

# 1. A PRINCIPLED CRITIQUE



**Only applies to trusts governed by Jersey law.**

## TRUSTS (AMENDMENT NO. 4) (JERSEY) LAW 200-

**A LAW** to amend further the Trusts (Jersey) Law 1984.

*Adopted by the States*  
2006

*25th April*

*Sanctioned by Order of Her Majesty in Council [date to be inserted]*

*Registered by the Royal Court [date to be inserted]*

### Interpretation

In this Law “principal Law” means the Trusts (Jersey) Law 1984.

### 2 Article 9 replaced

For Article 9 of the principal Law there shall be substituted the following Articles –

“9 Extent of application of law of Jersey to creation, etc of a trust

(1) Subject to paragraph (3), any question concerning –

(a) the validity or interpretation of a trust;

(b) the validity or effect of any transfer or other disposition of property to a trust;

(c) the capacity of a settlor;

(d) the administration of the trust, whether the administration be conducted in Jersey or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment or removal; or

**What?  
No *lex situs*?**

**What?  
Capacity of settlor governed by chosen law.**

**Repetition – Art 8 Hague Trust Convention already states this.**

**Consistency with Art 9 HTC?**

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**Repetitive  
– restates  
Art 8  
HTC.**

(e) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment and the validity of any exercise of such powers,

shall be determined in accordance with the law of Jersey and no rule of foreign law shall affect such question.

(2) Without prejudice to the generality of paragraph (1), any question mentioned in that paragraph shall be determined without consideration of whether or not –

(a) any foreign law prohibits or does not recognise the concept of a trust; or

(b) the trust or disposition avoids or defeats rights, claims, or interests conferred by any foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests.

(3) The law of Jersey relating to –

(a) *légitime*; and

(b) conflicts of law,

shall not apply to the determination of any question mentioned in paragraph (1) unless the settlor is domiciled in Jersey.

(4) No foreign judgement with respect to a trust shall be enforceable to the extent that it is inconsistent with this Article irrespective of any applicable law relating to conflicts of law.

**What if  
property is  
located in a  
non-trust  
State?  
Problems of  
enforcement.**

**What if foreign law of  
succession confers  
forced heirship right on  
family members?**

**Sic.**

**What? So whole  
of Art 9(1) not  
applicable to  
non-Jersey  
domiciliaries?!**

**How could this possibly  
satisfy Jersey's statutory  
obligations to enforce  
foreign judgments?  
Amounts to wholesale  
review of substance.**