



## CAYMAN: A TRUSTEE'S DUTY OF DISCLOSURE

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At common law, a trustee is under a duty to account for his stewardship of the trust fund. This duty is owed to the beneficiaries and in effect means that a trustee should be prepared to disclose to the beneficiaries full particulars of the assets, trust accounts, details of investments and other trust documents. However, the right of the beneficiaries to the trust accounts and documents is not an absolute right. A trustee may reject the request for information if he is justified in doing so. The circumstances when refusal is justified are vague but the issue has been considered in the House of Lord's decision of **Schmidt v Rosewood Trust Ltd [2003] 3 All ER 76**. In that case, the House of Lords rejected the argument that a beneficiary's right to the trust documents is a proprietary right. Instead, it held that the correct approach is to regard the right to disclosure of trust documents as one aspect of the inherent jurisdiction of the court to supervise and where necessary to intervene in the administration of the trust.

Prior to the *Schmidt* case, it was doubted whether the rights to trust accounts and other documents were enjoyed by beneficiaries under a discretionary dispositive power. *Schmidt* made it clear that all beneficiaries, whatever their status (including mere objects of a discretionary power), may request accounts and disclosure of trust documents.

At common law therefore, the starting point is that a trustee has a duty to provide information to all beneficiaries but may refuse to do so if it has compelling reasons. Essentially, it is a balancing of the reasons in favour of disclosure and those against disclosure. The court will consider the interest of the beneficiary requesting the information, the purpose of the request, the interests of the other beneficiaries, and the trust as a whole. It seems to be settled law that trustees would be justified in refusing to disclose trust documents if doing so would reveal their deliberations or reasons for exercising a particular discretion. Therefore, a trustee would not normally provide the agendas and minutes of trustee's meetings, the reasons for dispositive and administrative decisions, and the letter of wishes. However, it may be required to disclose the trust deed, deeds of appointment, deeds of retirement and removal of trustees, trust accounts, legal opinions and instructions to counsel paid by the trust.

Before a trustee in the Cayman Islands proceeds to release information to a beneficiary in accordance with the common law, it would be prudent to consider the trustee's obligations under the *Confidential Relationships (Preservation) Law (2015 Revision)*. Section 3(2) of that Law prohibits a professional person from releasing confidential information (including trust

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documentation), in among other circumstances, other than in the normal course of business or with the consent, express or implied, of the relevant principal or in accordance with the law. "Principal" is defined as a person who has imparted confidential information in the course of the transaction of business of a professional nature. The identity of the principal is not always clear in a trust structure but will usually be the settlor of the trust.

It is arguable that where a trustee has a specific duty to disclose information under the Trust Deed, the duty to disclose that information to the beneficiaries may be within the normal course of business. However, in other cases, it may be less

clear and the facts should be carefully considered before the trustee acts to disclose the document or information in question to the beneficiary. If the trustee is in doubt and cannot obtain the principal's consent, then it will be well-advised to seek legal advice/and or the court's direction.

*\*At the date of this Article there has been a proposal to repeal the Confidential Relationships (Preservation) Law (2015 Revision) with the proposed changes set out in Confidential Information Disclosure Bill 2016. This Bill will have the effect, among other things, of removing criminal liability for breach of confidence and reverting to the common law and rules of equity to determine liability.*

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