

# The Wigwam Trust

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Sir Michael Birt, Jurats Christensen, Dulake
<b>Judgment Date:</b>	02 December 2022
<b>Neutral Citation:</b>	[2022] JRC 263
<b>Court:</b>	Royal Court

**vLex Document Id:** VLEX-919041406

**Link:** <https://justis.vlex.com/vid/the-wigwam-trust-919041406>

## Text

In the Matter of the Wigwam Trust  
And in the Matter of the Representation of HSBC Trustee (CI) Limited  
And in the Matter of Article 51 of the Trust (Jersey) Law (As Amended)

[2022] JRC 263

Before:

Sir Michael Birt, Commissioner, and Jurats Christensen and Dulake

ROYAL COURT

(Samedi)

Trust — reasons for blessing the decision of the trustee

## Authorities

*In the matter of the Wigwam Trust* [\[2020\] JRC 228](#).

*Kan v HSBC International Trustee Limited* [\[2015\] \(1\) JLR Note 31](#).

*Kan v HSBC International Trustee Limited* [\[2015\] JCA 109](#).

**Advocate D. Evans for the Representor.**

**Advocate N. M. Sanders for Mrs X..**

**Advocate B. J. Lincoln for the Minor and Unborn Beneficiaries.**

**THE COMMISSIONER:**

- 1 On 24 October 2022, the Court blessed the decision of HSBC Trustee (CI) Limited (“the Trustee”) as trustee to distribute all the assets of the trust in question in a specified manner. We now give the reasons for our decision.

## **Background**

- 2 The Trustee is the trustee of a trust which, for the purposes of this judgment, is called the Wigwam Trust and to which we shall refer simply as ‘the Trust’. There has been a previous judgment in relation to the Trust, namely *In the matter of the Wigwam Trust* [\[2020\] JRC 228](#) (“the 2020 judgment”). The 2020 judgment sets out the factual background in considerable detail and reference may be made to that judgment for a fuller description of the background than we think necessary to give in this judgment. For ease of reference, we propose to use similar terms for the purposes of anonymisation as are used in the 2020 judgment.
- 3 The Trust was established on 14 June 1995 by declaration of trust by the original trustee. The assets of the Trust are derived principally from the successful business activities carried out by Mr Z and others during a 30 year period and thereafter a successful investment strategy following sale of a business.
- 4 The Trust is a discretionary trust governed by the law of Jersey. The beneficiaries are Mr Z, his wife Mrs Z, their children and grandchildren (of whom there are at present 8 adults (“the adult beneficiaries”) and 2 minors), their remoter issue, 4 philanthropic/charitable entities (including A Limited to which we shall refer shortly) and some dormant corporate entities.
- 5 A Limited is a company incorporated in the Cayman Islands but administered in Jersey. It is a grant making entity established in order to promote and support such charitable, benevolent or philanthropic objects in any part of the world as it shall consider to be for the benefit of the public in the part of the world concerned. A Limited is part of a wider group of philanthropic organisations based in various countries known as the E Foundation, which carries out the Z family's philanthropic and charitable activities.

- 6 The activities of the E Foundation and A Limited cover a broad range of charitable and philanthropic activities in a number of areas. The E Foundation has made grants of close to US\$2 billion over the last 7 years.

## The proposal

- 7 The Trust is one of a number of trusts which hold the wealth of the Z family ("the Family Trusts"). The family, including all the adult beneficiaries, is very supportive of philanthropic activities and the evidence satisfies us that it has long been the intention that an appropriate portion of the assets in the Family Trusts (being roughly one third of the current value of the Family Trusts) should be used for the benefit of the family including future generations and the balance of the assets in the Family Trusts (being roughly two thirds of the current value of the Family Trusts) should be made available for philanthropic purposes.
- 8 At present, the funds intended both for the family and for philanthropic purposes are held in the Family Trusts. Furthermore, some of the Family Trusts have provisions (for example, perpetuity periods) which are not felt to be satisfactory in the long term. Mr Z has written to the Trustee and to the Trustees of the other Family Trusts requesting various distributions with a view to simplifying matters by separating the assets intended for the benefit of the family from those intended for philanthropic purposes. A Limited has also written to request a distribution.
- 9 The overall proposal requested by Mr Z is explained in detail in his letter of request and in the evidence before us and we would summarise the proposal in very simple terms as follows:
- (i) Mr Z and Mrs Z would each establish a new trust (to be known as a Reserve Trust) for the benefit of their descendants.
  - (ii) The Trust would make a distribution of US\$750m to Mr Z who would intend to settle it on one of the Reserve Trusts.
  - (iii) One of the Family Trusts established under the law of the Cayman Islands ("the M Trust") would make a similar distribution to Mrs Z who would in turn intend to settle that sum on the second Reserve Trust.
  - (iv) On their deaths, Mr and Mrs Z intend to leave their personal assets, which are substantial, to certain trusts known as the Testamentary Trusts. The beneficiaries of the Testamentary Trusts would also be the descendants of Mr and Mrs Z.
  - (v) In summary, the assets available for Mr and Mrs Z's descendants including future generations of the family would be the assets in the Reserve Trusts and the Testamentary Trusts comprising the two distributions of \$750m and the personal assets of Mr and Mrs Z following their deaths.

(vi) After the above distribution out of the Trust, the balance of the assets in the Trust would be distributed to A Limited and the Trust would then terminate as there would be no assets left in it.

- 10 Following these distributions and other distributions from other Family Trusts, the result would be that the family wealth comprising roughly one third of the current value of the Family Trusts would be held in the Reserve Trusts and the Testamentary Trusts. The remaining assets in the Family Trusts (being roughly two thirds of the current value of the Family Trusts) would be held for philanthropic purposes.
- 11 The Trustee has decided that, subject to this Court's approval, it will make a distribution of US\$750m to Mr Z (the First Proposed Distribution) and thereafter will distribute the remaining assets of the Trust to A Limited (the Second Proposed Distribution) provided that:
- (i) the First Proposed Distribution has been approved by this Court and thereafter made to Mr Z;
  - (ii) a separate distribution of \$750m is made to Mrs Z from the M Trust;
  - (iii) the Trustee has satisfied itself that Mr Z and Mrs Z have made appropriate provision for their descendants and the Trustee has determined that appropriate provision would be so made if Mr Z and Mrs Z transfer the assets that they received from the First Proposed Distribution and the proposed distribution from the M Trust to the Reserve Trusts; and
  - (iv) The Trustee is satisfied that there has been no material change in the circumstances of the beneficiaries between the First Proposed Distribution being made and the making of the Second Proposed Distribution.
- 12 The test for approving a momentous decision is well established and was helpfully summarised by Bompas JA on behalf of the Court of Appeal in *Kan v HSBC International Trustee Limited* [2015] (1) JLR N31, [\[2015\] JCA 109](#), in the following terms:

***“14. Where a trustee has made a momentous decision, that is a decision of real importance for the trust, and seeks the court's approval for the decision, the legal test to be applied by the court is well established in this jurisdiction. As explained in Re S Settlement [2001] JLR N37, the court must satisfy itself (i) first, that the trustee's decision has been formed in good faith (ii) second, that the decision is one which a reasonable trustee properly instructed could have reached, and (iii) third, that the decision has not been vitiated by any actual or potential conflict of interest. A similar approach is taken in England: see Public Trustee v Cooper [2001] WTLR 901.”***

- 13 There is no suggestion that the Trustee's decision has not been formed in good faith or that it is subject to any actual or potential conflict of interest. The only matter for the Court therefore to consider is the second requirement, namely that the decision is one which a reasonable trustee properly instructed could have reached.
- 14 Having had the benefit of considering the detailed evidence before us, we had no hesitation in giving our approval to the Trustee's decision to make the First Proposed Distribution and the Second Proposed Distribution on the basis described above.

15 We would summarise our reasons as follows:

- (i) Given the fact that the proposed distributions would result in the distribution of all the assets of Trust, and that the sums involved are very substantial, we agree that this a momentous decision and that it is reasonable for the Trustee to seek the Court's blessing.
- (ii) We have read the minutes of the meeting of the Trustee resolving to make the proposed distributions. They are extremely thorough and we are satisfied that the Trustee has given the matter very careful consideration and considered all the relevant factors.
- (iii) The Trustee has obtained tax advice from the various relevant jurisdictions and has taken that into account.
- (iv) All the adult beneficiaries agree with the proposed distributions. Indeed, Mrs X, one of the children of Mr and Mrs Z, not only instructed Advocate Sanders to attend in order to support the Trustee's application, but, together with Mr Z and one of the other adult beneficiaries, attended the hearing in person.
- (v) Advocate Lincoln, who was appointed to represent the interests of the minor and unborn beneficiaries, has explained in considerable detail in a letter to the Court why, on their behalf, he does not oppose the proposed distributions even though it will result in the termination of the Trust. Thus, he notes that those whom he represents will all be beneficiaries of the Reserve Trusts and the Testamentary Trusts and that the amount in those trusts will be more than adequate to provide substantial financial benefit for minor and future beneficiaries should they be thought appropriate. Furthermore, the Reserve Trusts and the Testamentary Trusts will be in a more satisfactory form in certain respects (eg the relevant perpetuity period) and a further outcome would be more favourable tax treatment for future beneficiaries who reside in one particular jurisdiction. He also considered that payments for philanthropic purposes could be said to be for the benefit for those he represented in accordance with the observations of the Court in the 2020 judgment.
- (vi) The protector has confirmed that it is minded to consent to the proposed distributions.

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(vii) We can readily understand the desirability of separating the assets intended for the family from those intended for philanthropic purposes and consider the Trustee's opinion, that the amounts which will remain in the Reserve Trusts and the Testamentary Trusts will be more than adequate to provide adequate financial benefit for members of this family, to be reasonable.

- 16 In summary, we were satisfied that this is an entirely reasonable decision on the part of the Trustee and accordingly gave it our blessing.
- 17 We cannot leave this judgment without mentioning two other matters briefly. The first is to commend Mr and Mrs Z for the approach to philanthropy which they are encouraging in their children and grandchildren. As each beneficiary attains the age of 25, he or she is invited to join the board of trustees of the E Foundation with a view to participating in its philanthropic activities. Furthermore, it is the view of Mr and Mrs Z that it can be damaging for individuals to have access to too much wealth, particularly at an early stage and distributions have therefore been extremely limited. The assets in the Family Trusts are intended to provide for future generations.
- 18 Secondly, we have reminded ourselves of what the Court said in the 2020 judgment at [30]–[42] about the possibility of distributions from trusts for charitable purposes being for the benefit of minor and unborn beneficiaries. We respectfully agree with the Court's conclusion in that judgment that such distributions are capable of being for the benefit of such beneficiaries for the reasons which the Court gave.