

Jersey really does permit sham trusts

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I'm grateful for having had an article in the [Jersey & Guernsey Law Review](#) from 2010 drawn to my attention. By Filippo Nosedà, it discusses The Foundations (Jersey) Law 2009 under the title 'A Civilian Perspective: Not so plain vanilla and possibly a tad wacky'.

It's not exactly complimentary about the law but perhaps the most damning paragraph is this:

From a civilian perspective, the policy statement that a [Jersey] foundation may accord more control to the creator of the structure than a trust appears quite bewildering, given the amount of powers that a settlor of an ordinary Jersey trust may retain for himself under art 9A of the Trusts (Jersey) Law 1984 (2007 revision) without turning it into a sham or nominee ship-

“Powers reserved by settlor

9A.(1) The reservation or grant by a settlor of a trust of ... any of the powers mentioned in paragraph (2), shall not affect the validity of the trust nor delay the trust taking effect.

(2) The powers are-

- ***to revoke, vary or amend the terms of a trust or any trusts or powers arising wholly or partly under it;***
- ***to advance, appoint, pay or apply income or capital of the trust property or to give directions for the making of such advancement, appointment, payment or application;***
- ***to act as, or give binding directions as to the appointment or removal of, a director or officer of any corporation wholly or partly owned by the trust;***
- ***to give binding directions to the trustee in connection with the purchase,***

retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property;

- ***to appoint or remove any trustee, enforcer, protector or beneficiary;***
- ***to appoint or remove an investment manager or investment adviser;***
- ***to change the proper law of the trust;***
- ***to restrict the exercise of any powers or discretions of a trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust."***

Even without any prior knowledge of foundation law principles, it is difficult to imagine a wealth management structure under which the founder may retain more powers than those described under art 9A TJL without exposing such a structure to an attack based on sham.

I have argued since 2006 that the powers referred to were deliberately designed to create sham trusts. It's good to see a lawyer agreeing that such a possibility seems to be the case and the law helps it.

So much for the 'well regulated' offshore location that does not want anything to do with dubious activity.