

SHOULD I STAY OR SHOULD I GO: TYNWALD RETIRES A TRUSTEE DILEMMA

by Andrew Newton and Alicia Cain

Fourteen years ago the decision of the Honourable Justice Evans-Lombe on a preliminary issue in the case of *Adams Co. Int. Trustees Ltd v Theodore Goddard* [2000] W.T.L.R. 349 (Ch D) highlighted a particular nuance of English trust law: the status of the trust corporation as a trustee. The Trusts (Amendment) Bill 2014 (the **Trusts Bill**), which now awaits Royal Assent, addresses the role and importance of the trust corporation in Manx trust law, providing a change in the law that will assist trust practitioners in the future administration and transfer of trusts to and from the Isle of Man.

Adams Co. involved a professional negligence suit brought against the English law firm Theodore Goddard (now Addleshaw Goddard) over purported negligence in its retirement of two trustees to facilitate the transfer of a trust from England to the Channel Islands. The salient point in the decision was that in replacing the two individual trustees with a company which was not a trust corporation, the requirements of the English Trustee Act 1925 (the **English Trustee Act**) had not been complied with and therefore the appointment had not been effective to discharge both of the trustees. In essence, a trustee who purported to retire remained as trustee and would still be personally liable for breaches of trustees' duties. This might also mean that a trust has not divested itself of an unwanted residency status leaving on-going tax and regulatory implications.

The Isle of Man Trustee Act 1961 (the **IOM Trustee Act**) is very similar to the English Trustee Act, and Manx trusts are currently subject to similar restrictions as those delineated in *Adams Co.* Manx trusts cannot have more than four trustees at one time, and must have at a minimum two individual trustees or a trust corporation (unless a settlor creating a trust has decided otherwise). A trust corporation is a corporate, meeting certain

conditions prescribed by the IOM Trustee Act, including a requirement to hold an appropriate licence issued by the Isle of Man Financial Supervision Commission (the **FSC**). It does not describe just any company acting as a trustee, as highlighted so explicitly in *Adams Co.*

Traditionally the reason why two individual trustees were required by statute law was to guard against the misuse and misappropriation of trust assets. Although trust corporations can act alone as a trustee, they are intended to be monitored by their internal corporate governance to provide a check against abuse. They are also subject to the supervision and regulation of the FSC. However, the reason why trust corporations are afforded special status over companies acting as trustees has become less clear; and further to this, the sentiment of the trust industry is that the statutory requirement for two individual trustees has a prohibitive role in administering trusts. With these arguments in mind, and in the knowledge that there is a well regulated and professional trust industry in the Island, Tynwald has included in the Trusts Bill the abolition of the requirement to have more than one trustee, whether corporate or individual.

The Trusts Bill also demonstrates further progressive developments in Manx trust law, and in particular the abolition of the rule against perpetuities.

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