

2. Trusts (Amendment) Bill 2014 – Third Reading approved

Mr Braidwood to move:

That the Trusts (Amendment) Bill 2014 be read a third time and do pass.

The President: Item 2 on our Order Paper, Trusts (Amendment) Bill 2014, the Third Reading. I call on the Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

This Bill seeks to make amendments to three small areas of the Island's trust law. These three small areas will have a big impact as they will bring the Island's legislation in line to that of its nearest neighbours and competitors. The Bill will also ensure that the Isle of Man remains competitive, and Hon. Members will be relieved to know that great care has been taken to ensure that this is not at the expense of good practice or the Island's reputation.

The three areas that are considered by this Bill are: the abolition of the 'two trustee rule'; the abolition of the perpetuity period in respect of future dispositions of trusts; and the matters determined by governing law where a trust is settled subject to the law of the Isle of Man.

The two trustee rule requires two trustees to be in place in order to give valid receipt for capital moneys on the sale of settled land. In essence, this means that there must be two trustees acting when land owned by the trust is sold.

There are, Madam President, as I have pointed out on previous occasions, problems with this requirement. The first is where it would take time to find a replacement trustee, and the sale of land is time critical. Delays could prejudice the beneficiaries.

The second problem takes the form of an anomaly. There are already instances where a sole trustee can act: trust corporations, as opposed to trust service providers, can act alone. In addition to this if a trust instrument expressly permits a sole trustee to act, the legislation already permits this.

Madam President, the second area to be considered is the abolition of the perpetuity period. The perpetuity period was put in place to restrict the time for which property could be tied up in a trust. The courts developed what is known as 'the rule against perpetuities' during the 17th century. The perpetuity period in the Isle of Man is currently ordinarily 150 years – this is the maximum amount of time for which assets can be owned by the trust. Before the expiry of the perpetuity period a trust must vest, and the trust property must be distributed.

The realities of modern day trusts are that trusts will often vest sooner than the settlor envisaged. Despite this, the continued existence of a perpetuity period in the Isle of Man is perceived to be a weakness. This sees the Island at a competitive disadvantage.

No attempt has been made to quantify how much settled land exists in the Island. To quantify this would be a mammoth undertaking and, Madam President, in recognition of this, this provision has been restricted to future dispositions of property only.

The scope of matters determined by the governing law under the Trust Act 1995 is being widened. The provisions that are known as firewall provisions are being strengthened, and those able to seek protection under the provisions now include all parties to a trust. Under this amendment anyone seeking to attack a trust would have to obtain an order from the High Court in order to do so. This would not mean that the Isle of Man trusts were immune to attacks from outside the jurisdiction.

It also does not mean that trusts that have been created invalidly would be legitimised. It does, however, mean that the Island's trust law is more robust and that the High Court's powers are strengthened. Application will now need to be made to the court before a foreign judgment takes effect in the Island.

Madam President, may I remind Hon. Members that in an increasingly competitive market it is critical that our industry is given the tools to allow it to compete. This Bill with its modern aspirations will ensure that the Island competes on a level playing field.

Madam President, I beg to move the Third Reading of the Trusts (Amendment) Bill 2014.

Mr Downie: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that the Bill be read a third time and do pass. Those in favour please

say aye; against, no. The ayes have it. The ayes have it.