STATES OF JERSEY

DRAFT TRUSTS (JERSEY) AMENDMENT LAW 202- (P.89/2025): COMMENTS

Presented to the States on 3rd December 2025
by the Economic and International Affairs Scrutiny Panel

STATES GREFFE

COMMENTS

Background

The Draft Trusts (Jersey) Amendment Law 202- [P.89/2025] (hereafter referred to as the "draft Law") was lodged *au Greffe* on 22nd October 2025 by the Minister for External Relations (hereafter the "Minister") and is scheduled for debate at the States' sitting commencing 8th December 2025.

The Economic and International Affairs Scrutiny Panel (hereafter the "Panel") received briefings from Government of Jersey Officers on 13th November 2025. The Panel has also questioned the Minister during Quarterly Hearings on 10th June 2025. The Panel presents these comments in order to aid Members in their consideration of the Draft Amendment Law.

The Draft Law

The draft Law seeks to amend the Trusts (Jersey) Law 1984 (the "1984 Law" to clarify and enhance existing provisions, ensuring the law remains current and aligned with evolving jurisprudence and industry practice. The "1984 Law", supported by case law, is internationally respected as a flexible statutory framework which is not fully codified, therefore helping to maintain Jersey's leading position in the global trusts industry, as was mentioned during the Panel's public hearing with the Minister on 10th June 2025:

> **Director, Financial and Professional Services:**
> *"Jersey's Trusts Law is probably the greatest asset of the private wealth industry in Jersey. What we do not want to do is codify absolutely everything."*[1]

The Panel understands that the proposed draft Law has gone through consultation, concluding on 16th August 2024 with a response paper published in July 2025. The consultation notes that proposals, which draw on previous work, were reviewed by the Trusts Law Working Group comprised of representatives from several Jersey law firms and trust companies prior to the publication of the Consultation Paper.[2] The Panel was also advised during its hearing with the Minister on 10th June 2025 that there was broad support for the proposals.

> **The Minister for External Relations:**
> *"She manages all of this dialogue with the Trusts Working Group, and she has not said that there are any concerns, more, I would suspect, that there was full support for it."*[3]

The Panel notes that there is a series of amendments clarifying that a Jersey Limited Liability Company (LLC) can act as a trustee of a Jersey trust. While there is no objection in principle to an LLC or other entity serving as trustee, the law is not entirely clear, so Articles 2, 3, 4, and 6 include changes to address this.

[1] Transcript - Quarterly Hearing - Minister for External Relations -10th June 2025
[2] Consultation Paper: Amendments to the Trusts (Jersey) Law 1984
[3] Transcript - Quarterly Hearing - Minister for External Relations -10th June 2025

The Panel understands that Article 5 of the draft Law would be amending Article 19 of the "1984 Law", 'Resignation or removal of trustee'. This amendment seeks to formalise the existing assumption that a sole trustee cannot resign when such resignation would leave the trust ~~unadministered~~ without a trustee. This aligns with the existing provision for multiple trustees, which invalidates resignations that would result in no trustee remaining. The Panel was advised of this during its hearing with the Minister on 10th June 2025:

> **The Minister for External Relations:**
> *"Then we have got changes around clarifying that a sole trustee cannot resign if that would mean there are no trustees for the trust… Of course, there are, because what needs to happen is that one needs to find a trustee that the trust can be assigned to. That is something that normally there would be support for from the J.F.S.C. to do that assignment, but it is really important that the trust itself does not fall over because there is no trustee."*[4]

The Panel sought clarification as to what would happen if a trustee, particularly a sole trustee, were to pass away. The Panel was advised that most trust deeds will often have specific provisions within the relevant deed which deal with this area. If the trust deed doesn't specify how to appoint a new trustee, Article 17 of the ~~Trusts~~ 1984 Law allows this to be done by the remaining trustees, the last trustee, or the executor of the last trustee (or a liquidator if the trustee was a company). The Court also has the power under Article 51(2) to appoint a trustee, and the Attorney General or the beneficiaries can ask the Court for an order to do so.[5]

The Panel notes that Article 7 of the draft Law would amend Article 43 of the "1984 Law", 'Termination of a Jersey trust'. The Panel understands that a recent Guernsey case (Rusnano) raised questions around whether trust beneficiaries can end a trust. The accepted view has been that the existence of a power to add beneficiaries is sufficient to prevent the beneficiaries calling for the termination of a trust. The report accompanying the draft Law notes that the Guernsey court disagreed and that a Jersey court might give weight to that decision, if the question came before it, as the Jersey and Guernsey statutes have similar wording on this point.

To avoid uncertainty, it is the Panel's understanding that Article 43 will be amended to confirm that if others could become beneficiaries under the trust or by the exercise of a power under the trust, or if there could be a disposition of trust property for a charitable or non-charitable purpose, the beneficiaries cannot exercise the power to call for the termination of the trust. The Panel also notes that such amendments should assist in making certain that the wishes and intentions of the settlor when establishing the trust are given due consideration and by giving certainty to the position, thereby avoiding any unnecessary costs and delays in having to seek a court determination on the topic. Beneficiaries retain the right to seek directions from the court, and trustees may terminate a trust if doing so serves the beneficiaries' interests. This was mentioned to the Panel during its hearing on 10th June 2025 with the Minister:

[4] Transcript - Quarterly Hearing - Minister for External Relations -10th June 2025
[5] Trusts (Jersey) Law 1984 pages 14/18 and 33

The Minister for External Relations:
"Then we have got the change around beneficiaries' ability to call for the termination of a trust in certain circumstances that is confirmed as being where other beneficiaries cannot be appointed."[6]

The Panel also understands that Article 8(3) of the draft Law is seeking to amend Article 43A of the "1984 Law" Security'. The Panel notes that this amendment relates to a question arising out of the case commonly known as Re Z. The amendment confirms that the interest of a lender secured over trust assets takes priority over the lien[7] of a current or former trustee arising by operation of law, unless the lender agrees otherwise.

This is especially relevant to a former trustee's lien as any risk to a lender can usually be reduced by including waivers in the finance documents when dealing with the current trustee, but the former trustee is not normally party to those agreements. This applies to assets located in Jersey, or elsewhere, and to securities established under Jersey law or otherwise. It does not change the nature or rights coming from the lien or security, nor the trustee's lien itself. It also does not prevent a trustee from taking direct security over trust assets where appropriate. The Panel was further advised during the hearing on 10th June 2025 with the Minister:

The Minister for External Relations:
"One area is confirmation of priority of claims between a former and current trustee on the one hand and a secured lender on the other, given the recent case of Re Z. This amendment will clear up that position and give clarity to secured lenders that they do have priority in an insolvency over a trustee."[8]

Conclusion

The Panel is of the opinion that it is prudent for Jersey to keep aligned to evolving jurisprudence and industry practice in the area of Trust Law. After reviewing the Draft Trusts (Jersey) Amendment Law 202- [P.89/2025] the Panel has found no areas of concern. The Panel is therefore supportive of the draft Amendment Law, as proposed.

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[6] Transcript - Quarterly Hearing - Minister for External Relations -10th June 2025

[7] Lien - a 'lien' is a legal right that entitles a party to retain possession of assets in their possession until payment of a debt is owed. For a trustee, it endures beyond the transfer of assets and gives a former trustee a claim on the trust assets in relation to the debts which it has (reasonably and properly) incurred as trustee.

[8] Transcript - Quarterly Hearing - Minister for External Relations -10th June 2025