

## Privy Council Decision on Production of Information by Trustees

April 17, 2003

On March 27 2003 the Judicial Committee of the Privy Council (as ultimate appellate court for the Isle of Man) delivered its eagerly awaited judgment in *Vadim Schmidt as Appellant against Rosewood Trust Limited as Respondent*. The appellant was successful, in that the Privy Council overturned the February 26 2001 decision of the Staff of Government Division of the High Court of the Isle of Man. However, the effect of the judgment is to remit the matter to the Isle of Man High Court for further consideration in the light of comments of the Privy Council contained in its judgment.

Vadim Schmidt was the son and the administrator of the estate of the object of discretionary powers under two discretionary settlements. He sought extensive disclosure of information and documents from the trustees. At first instance, the High Court had granted the application, and in so doing had indicated that while it was prepared to protect the interests of other third parties, it did not regard it as proper or possible to do anything to protect the separate interests of other beneficiaries or objects of powers under the settlements (an aspect which greatly concerned the trustees). As a part of its order, the court put in place provisions for review of some of the documentation prior to any decision as to whether it should be disclosed. Rather than placing such review in the hands of wholly independent parties, the court allowed heavy involvement on the part of the applicant's legal and accountancy advisers in a way which would have required the creation of 'Chinese walls'.

Although the appeal to the Staff of Government Division questioned the first instance approach to the framing of the order, including the two points referred to in the above paragraph, the appeal also raised a more far-reaching point on jurisdiction. This point was the question of whether a mere object of a discretionary power had a sufficient interest in the settlements to have status to bring such an application. The Staff of Government Division decided that he did not. There was also some debate as to how far any rights of disclosure could pass to the personal representative of an object of a power, but in the light of the decision of the Staff of Government Division against the applicant on the fundamental point concerning jurisdiction, there was no adjudication upon other issues arising.

In argument before both the Staff of Government Division and the Privy Council, counsel for the trustees (Mr David Brownbill, assisted at Privy Council level by Mr Michael Gibbon) sought to persuade the court that any right to disclosure could only arise as a result of a proprietary interest in trust assets. In its judgment, the Privy Council stated that:

*"a beneficiary's right to seek disclosure of trust documents, although sometimes not inappropriately described as a proprietary right, is best approached as one aspect of*

*the court's inherent jurisdiction to supervise (and where appropriate intervene in) the administration of trusts. There is therefore in their lordships' view no reason to draw any bright dividing line either between transmissible and non-transmissible (that is, discretionary) interests, or between the rights of an object of a discretionary trust and those of the object of a mere power (of a fiduciary character)."*

The Privy Council then went on to comment on the nature of the right to disclosure in the following terms.

*"No beneficiary (and least of all a discretionary object) has any entitlement as of right to disclosure of anything which can plausibly be described as a trust document. Especially when there are issues as to personal or commercial confidentiality, the court may have to balance the competing interests of different beneficiaries, the trustees themselves, and third parties. Disclosure may have to be limited and safeguards may have to be put in place. Evaluation of the claims of a beneficiary (and especially of a discretionary object) may be an important part of the balancing exercise which the court has to perform on the materials placed before it. In many cases the court may have no difficulty in concluding that an applicant with no more than a theoretical possibility of benefit ought not to be granted any relief."*

This decision significantly impacts on the decision-making process of trustees. Previously, there would have been many situations in which trustees might well have felt compelled to make disclosure to beneficiaries as of right. However, as a consequence of the decision it appears that trustees will need to approach this area with considerably more care, and quite possibly refer to the court for guidance more often.

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