



All change

Jersey practitioners have been faced with a number of significant legislative developments in recent months. Here, **Henry Wickham** summarises the most important and considers their implications

TRUSTS (AMENDMENT NO.6) (JERSEY) LAW 2013

The *Trusts (Amendment No.6) (Jersey) Law 2013* (Amendment No.6) came into force in October 2013, amending Jersey's trusts legislation to enshrine in statute the existing Jersey case law provisions in relation to mistake and 'the rule in *Hastings-Bass*'. The provisions allow for the Royal Court of Jersey to remedy the adverse effects or consequences of mistakes, or other acts or omissions, made by settlors, trustees and others. The existence of this jurisdiction to offer a remedy is important; it can be a very attractive alternative to the option of pursuing hostile litigation against professional advisors, with the attendant concerns in relation to uncertainty of outcome, time delays and expense.

Amendment No.6 identifies four different situations in relation to Jersey law trusts, the first two concerning transfers into trust and the second two the exercise of powers as regards an existing trust:

- Where a transfer or other disposition (together referred to here as a 'transfer') of property to a trust has been made by a settlor or through another person exercising a power on behalf of a settlor, but the settlor or other person made a mistake in relation to the transfer and would not have made the transfer but for the mistake, and the mistake is so serious that it is just for the court to make a declaration.
- Where a transfer of property to a trust has been made by a settlor through a person exercising a power on behalf of a settlor and owing a fiduciary duty in relation to the exercise of that power, but the person failed to take into account any relevant considerations or took into account irrelevant considerations, and would not have exercised the power as they did, but for such failure.

- Where a power has been exercised by a trustee or by another person in relation to a trust or trust property, but the trustee or other person made a mistake in relation to the exercise of the power, and would not have exercised the power at all, or in the way in which it was exercised, but for the mistake, and the mistake is so serious that it is just for the court to make a declaration.
- Where a power has been exercised by a trustee or by another person in relation to a trust or trust property (where that person owes a fiduciary duty to a beneficiary in relation to the exercise of the power), but the trustee or other person failed to take into account any relevant considerations or took into account irrelevant considerations, and would not have exercised the power at all, or in the way in which it was exercised, but for such failure.

In all of these situations, the court has the power to declare that the transfer of property to a trust, or the exercise of a power, as the case may be, is voidable and has such effect as the court determines, or is of no effect from the time of its exercise.

Amendment No.6 provides certainty as to the Jersey position in relation to both mistake and *Hastings-Bass*, which is particularly helpful for settlors and beneficiaries in light of the Supreme Court judgment in *Pitt v Holt; Futter v Futter* [2013] UKSC 26, [2013] STC 1148.

SECURITY INTERESTS (JERSEY) LAW 2012

The *Security Interests (Jersey) Law 2012* (the Law) came into full force on 2 January 2014. The Law significantly reforms the way in which security may be taken over Jersey intangible movable property and will enhance the remedies that are available to a secured party on default. However, the prior law, the





Security Interests (Jersey) Law 1983 (the 1983 Law), will continue to govern all security interests taken over intangible movable property before the new Law came into force. There will, therefore, be dual security regimes in Jersey, one governed under the 1983 Law and the other governed under the new Law.

The key features of the Law are as follows:

- A simplified concept of what constitutes a security interest is established. It is possible to create a security interest in the relevant collateral, without having to specify any particular method of creation – for example, by possession of certificates of title, by control or by assignment.
- It is possible to take debenture-style security over all of a company's present and future intangible movable property.
- The Law establishes a clear set of priority rules. A secured party will enjoy more certainty as to how security will rank against competing interests.
- The Law introduces a modern security registration system. It is available online and fully automated.
- The Law significantly extends the enforcement powers of the secured party. In addition to the ability to sell the collateral, the secured party will have the right to appropriate the collateral and to take a range of ancillary actions (including the exercise of any rights of the grantor in relation to the collateral).

The Law represents a significant reform of the security laws of Jersey. It addresses many of the technical limitations that existed under the 1983 Law and will greatly enhance the ability of a secured party to take security that will meet with international standards. In particular, the ability to take security over all present and future intangible movable property and the enhanced enforcement remedies are significant improvements on the previous position.

COMPANIES (AMENDMENT NO.11) (JERSEY) LAW 2014

The *Companies (Amendment No.11) (Jersey) Law 2014* (the Amendment Law) came into force on 1 August 2014. It makes a number of significant amendments to the *Companies (Jersey) Law 1991* (the 1991 Law), in order to 'confirm and strengthen the competitiveness and standing of the Jersey company, a vehicle used both for local business and one of the key tools of the international finance industry', as stated in the report that accompanied the draft Amendment Law.

Highlights among the amendments include:

- Shareholder resolutions: new rules have been introduced to enable different thresholds to be specified in the articles of association for different types of resolutions.
- Reductions of capital: a new procedure has been introduced that enables a company to reduce its capital without the need for court sanction.
- Dividends: the nature of a dividend has been clarified, with a focus on whether the transaction reduces net assets or is required to be recognised as a liability in the accounts of the company.
- Ratification of unlawful dividends: a procedure has been introduced to enable unlawful distributions to be ratified.
- Maintenance of capital: restrictions have been removed on issuing shares at a discount and allowing the payment of commissions.



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- Ratification of breach of directors' duties: a revised procedure has been introduced that enables a breach of directors' duties to be ratified by ordinary resolution, or, if the articles of association require, a special resolution.
- Annual general meetings: private companies may dispense with AGMs unless they opt otherwise.
- Purchase of own shares: the existing buy-back provisions have been extended to include the purchase of depositary certificates.

DRAFT CHARITIES (JERSEY) LAW 201-

The draft *Charities (Jersey) Law 201-* (the Charities Law), which was approved by the States of Jersey on 18 July 2014, forms part of an initiative to develop Jersey's position as a centre of excellence for philanthropic wealth structuring.

It is anticipated that the Charities Law will be brought into force on a staged basis and that, in advance of that happening, it will be supplemented by the introduction of regulations and orders and the publication of guidance.

Trusts and foundations are the two key structures used for philanthropy in Jersey, with the *Trusts (Jersey) Law 1984* and the *Foundations (Jersey) Law 2009* both placing a strong emphasis on the importance of flexibility, allowing for the creation of structures designed to meet an individual client's requirements.

The Charities Law will complement these two pieces of legislation by introducing a new definition of 'charitable purposes' and, for those wishing to register as a Jersey charity, a charity test, together with a system of registration.

Key features of the Charities Law are that it will:

- Provide for a Jersey Charity Commissioner, whose functions will include the issuance of guidance on the operation of the Charities Law, the operation of the charity register, the administration of the charity test to be satisfied by registered charities, and the supervision of compliance by charity governors with their duties under the Charities Law.
- Establish a register of charities, with general, restricted and historic sections, providing for differing levels of public access to information.
- Define the charity test to be satisfied by structures registered under the Charities Law.

In due course, it is proposed that the Charities Law should be extended in scope, to introduce regulatory standards in relation to registered charities. ●