter of the Avalon Trust* [2006]). This is rooted in the fundamental principle that a trustee is obliged to account to the beneficiaries for its dealings in relation to the trust and trust assets.
9. As already mentioned, the wording of Article 29 is such that a trustee's obligation to disclose trust accounts to a beneficiary is subject to the terms of the trust or an order of the Court. The effect of the wording of the trust instrument has been discussed above. If the trust instrument is silent in this regard then a trustee can only refuse such a request if it obtains an order of the Court sanctioning its decision to resist the request. Accordingly, if it decides that it does not wish to disclose the trust accounts for some reason, it should seek the directions of the Court under Article 51 of the TJL. There is, however, a very strong presumption in favour of the disclosure of trust accounts and the trustee would therefore need to have very good reason not to disclose the accounts in order to persuade the Court to make an order to this effect.
10. The remainder of Article 29 is concerned with documents which a trustee is not obliged to disclose (albeit that this is again subject to the terms of the trust or any order of the Court). Thus, in *In the matter of the Rabaiotti 1989 Settlement* [2000] JLR 173, the Court noted that "one starts with the proposition that a beneficiary of a trust is entitled to inspect trust documents", but it also held that "a beneficiary is not normally entitled to see a letter of wishes" being a document which "is closely related to the decision-making process and to the reasons for a decision". The Court stated that a letter of wishes "may in many cases be a document which discloses the reasons for a decision and is, in almost all cases, likely to be material upon which such reasons were or might have been based, even in cases where the trustee chooses to depart from it...". It went on to note "we would rest our decision... upon the general principle that a trustee does not have to disclose the reasons for the exercise of a discretion".
11. In *In The Matter Of The Avalon Trust* [2006] JLR Note 19, the Court held that, whilst it would be reasonable for a trustee to be required to provide a beneficiary with any correspondence between the

trustee and that beneficiary, it would not be reasonable for the beneficiary to be provided with the trustee's correspondence with other beneficiaries. It noted that such correspondence was confidential and was not required so as to give a full and fair picture of the trust's assets and the benefits which might accrue to the beneficiary under the trust.

The costs of the disclosure

12. In the HHH Trust [2011] JRC235 the Court affirmed the principle that a beneficiary's right to disclosure would be at the expense of the requesting beneficiary. The Court acknowledged that, in practice, trustees may not apply this principle to reasonable requests for documents that are easily produced but stated that a trustee could not be expected to meet the costs of making disclosure personally and that it would not be fair for the other beneficiaries to be prejudiced by the cost of the provision being borne by the trust fund. The Court also stated that, in circumstances where material work is involved, the trustee should estimate the likely cost and require payment by the beneficiary in advance to avoid the trust fund being burdened by the cost.

Discretion of the Court

13. As mentioned above, both the "obligation" to disclose trust accounts to a beneficiary and the right of a trustee to refuse to disclose the documents described in Article 29(a) to (c), are "subject to any order of the court". This effectively gives the Court a discretion to refuse disclosure of documents which a beneficiary would ordinarily expect to be entitled to see, or to order the disclosure of documents that would not normally be provided to a beneficiary.

14. In *Rabaiotti*, the Court held that it "does have a discretion to refuse to order disclosure of trust documents that a beneficiary is normally entitled to see. Clearly, the general principle is that a beneficiary is entitled to see trust documents which show the financial position of the trust, what assets are in the trust, how the trustee has dealt with those assets, etc. This is an essential part of the

mechanism whereby the trustee can be held accountable for his trusteeship to a beneficiary. But the need for an individual beneficiary to obtain trust documents has to be weighed against the interests of the beneficiaries as a whole. The trustee has a duty to the beneficiaries as a class. If, as in some of the cases referred to above, the 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 as a whole, it may refuse to make that disclosure and seek the directions of the court."

15. Conversely, the Court has a discretion to order disclosure of documents that beneficiaries are not normally entitled to see. In *Rabaiotti*, the Court observed that "it would be inconsistent with the general position of the court if it did not have the power to order disclosure of a letter of wishes or other document, which did not have to be disclosed [on the basis that it is closely related to the decision-making process and to the reasons for the trustee's decision] where it was satisfied that it was essential to do so... One starts with a strong presumption that [such a document] does not have to be disclosed to a beneficiary. The burden lies on a beneficiary who requests the court to order the disclosure of such a document against the wishes of the trustees. Nevertheless, there is power in the court to do so if the court is satisfied that there are good grounds for ordering disclosure in a particular case..." The Court went on to note that "under Jersey law, the position is even clearer, because [Article 29] of the 1984 Law provides that the rule that a trustee is not required to disclose documents falling within paragraphs (a) to (c) is "subject to any order of the court". It is clear, therefore, that the court has power to order disclosure of documents which would otherwise not be disclosable".

16. This approach is in line with the Privy Council's decision in *Schmidt v Rosewood Trust Limited* [2003] 3 All ER 76, a now well-known case which

ARTICLE

emanated from the Isle of Man. The Privy Council confirmed that the right of a discretionary beneficiary to obtain trust documents and information is not proprietary; rather, a beneficiary's access to trust documentation should be approached as an aspect of the Court's inherent jurisdiction to supervise the administration of trusts and thus a matter of the Court's general discretion to be exercised as appropriate in the circumstances of the case.

17. In this regard the Court set out relevant factors which it would take into account in exercising its discretion over whether to order the disclosure of documents in *In the A Settlement* [2011] JRC109. These included: (i) the context of the request (including whether proceedings were afoot); (ii) the capacity in which the beneficiary is seeking the documents; (iii) their relevance to any current or potential issues; (iv) the purpose for which the beneficiary wants the documents; (v) whether the request is for specific documents or whether it is a fishing expedition that would result in increased costs to the detriment of the other beneficiaries; (vi) whether the documents concern third parties; and (vii) procedural appropriateness and the extent that an order for disclosure would amount to pre-action discovery. The Court also stated that it would not be in the interests of justice for trustees necessarily to be obliged to disclose all communications with their advisors which were created in the context of obtaining directions from the Court. The Court stated that it is important that trustees are not inhibited in their communications with advisors by fear that the communications could be disclosed to beneficiaries (although the Court did accept that in certain circumstances disclosure of such information would be requisite, for example where the conduct of the trustee in bringing an application was itself questioned).
18. Where the costs of all parties to these applications by trustees are necessarily incurred for the benefit of the trust they

are usually ordered to be paid out of the trust. Costs may also be awarded from the trust where someone other than the trustee has brought proceedings for guidance as to the construction of the trust instrument or some other instrument of law arising in the administration of the trust. For example, in the *HHH Trust* [2013] JRC023 the settlor incurred legal costs in raising the issue of the extent of its disclosure obligations towards the beneficiary, which was part of the exercise of its fiduciary functions, and the Court ordered that costs be met from the trust on the basis that it was for the benefit of the trust estate that this question should be determined.

Restriction on rights to information

19. Many trusts in the modern era are highly complex and may hold trading companies as part of the trust's assets. In such instances, information relating to the trust could include commercially sensitive information. This can complicate the issue of the disclosure of information by a trustee, as the trustee needs to be certain that, if confidential or sensitive information is disclosed, the party to whom it is disclosed understands the confidential nature of the information and understands that it must not be disclosed onwards. In such circumstances, it may be reasonable for the trustee to require the requesting party to give a confidentiality undertaking ensuring that commercially sensitive information relating to the trust remains confidential.

Disclosure of trust information to third parties

20. In *In The Matter Of The C.A. Settlement* [2002] JLR 312 at 316, the Court found that it had jurisdiction under Article 29 to order the disclosure of any document by a trustee to any person, not just beneficiaries. The then Deputy Bailiff, Sir Michael Birt, stated "*the introduction to [Article 29] refers to 'any person'. That expression is to be distinguished from the concluding passage of the article which makes specific provision where '... that person is a beneficiary ...' The expression therefore extends to non-beneficiaries.*"

ARTICLE

21. However, the presumption of confidentiality (as between trustees and their beneficiaries) which attaches to trust information means that it is unlikely that a trustee would think it appropriate to disclose such information to a stranger to the trust without a court order requiring it to do so unless the disclosure was part of the routine administration of the trust (eg a disclosure of the trust instrument to a bank on the opening of an account). Furthermore, the general rule is that strangers to a trust cannot attempt to circumvent the general principle against pre-action disclosure (*In Re Internine and Azali Trusts* [2006] JLR 195).
- Guernsey Law**
- Relevant Sections of the Trusts (Guernsey) Law 2007 (as amended) (the 2007 Law)**
22. Section 26(1) of the 2007 Law requires a trustee, subject to the terms of the trust and at the written request of any beneficiary (among others), to provide information as to the state and amount of the trust property.
 23. Where the terms of the trust prohibit or restrict the provision of such information, Section 26(2) of the 2007 Law enables a trustee or beneficiary (among others) to apply to Court for an order authorising or requiring the provision of the information.
 24. These sections state:
 1. "A trustee shall, at all reasonable times, at the written request of -
 - a. any enforcer, or
 - b. subject to the terms of the trust -
 - i. any beneficiary (including any charity named in the trust),
 - ii. the settlor, or
 - iii. any trust official,provide full and accurate information as to the state and amount of the trust property."
 25. Section 26(2)-(4) of the 2007 Law also states that:
 2. "Where the terms of the trust prohibit or restrict the provision of any information described in subsection (1), a trustee, beneficiary, trust official or settlor may apply to the Royal Court for an order authorising or requiring the provision of the information.
 3. The person applying to the Royal Court for an order under subsection (2) must show that the provision of the information is necessary or expedient -
 - a. for the proper disposal of any matter before the Court,
 - b. for the protection of the interests of any beneficiary, or
 - c. for the proper administration or enforcement of the trust.
 4. In its application to a trust arising from a document or disposition executed or taking effect before the 18 April, 1989¹, subsection (1) only operates for the benefit of a beneficiary whose interest in the trust property became vested before that date, but this subsection does not prejudice any rights that the beneficiary may have under the terms of the trust."
 26. It is important to note that Section 26 is only concerned with the disclosure of information as to the state and amount of trust property. As is the case for Article 29 of the Trusts (Jersey Law) 1984, the words "subject to the terms of the trust" indicate that, save for a written request from any enforcer, the trustee must first consider the trust instrument to ascertain the extent of the trustee's obligation to disclose trust information.
 27. The same considerations as those under the heading "What information must the trustee disclose?" above in respect of Jersey Law apply.
 28. If the trust instrument does not exclude Section 26(1), then, if a written request by any one of the parties listed in Section 26(1) is made, a trustee can only refuse

¹18 April 1989 was the date of commencement of the Trusts (Guernsey) Law 1989

MOURANT OZANNES

ARTICLE

such a request if it obtains an order from the Court sanctioning its decision to resist the request, or it considers that the request has not been made at a "reasonable time". If a trustee objects to disclosure on the latter ground then the onus will be on the trustee to prove the same and it is difficult to envisage when a trustee could reasonably rely on that ground to resist disclosure.

29. The Guernsey Court of Appeal case of *Alan Stuart-Hutcheson v Spread Trustee Company Limited* (299/2002) (which was determined in relation to Section 22 of the Trusts (Guernsey) Law 1989² (the 1989 Law) and the general legal position gives an indication of the extent of the information a beneficiary is entitled to see. Advocate St John Robilliard of Mourant Ozannes appeared for the Applicant in this case.
30. In *Stuart-Hutcheson* a trustee of two Guernsey trusts was ordered to allow a discretionary beneficiary to inspect certain documents in the context of a potential claim for breach of duty by them. The documents related to a company of which the trust owned 50% of the issued shares, where the trustee effectively ran the Board of the company and where the company was the vehicle by which the trustee held a principal asset of the trust. It was held that the discretionary beneficiary was entitled to inspect the minutes of the meetings of the company's shareholders and directors as well as its annual accounts. Thus:
"Compliance with the duty to provide full and accurate information on the state and amount of the trust property may require the production of existing documents, or fresh information, or both. Nor is information as to the state and amount of the trust property to be limited to the state and amount of the trust property at the time of the request."
31. When considering what information to provide about the state and amount of the trust property pursuant to Section

26 of the 2007 Law, a trustee should bear in mind that the term "state and amount of the trust property" has been widely interpreted by the Courts.

32. In determining any application for disclosure made pursuant to Section 26(2) of the 2007 Law (and normally Section 26(1) and its predecessor are excluded in the trust instrument), the Court must be satisfied that at least one of the grounds in that sub-section are met and it will take into account policy considerations set out in *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709, which clarified the way the courts viewed a beneficiary's request for information.³
33. The conclusion in *Schmidt* was as follows:
*"Their Lordships have already indicated their view that a beneficiary's right to seek disclosure of trust documents, although sometimes not inappropriately described as a proprietary right, is best approached as one aspect of the court's inherent jurisdiction to supervise (and where appropriate intervene in) the administration of trusts. There is therefore in their Lordships' view no reason to draw any bright dividing line either between transmissible and non-transmissible (that is, discretionary) interests, or between the rights of an object of a discretionary trust and those of the object of a mere power (of a fiduciary character). The differences in this context between trusts and powers are (as Lord Wilberforce demonstrated in *McPhail v Doulton* a good deal less significant than the similarities. The tide of Commonwealth authority, although not entirely uniform, appears to be flowing in that direction. However the recent cases also confirm (as had been stated as long ago as *In Re Cowin* in 1886) that no beneficiary (and least of all a discretionary object) has any entitlement as of right to disclosure of anything which can plausibly be described as a trust document. Especially when there are issues as to personal or commercial confidentiality, **the court may have to balance the competing interests of different beneficiaries, the trustees***

²The corresponding provision to Section 26 of the 2007 Law

³This case is also discussed under the heading 'Jersey Law' above.

themselves and third parties. Disclosure may have to be limited and safeguards may have to be put in place. Evaluation of the claims of a beneficiary (and especially of a discretionary object) may be an important part of the balancing exercise which the court has to perform on the materials placed before it. In many cases the court may have no difficulty in concluding that an applicant with no more than a theoretical possibility of benefit ought not to be granted any relief [emphasis added]."

34. The Guernsey case of *Bathurst v Kleinwort Benson (Channel Islands) Trustees Limited et al* (38/2004) is of particular importance as it was the first opportunity the Guernsey Court had to consider the impact of the Schmidt decision. Advocate Robert Shepherd of Mourant Ozannes appeared for the First Respondent in this case.
35. Lieutenant Bailiff Talbot decided that the Court should "follow, in relation to Guernsey and foreign trusts, in respect of which the Royal Court has a supervisory jurisdiction, the approach taken in both *Stuart-Hutcheson* and *Schmidt*."
36. The conclusion reached by the court was that, "under the law of Guernsey no beneficiary of a trust, whether or not he has a vested interest under the trust, and no object of a discretionary power, has "any entitlement as of right to disclosure of anything which can plausibly be described as a trust document" or to disclosure of trust information – see *Lord Walker in Schmidt* at paragraph 67. The real test is, in my judgment, whether or not it is appropriate, in all the circumstances of the case in question, for the Royal Court, under its inherent jurisdiction to supervise, and where appropriate intervene in, the administration of trusts, to exercise its discretion by ordering the disclosure by a trustee of trust documents or information."

Section 38 of the 2007 Law

37. Trustees exercising a power or discretion are, generally speaking, not obliged to disclose their reasons for taking a particular decision, regardless of whether

disclosure of those reasons is sought by a beneficiary.

38. In the English Court of Appeal case of *Re Londonderry's Settlement* [1965] Ch.918, CA, the general rule was established that trustees are not bound to disclose or allow inspection of documents disclosing the reasons for exercising a power or discretion in a particular way. Harman LJ stated that "If the defendant is allowed to examine these, she will know at once the very matters which the trustees are not bound to disclose to her, namely their motives and reasons. Trustees who wish to preserve their rights in this respect must either commit nothing to paper or destroy everything from meeting to meeting..."
39. Section 38 of the 2007 Law sets out the documents which are excluded from disclosure under *Re Londonderry's Settlement*. It states:
 1. "A trustee is not, subject to the terms of the trust and to any order of the Royal Court, obliged to disclose –
 - a. documents which reveal –
 - i. his deliberations as to how he should exercise his functions as trustee,
 - ii. the reasons for any decision made in the exercise of those functions,
 - iii. any material upon which such a decision was or might have been based,
 - b. any letter of wishes.
 2. A "letter of wishes" is a letter or other document intimating how the settlor or beneficiary wishes the trustees to exercise any of their functions.
 3. The person applying to the Royal Court for an order under this section of the disclosure of any document must show that the disclosure is necessary or expedient –
 - a. for the proper disposal of any matter before the court,
 - b. for the protection of the interests of any beneficiary, or

ARTICLE

c. *for the proper administration or enforcement of the trust.*"

40. Section 38(3) therefore enables an application for disclosure of documents which reveal the matters referred to in Section 38(1) of the 2007 Law to be made.
41. Again, our comments with regard to Section 26(1) and the words "subject to the trust" apply, save that, in relation to Section 38, if the trust instrument is silent about disclosure of documents to which Section 38 applies, a trustee is "not obliged" to disclose such documents. That does not mean that a trustee is prohibited from disclosing them, and a trustee must exercise its discretion in deciding whether to do so. It may however be preferable for a trustee, when faced with a request for disclosure of such documents, to seek the directions of the Court.
42. Again, as in any application made pursuant to Section 26(2), in determining any application made pursuant to Section 38(3), the Court must be satisfied that that at least one of the grounds in that sub-section are met and it will take into account the policy considerations set out in *Re Londonderry's Settlement*.

Section 69(1) of the 2007 Law and the Inherent Jurisdiction of the Guernsey Court

43. Section 69(1) of the 2007 Law also provides a statutory basis on which an application can be made by a beneficiary (among others) requiring a trustee to disclose other documents and information beyond the ambit of either Section 26 or Section 38 of the 2007 Law.
44. It was also held in *Stuart-Hutcheson* that, in addition to the statutory right to seek information (as set out above), the Court has the power, as part of its supervisory jurisdiction, to order disclosure.
45. The case of *H W Trust Company Limited v Andrew Cunningham* (349/2006) considered the *Stuart-Hutcheson* judgment.
46. The Deputy Bailiff stated that:

"In Stuart-Hutcheson, the Guernsey Court of Appeal held that the principles of English trust law would not be applicable in Guernsey where they are inconsistent with some provision of Guernsey customary or statute law. I therefore conclude that the principles established by the Privy Council in Schmidt are applicable in Guernsey, subject to the provisions of Section 22 of the 1989 Law. In other words, a beneficiary has the right to ask the Court, in exercise of its inherent jurisdiction to supervise trusts, to order the disclosure of trust information or documents and also an entitlement as of right to receive information as to the state and amount of trust property under Section 22 [emphasis added]. The Section 22 right is expressed to be subject to the terms of the trust. In practice, Section 22 is commonly excluded, under the express terms of the trust deed and, where it is excluded, the beneficiary's only entitlement to trust documents will be at the discretion of the Court pursuant to the principles in Schmidt. Disclosure is also, subject, of course, to the provisions of Section 33 of the 1989 Law⁴."

47. The Court's inherent jurisdiction to supervise and intervene in the administration of trusts, which forms the basis of the Court's discretion to require trustees to give beneficiaries access to trust documents subject to their statutory duties, was also recognised in the case of *A Limited and B Limited v HM Procureur* (2003-4 GLR 593). Advocate Robert Shepherd of Mourant Ozannes appeared for the Appellants in this case.

Restrictions on rights to information

48. The points made above in relation to Jersey law are equally applicable to Guernsey law.

Disclosure of trust information to third parties

49. As stated above under the heading "Jersey Law", the presumption of confidentiality (as between trustees and their beneficiaries) which attaches to trust information means that it is unlikely that a trustee would think it appropriate to

⁴Note that Section 38 of the 2007 Law is the corresponding provision for Section 33 of the 1989 Law.

ARTICLE

disclose such information to a stranger to the trust without a Court order requiring it to do so.

50. The issue of whether a third party who has no connection with a trust could make an application for disclosure pursuant to Section 69(1) and 69(2)(g) of the 2007 Law has yet to be determined by the Guernsey Courts. We are of the view that the third party would need to have a connection with the trust in order to be permitted to make an application for disclosure pursuant to these sections; for example if they were a person named in a letter of wishes who had not been added as a beneficiary but were likely to be, or they were a past or future trustee with good reason for seeking disclosure. A "stranger" to a trust, such as a party who has a contact with the trustee, would be unlikely to be granted permission given that pre-action disclosure of documents is not usually possible.

Summary

- i. Pursuant to Section 26(1) of the 2007 Law a trustee is under a duty to provide information concerning the state and amount of trust property to a beneficiary (among others) on written request. However, that duty is subject to the terms of the particular trust instrument.
- ii. Section 26(2) of the 2007 Law provides that where the trust instrument excludes a beneficiary's right to information, the beneficiary has the right to apply to the Court for an order for the provision of information as to the state and amount of trust property. An application for disclosure of such documents may be granted if any one of the criteria in Section 26(3) of the 2007 law and the policy considerations referred to in Schmidt are met.

- iii. Section 38 of the 2007 Law provides that, subject to the terms of the particular trust instrument or any Court Order, a trustee is not obliged to disclose documents which reveal its deliberations, or letters of wishes. A trustee has a discretion as to whether to disclose such documents. An application for disclosure of such documents may be granted if any one of the criteria in Section 38(3) of the 2007 law and the policy considerations referred to in *Re Londonderry's Settlement* are met.
- iv. The Trustee is at risk as to costs if it refuses to disclose and the Court takes a different view.
- v. In difficult cases it may be prudent for the Trustee to initiate the application to the Court.

Conclusion

51. This article gives an overview of the principles and issues in relation to trustees' disclosure obligations. But these are the main principles only and ultimately careful consideration will always need to be given as to whether disclosure is appropriate in the particular circumstances. Where difficult issues arise, it may be appropriate for the trustee to consider seeking directions from the Court.

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