

THE TRUSTS (GUERNSEY) LAW, 1989

(as amended)

THE STATES, in pursuance of their Resolution of the 17th day of March, 1988, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Guernsey.

PART I

PRELIMINARY

Existence of a trust.

1. A trust exists if a person (a "trustee") holds or has vested in him, or is deemed to hold or have vested in him, property which does not form, or which has ceased to form, part of his own estate -

(a) for the benefit of another person (a "beneficiary"), whether or not yet ascertained or in existence;

(b) for any purpose which is not for the benefit only of the trustee.

Validity of trusts.

2. Subject to the provisions of this Law, a trust is valid and enforceable in Guernsey.

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Proper law of trust.

3. Subject to sections 46 and 52, the proper law of a trust is-

(a) the law chosen by the settlor to be the proper law, the choice being expressed or implied in the terms of the trust; or

(b) if no law is so chosen, the law with which the trust has its closest connection at the time of its creation.

Jurisdiction of court.

4. The court has jurisdiction in respect of -

(a) a Guernsey trust;

(b) a foreign trust -

(i) a trustee of which is resident in Guernsey; or

(ii) any property of which is situated or administered in Guernsey;

(iii) the terms of which provide that the court is to have jurisdiction.

PART II

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PROVISIONS APPLICABLE ONLY TO A GUERNSEY TRUST

Application of Part II

5. This Part of this Law applies only to a Guernsey trust.

Creation, validity and duration of

Guernsey trusts

Creation of a trust.

6.(1) A trust other than a unit trust may be created by oral declaration, by an instrument in writing (including a will or codicil), by conduct, or in any other manner whatsoever.

(2) A unit trust may be created only by an instrument in writing.

(3) No technical expressions are needed for the creation of a trust.

Property which may be held on trust.

7.(1) Any property may be held on trust.

(2) A trustee may accept property to be held on trust from any person.

Beneficiaries of a trust.

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8.(1) A beneficiary shall be -

- (a) identifiable by name; or
- (b) ascertainable by reference to -
 - (i) a class; or

- (ii) a relationship to another person, whether or not living at the time of the creation of the trust or at the time by reference to which, under the terms of the trust, members of a class are to be determined.

(2) The terms of a trust may provide for the addition of a person as beneficiary, or for the exclusion from benefit of a beneficiary.

(3) The terms of a trust may impose an obligation upon a beneficiary as a condition of benefit.

(4) A settlor or trustee of a trust may also be a beneficiary thereof.

Disclaimer of beneficial interest.

9.(1) Subject to the terms of the trust, a beneficiary may disclaim his interest or any part of it,

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whether or not he has received any benefit from it.

(2) A disclaimer shall be in writing and, subject to the terms of the trust -

- (a) may be temporary; and
- (b) may, if the disclaimer so provides, be revoked in the manner and circumstances specified thereby.

(3) A disclaimer is not effective until received by a trustee.

Nature of beneficial interest.

10. The interest of a beneficiary is personal property and, subject to the terms of the trust, may be dealt with or charged accordingly.

Enforceability of trust.

11.(1) Subject to subsections (2) and (3), a trust is valid and enforceable in accordance with its terms.

(2) A trust is invalid and unenforceable to the extent that-

- (a) it purports to do anything contrary to the law of Guernsey;

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- (b) it confers or imposes any right or function the exercise or discharge of which would be contrary to the law of Guernsey;

- (c) it has no beneficiary identifiable or ascertainable under section 8(1), unless it is created for a charitable purpose; or

- (d) the court declares that -

- (i) it was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty;

- (ii) it is immoral or contrary to public policy;

- (iii) its terms are so uncertain that its performance is rendered impossible; or

- (iv) the settlor was, at the time of its creation, incapable of creating such a trust.

(3) Where some of the terms of a trust are invalid but others are not-

- (a) if the terms cannot be separated, the trust is invalid;

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- (b) if the terms can be separated, the court may declare that the trust is valid as to the terms which are valid.

(4) Where a trust is partially invalid, the court may declare what property is and what

property is not to be held subject to the trust.

(5) Property as to which a trust is invalid shall, subject to any order of the court, be held by the trustees in trust for the settlor absolutely or, if he is dead, for his personal representative.

(6) An application to the court under this section may be made by any person mentioned in section 63(2).

Validity of trusts and dispositions thereto.

11A.(1) Where a person (the "settlor") creates a Guernsey trust, or during his lifetime makes any transfer or disposition of property or any interest therein to a Guernsey trust -

(a) neither the trust nor the transfer or disposition is invalidated by any foreign rule of forced heirship or by reason of the fact that the concept of trusts is unknown to or not admitted by the law of a jurisdiction other than Guernsey;

(b) the settlor shall be deemed to have had capacity to create the trust or to make the transfer or disposition if he had capacity to do so under -

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(i) Guernsey law;

(ii) the law of his domicile or nationality; or

(iii) the proper law of the transfer or disposition.

(2) In subsection (1) "foreign rule of forced heirship" means any rule of law of a jurisdiction other than Guernsey which, in order to protect or give effect to the rights of any person or class of persons to inherit, succeed to or share in the settlor's property or any interest therein on his death, purports to remove or restrict the settlor's right to encumber, alienate or otherwise deal in his property or any interest therein during his life-time and includes any judicial or administrative order of a jurisdiction other than Guernsey intended to enforce or implement any such rule.

(3) This section applies -

(a) whenever the trust, transfer or disposition in question arose or was made;

(b) notwithstanding any other provision of this Law.

Duration of trust.

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12. A trust shall terminate on the expiration of 100 years from the date of its creation, unless-

(a) it is a trust for a charitable purpose; or

(b) it is terminated sooner.

Appointment, retirement and discharge of trustees

Number of trustees.

13.(1) The number of trustees of a trust shall not be less than two, unless -

(a) only one trustee was originally appointed;

(b) a corporate trustee resident in Guernsey is acting; or

(c) the terms of the trust provide otherwise.

(2) A trust shall not fail on the ground that there is no trustee or less than the number required by subsection (1).

Appointment of new or additional trustees.

14.(1) Where the terms of a trust contain no provision for the appointment of a new or

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additional trustee, such a trustee may be appointed by -

(a) the existing trustee;

(b) the last remaining trustee;

(c) the personal representative or liquidator of the last remaining trustee; or

(d) the court.

(2) Subject to the terms of the trust, a trustee appointed under this section has the same functions, and may act in all respects, as if he had been originally appointed a trustee.

(3) A trustee with power to appoint a new or additional trustee who fails to exercise the power may be removed from office by the court.

(4) On the appointment of a new or additional trustee, anything necessary to vest the trust property in him jointly with his co-trustees (if any) shall be done.

No renunciation after acceptance.

15.(1) A person appointed as trustee need not accept the appointment, but he shall be deemed to have done so if he knowingly intermeddles with the trust or its affairs.

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(2) A person appointed as trustee may, before acceptance (actual or deemed) -

(a) disclaim the appointment by notice in writing to the settlor or to the other trustees; or

(b) if the settlor is dead or cannot be found, and there are no other trustees, apply to the court for relief from the appointment, whereupon the court may make such order as it thinks fit;

but if the person appointed does not act under paragraph (a) or (b) within a reasonable period of time of becoming aware of the appointment, he shall be deemed to have accepted it.

Resignation or removal of trustees.

16.(1) A trustee other than a sole trustee may resign his office by delivering a written notice of resignation to his co-trustees.

(2) Subject to subsection (3), a resignation takes effect upon delivery of the notice.

(3) A resignation -

(a) given to facilitate a breach of trust; or

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(b) which would result in there being no trustee or less than the number required by section 13(1),

has no effect.

(4) A trustee ceases to be a trustee immediately upon -

(a) his removal from office by the court;

(b) his resignation taking effect; or

(c) the coming into effect of, or the exercise of a power under, a provision in the terms of the trust under or by which he is removed from, or otherwise ceases to hold, his office.

(5) A person who ceases to be a trustee under this section shall do everything necessary to vest the trust property in the new or continuing trustees.

(6) Subsections (1) and (2) are subject to the terms of the trust.

Position of continuing trustees on reduction in number of trustees.

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17. Subject to the terms of the trust, where the number of trustees falls below the number required by section 13(1) -

(a) the necessary number of additional trustees shall be appointed; and

(b) until the required number is reached, the existing trustee shall act only to preserve the trust property.

Duties of trustees

General fiduciary duties.

18.(1) A trustee shall, in the exercise of his functions, observe the utmost good faith and act en bon père de famille.

(2) A trustee shall execute and administer the trust, and shall exercise his functions thereunder, in accordance with the provisions of this Law and, subject thereto -

(a) in accordance with the terms of the trust;

(b) only in the interests of the beneficiaries or charitable purpose, as the case may be.

Duty to get in and preserve trust property.

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19. A trustee shall, subject to the terms of the trust and to the provisions of this Law -

(a) ensure that the trust property is held by or vested in him or is otherwise under his control; and

(b) preserve and enhance, so far as is reasonable, the value of the trust property.

Duty not to profit from trusteeship.

20. A trustee shall not -

(a) derive, directly or indirectly, any profit from his trusteeship;

(b) cause or permit any other person to so derive any such profit; or

(c) on his own account enter into any transaction with his co-trustees, or relating to the trust property, which may result in any such profit,

except -

(i) with the approval of the court;

(ii) as permitted by the provisions of this Law; or

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(iii) as expressly provided by the terms of the trust.

Duty to keep accounts.

21. A trustee shall keep accurate accounts and records of his trusteeship.

Duty to give information.

22.(1) Subject to the terms of the trust, a trustee shall, at all reasonable times, at the written request of any beneficiary (including any charity named in the trust) or of the settlor, provide full and accurate information as to the state and amount of the trust property.

(2) In its application to a trust arising from a document or disposition executed or taking effect before the commencement of this Law, subsection (1) shall only operate for the benefit of a beneficiary whose interest in the trust property becomes vested before the commencement of this Law, but this subsection shall not prejudice any rights that the beneficiary may have under the terms of the trust.

Duty to keep trust property separate.

23. A trustee shall keep trust property separate from his own property and separately identifiable from any other property of which he is trustee.

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Duty of co-trustees to act together.

24.(1) All the trustees of a trust shall, subject to the terms of the trust, join in the execution of the trust.

(2) Subject to subsection (3), no function conferred on trustees shall be exercised unless all the trustees agree on its exercise.

(3) The terms of a trust may empower the trustees to act by a majority.

(4) A trustee who dissents from a decision of the majority may require his dissent to be recorded in writing.

Impartiality of trustees.

25.(1) Where a trust has -

(a) more than one beneficiary or charitable purpose; or

(b) a beneficiary and a charitable purpose,

the trustees, subject to the terms of the trust and to subsection (2), shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

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(2) Subsection (1) does not prejudice the exercise of a discretion conferred upon a trustee by the terms of the trust.

General powers of trustees

Powers of trustees in relation to property.

26. Subject to the provisions of this Law and to the terms of the trust, a trustee has, in relation to the trust property, all the powers of a beneficial owner.

Power to sue.

27. A trustee may sue and be sued as trustee.

Consultation by trustees.

28.(1) A trustee may consult professional persons in relation to the affairs of the trust.

(2) The terms of a trust may require a trustee to consult or obtain the consent of another person before exercising any function.

(3) A person shall not, by virtue of being so consulted or giving or refusing such consent, be deemed to be a trustee.

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Delegation by trustees.

29.(1) A trustee shall not delegate his functions unless permitted to do so by the provisions of this Law or by the terms of the trust.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee may -

(a) delegate the management of trust property to, and appoint, investment managers whom the trustee reasonably considers to be competent and qualified to manage the investment of the trust property;

(b) appoint professional persons to act in relation to the affairs of the trust, or to hold any trust property; and

(c) authorise any such manager or person to retain any commission or other payment usually payable for services of the description rendered.

(3) A trustee who, without any breach on his part of section 18(1), makes or permits the continuation of a delegation or appointment under subsection (2), is not liable for any loss to the trust arising from the delegation or appointment.

Powers of attorney

29A.(1) Unless the terms of the trust provide to the contrary, a trustee may, by power of

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attorney, delegate for a period not exceeding twelve months the performance of any trust or function vested in him (alone or jointly) as trustee.

(2) A trustee who delegates a trust or function by a power of attorney under this section is referred in this section as the "donor"; and the person to whom the trust or function is delegated is referred to as the "the donee".

(3) The persons who may be donees include corporate trustees but not (unless a corporate trustee) the only other co-trustee of the donor.

(4) A power of attorney under this section shall be in writing and -

(a) shall, if the donor is an individual, be signed by him, or by his direction and in his

presence, in the presence of a witness, who shall also sign; or
(b) shall, if the donor is a corporate trustee, be sealed by the donor in accordance with its articles of association.

(5) Within seven days of giving a power of attorney under this section, the donor shall give written notice thereof to -

(a) every other person who, under the terms of the trust has power (alone or jointly) to
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appoint a new trustee; and

(b) every co-trustee.

(6) The notice under subsection (5) shall state -

(a) the date of commencement and duration of the power of attorney;

(b) the name and address of the donee;

(c) the reason for giving the power of attorney; and

(d) the trust or function delegated.

(7) Failure to comply with subsection (5) or (6) shall not of itself, in favour of a person dealing with the donee, invalidate anything done by the donee.

(8) The donor is bound by and liable for all acts or defaults of the donee done or purportedly done under the power of attorney as if they were his own acts or defaults.

(9) For the purpose of performing the trust or function delegated, the donee may exercise any function conferred on the donor as a trustee by law or by the terms of the trust, other than the
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power to give powers of attorney under this section.

Remuneration and expenses of trustees.

30.(1) Unless authorised by -

(a) the terms of the trust;

(b) the consent in writing of every beneficiary; or

(c) an order of the court,

a trustee is not entitled to remuneration for his services.

(2) A trustee may pay from the trust property, and may reimburse himself from the trust property for, all expenses and liabilities properly incurred in connection with the trust.

Power to appropriate.

31. Subject to the terms of the trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such manner and in accordance with such valuation as he thinks fit.

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Corporate trustee may act by resolution.

32. A corporate trustee may -

(a) act in connection with a trust by a resolution of the corporate trustee or of its board of directors or other governing body; or

(b) by such a resolution appoint an officer or employee to act on its behalf in connection with the trust.

Non-disclosure of deliberations.

33. A trustee is not (subject to the terms of the trust and to any order of the court) obliged to disclose documents which reveal -

(a) his deliberations as to how he should exercise his functions as trustee;

(b) the reasons for any decision made in the exercise of those functions;

(c) any material upon which such a decision was or might have been based.

Liability for breach of trust

Liability for breach of trust.

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34.(1) Subject to the provisions of this Law and to the terms of the trust, a trustee who commits or concurs in a breach of trust is liable for -

(a) any loss or depreciation in value of the trust property resulting from the breach; and
(b) any profit which would have accrued to the trust had there been no breach.

(2) A trustee may not set off a profit accruing from one breach of trust against a loss or depreciation in value resulting from another.

(3) A trustee is not liable for a breach of trust committed by another person prior to his appointment.

(4) A trustee is not liable for a breach of trust committed by a co-trustee unless -

(a) he becomes or ought to have become aware of the breach, or of the intention of his cotrustee to commit the breach; and

(b) he actively conceals the breach or intention, or fails within a reasonable time to take proper steps to protect or restore the trust property or to prevent the breach.

(5) Where trustees are liable for a breach of trust, they are liable jointly and severally.

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(6) A trustee who becomes aware of a breach of trust to which subsection (3) applies shall take all reasonable steps to have the breach remedied.

(7) Nothing in the terms of a trust shall relieve a trustee of liability for a breach of trust arising from his own fraud or wilful misconduct or gross negligence.

(8) This section is in addition to section 70.

Beneficiary may relieve or indemnify trustee.

35.(1) A beneficiary may -

(a) relieve a trustee of liability to him for a breach of trust;
(b) indemnify a trustee against liability for a breach of trust.

(2) Subsection (1) does not apply if the beneficiary -

(a) is a minor or a person under legal disability;
(b) does not have full knowledge of all material facts; or

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(c) is improperly induced by the trustee to act under subsection (1).

Trustees of more than one trust.

36.(1) A trustee is not, in the absence of fraud, affected by notice of any instrument, matter, fact or thing in relation to a trust if he obtained notice of it by reason of his acting or having acted for the purposes of another trust.

(2) A trustee of a trust shall disclose to his co-trustees any interest which he has as trustee of another trust if any transaction in relation to the first mentioned trust is to be entered into with the trustees of the other trust.

Dealings by trustees with third parties.

37.(1) Where, in a transaction or matter affecting a trust, a trustee informs a third party that he is acting as trustee, a claim by the third party in respect of the transaction or matter shall (subject to subsection (3)) extend only to the trust property.

(2) If the trustee fails to inform the third party that he is acting as trustee and the third party is otherwise unaware of the fact -

(a) he incurs personal liability to the third party in respect of the transaction or matter; and
(b) he has a right of indemnity against the trust property in respect of his personal liability,

unless he acted in breach of trust.

(3) Nothing in this section prejudices a trustee's liability for breach of trust or any claim for breach of warranty of authority.

(4) In this section "third party" means a person other than a settlor, trustee or beneficiary of the trust.

Constructive trusts.

38.(1) A person who derives a profit from a breach of trust, or who obtains property in breach of trust, shall be deemed to be a trustee of the profit or property, unless he derives or obtains it in good faith without notice of the breach of trust.

(2) A person who becomes a trustee by virtue of subsection (1) shall deliver up the profit or property to the person properly entitled to it.

(3) This section does not exclude any other circumstances in which a constructive trust may arise.

Position of outgoing trustees.

39.(1) When a trustee resigns or is removed -

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(a) he shall, subject to paragraph (b), duly surrender all trust property held by or vested in him or otherwise under his control;

(b) he may require that he be provided with reasonable security for liabilities (existing, future, contingent or otherwise) before surrendering the trust property.

(2) A trustee who complies with subsection (1) is relieved of liability to any beneficiary, trustee or other person interested under the trust for any act or omission in relation to the trust property or to his functions as a trustee, except any liability -

(a) arising from a breach of trust to which the trustee (or, in the case of a corporate trustee, any of its officers or employees) was a party or was privy;

(b) in respect of an action to recover from the trustee (or, in the case of a corporate trustee, any of its officers or employees) trust property or the proceeds thereof in his possession.

*Protective trusts, class interests
and certain powers*

Protective trusts.

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40. The terms of a trust may make the interest of a beneficiary-

(a) liable to termination;

(b) subject to a restriction on alienation or dealing; or

(c) subject to diminution or termination in the event of the beneficiary becoming bankrupt or any of his property becoming liable to arrest, saisie, or similar process of law.

Class interests.

41. Where a trust is in favour of a class of persons then, subject to the terms of the trust -

(a) the class closes when it is no longer possible for any other person to become a member of the class;

(b) a woman over the age of 60 years shall be deemed to be no longer capable of bearing a child; and

(c) where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and, subject to section 12, retained until a member of the class exists or the class closes.

Power of variation.

42.(1) The terms of a trust may be varied in any manner provided by those terms.

(2) This section is in addition to sections 52 to 56.

Power of accumulation and advancement.

43.(1) Subject to section 12, the terms of a trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

(2) Subject to subsection (3), income which is not accumulated shall be distributed.

(3) Subject to the terms of the trust and to any prior interest or charge affecting the trust property, the trustees may-

(a) where a beneficiary is a minor (whether or not his interest is vested) -

(i) accumulate the income attributable to the beneficiary's interest pending attainment of full age;

(ii) apply the income or part of it to or for the maintenance, education or other benefit of the beneficiary;

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(b) advance or apply for the benefit of a beneficiary part of the trust property prior to the happening of the event upon which the beneficiary is to become absolutely entitled thereto.

(4) Subject to the terms of the trust -

(a) any trust property advanced or applied under this section shall be brought into account in determining the beneficiary's share in the trust property; and

(b) no part of the trust property so advanced or applied shall exceed the beneficiary's vested, presumptive or contingent share in the trust property.

(5) The receipt of a guardian of a beneficiary who is a minor or a person under legal disability is a sufficient discharge to the trustees for a payment made to or for the benefit of the beneficiary.

Power of appointment.

44. The terms of a trust may confer on the settlor, trustees or any other person power to appoint or assign all or any of the trust property or any interest in it to, or for the benefit of, any person (whether or not a beneficiary of the trust immediately prior to the appointment or assignment).

Power of revocation.

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45.(1) A trust and any exercise of a power under a trust may be expressed to be capable of -

(a) revocation, in whole or in part; or

(b) variation.

(2) No revocation or variation prejudices anything lawfully done by a trustee in relation to the trust before he receives notice of the revocation or variation.

(3) Subject to the terms of the trust, if the trust is revoked in whole or in part, the trustees shall hold the trust property, or that part of the trust property which is the subject of the revocation, as the case may be, in trust for the settlor absolutely or, if he is dead, for his personal representative.

Change of proper law.

46.(1) The terms of a trust may provide for the proper law of the trust to be changed from the law of Guernsey to the law of another jurisdiction.

(2) Subsection (1) is without prejudice to the powers of the court under section 52.

Failure, lapse and termination of trusts

Failure or lapse of interest.

47. Subject to the terms of the trust and to any order of the court, where -

- (a) an interest lapses;
- (b) a trust terminates;
- (c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust; or
- (d) property is vested in a person otherwise than for his sole benefit, but the trusts upon which he is to hold the property are not declared or communicated to him, the interest or property concerned shall be held by the trustees in trust for the settlor absolutely or, if he is dead, for his personal representative.

Termination of trusts.

48.(1) On the termination of a trust, the trust property shall, subject to subsection (2), be distributed by the trustees within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.

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- (2) The trustees may however require that they be provided with reasonable security for liabilities (existing, future, contingent or otherwise) before so distributing the trust property.
- (3) Without prejudice to the powers of the court under subsection (4), and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained, and none is a person under legal disability or minor, they may require the trustees to terminate the trust and distribute the trust property among them.
- (4) The court, on the application of any person mentioned in section 63(2), may -
 - (a) direct the trustees to distribute, or not to distribute, the trust property; or
 - (b) make such other order in respect of the termination of the trust and the distribution of the property as it thinks fit.

*Powers of the court***Appointment of resident trustees.**

49.(1) Where there is no trustee resident in Guernsey, a beneficiary may apply to the court for the appointment of a person, resident in Guernsey and nominated in the application, as an additional trustee.

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- (2) The court -
 - (a) if satisfied that notice of the application has been served on the existing trustees;
 - (b) having heard any representations of the existing trustees, of the settlor or his personal representatives, of the other beneficiaries, and of any person described in section 28(2); and
 - (c) having ascertained that the person nominated is willing to act, may appoint that person as an additional trustee.

Power to relieve trustees from personal liability.

50. The court may relieve a trustee wholly or partly of liability for a breach of trust, whether committed before or after the commencement of this Law, where it appears to the court that the trustee -

- (a) has acted honestly and reasonably; and
- (b) ought fairly to be excused -
 - (i) for the breach of trust;

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(ii) for omitting to obtain the directions of the court in the matter in which the breach arose.

Power to make beneficiaries indemnify.

51. Where a trustee commits a breach of trust at the instigation, at the request or with the concurrence of a beneficiary, the court, whether or not the beneficiary is a minor or a person under legal disability, may impound all or part of his interest by way of indemnity to the trustee or any person claiming through him.

Variation, etc. of trusts

Variation of trusts on behalf of minors, etc.

52.(1) The court, on the application of any person mentioned in section 63(2), on behalf of -

(a) a minor or a person under legal disability having, directly or indirectly, an interest, vested or contingent, under a trust;

(b) any person unborn;

(c) any person, ascertained or not, who may become entitled, directly or indirectly, to an interest under a trust, as being (at a future date or on the happening of a future event) a person of any specified description or a member of any specified class;

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or

(d) any person, in respect of an interest that may accrue to him by virtue of the exercise of a discretionary power on the failure or determination of an existing interest, may, subject to subsection (2), approve any arrangement which varies or revokes the terms of a trust or enlarges or modifies the powers of management or administration of any trustees, whether or not there is another person with a beneficial interest who is capable of assenting to the arrangement.

(2) The court shall not approve an arrangement on behalf of a person mentioned in subsection (1)(a), (b) or (c) unless the arrangement appears to be for his benefit.

Approval of particular transactions.

53. Where, in the management or administration of a trust, a transaction is, in the opinion of the court, expedient, but cannot be effected because the necessary power is not vested in the trustees by the terms of the trust or by law, the court, on the application of any person mentioned in section 63(2) -

(a) may confer upon the trustees, generally or in any particular circumstances, the necessary power, on such terms and subject to such conditions as the court thinks fit; and

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(b) may direct the manner in which, and the property from which, any monies authorised to be expended, and the costs of any transaction, are to be paid or borne.

Charitable trusts - "cy-pres"

54. Where trust property is held for a charitable purpose and -

(a) the purpose has been, as far as may be, fulfilled;

(b) the purpose cannot be carried out, or not according to the directions given and to the spirit of the gift;

(c) the purpose provides a use for part only of the property;

(d) the property, and other property applicable for a similar purpose, can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be applied to a common purpose;

(e) the purpose was laid down by reference to an area which was then, but has since ceased to be, a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the

spirit of the gift, or to be practicable in administering the gift;
(f) the purpose has been adequately provided for by other means;

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(g) the purpose has ceased to be charitable (by being useless or harmful to the community or otherwise); or

(h) the purpose has ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift, the property, or the remainder of the property, as the case may be, shall be held for such other charitable purpose as the court, on the application of Her Majesty's Procureur or the trustees, may declare to be consistent with the original intention of the settlor.

General power to vary.

55.(1) Where trust property is held for a charitable or public purpose, the court, on the application of Her Majesty's Procureur or the trustees, may approve any arrangement which varies or revokes the purposes or terms of the trust or enlarges or modifies the powers of management or administration of the trustees, if it is satisfied that the arrangement -

(a) is now suitable or expedient; and

(b) is consistent with the original intention of the settlor and the spirit of the gift.

(2) The court shall not approve an arrangement under subsection (1) unless satisfied that any
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person with a material interest in the trust has had an opportunity of being heard.

Trusts created by Order in Council.

56. Sections 52 to 55 do not apply to trusts created by an Order in Council of Her Majesty.

Permitted investments

Power to describe permitted investments.

57.(1) The Committee may by order provide that trustees may only invest trust property on the securities and investments prescribed by the order.

(2) The terms of a trust may -

(a) exclude the provisions of an order under subsection (1);

(b) authorise the trustees to invest trust property on securities and investments other than those prescribed by any such order;

(c) restrict the powers of investment which trustees would otherwise enjoy under any such order.

(3) The powers of investment conferred by an order under subsection (1) or by the terms of a
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trust do not derogate from the duties imposed on trustees by sections 18 to 23.

(4) An order under subsection (1) -

(a) may prescribe securities and investments specifically or by general description;

(b) may provide that an investment shall not be made unless a person described in or specified by the order is consulted and recommends the investment;

(c) may be amended or revoked by a subsequent order thereunder;

(d) may make different provision for different trustees, trusts and trust property or different classes thereof;

(e) may contain such incidental and supplemental provision as (in the opinion of the Committee) is necessary or expedient for the purposes of the order;

(f) shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve to annul the order, it shall cease to have effect, but without prejudice to anything done under it or to the making of a

new order.

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(5) An order under subsection (1) shall not apply to a trust created before the order comes into operation.

PART III

PROVISIONS APPLICABLE ONLY TO A FOREIGN TRUST

Application of Part III.

58. This Part of this Law applies only to a foreign trust.

Enforceability of foreign trusts.

59.(1) Subject to subsection (2), a foreign trust is governed by, and shall be interpreted in accordance with, its proper law.

(2) A foreign trust is unenforceable in Guernsey to the extent that -

(a) it purports to do anything contrary to the law of Guernsey;

(b) it confers or imposes any right or function the exercise or discharge of which would be contrary to the law of Guernsey; or

(c) the court declares that it is immoral or contrary to public policy.

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PART IV

PROVISIONS OF GENERAL APPLICATION

Application of Part IV.

60. This Part of this Law applies to a Guernsey trust and, where the context admits, to a foreign trust.

Rules of Royal Court.

61. The Royal Court may by order make rules dealing with all procedural and incidental matters arising under this Law, and generally for carrying this Law into effect.

Applications for directions.

62. A trustee may apply to the court for directions as to how he should or might act in any of the affairs of the trust, and the court may make such order as it thinks fit.

General powers of court.

63.(1) On the application of any person mentioned in subsection (2), the court may -

(a) make an order in respect of -

(i) the execution, administration or enforcement of a trust;

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(ii) a trustee, including an order as to the exercise by a trustee of his functions, the removal of a trustee (if, for example, he refuses or is unfit to act, or is incapable of acting, or is bankrupt or if his property becomes liable to arrest, saisie, or similar process of law), the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments, whether into court or otherwise;

(iii) a beneficiary, or any person connected with a trust;

(iv) any trust property, including an order as to the vesting, preservation, application, surrender or recovery thereof;

(b) make a declaration as to the validity or enforceability of a trust;

(c) rescind or vary an order or declaration under this Law, or make a new or further order or declaration.

(2) An application under subsection (1) may be made by Her Majesty's Procureur, a trustee, a

settlor, a beneficiary, a person described in section 28(2), or, with leave of the court, any other person.

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(3) Where the court appoints or removes a trustee under this section -

(a) it may impose such requirements and conditions as it thinks fit, including requirements and conditions as to the vesting of trust property;

(b) subject to the court's order, a trustee appointed by the court has the same functions, and may act in all respects, as if he had been originally appointed a trustee.

Powers of court in event of default.

64. If a person does not comply with an order of the court under this Law requiring him to do anything, the court may, on such terms and conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the court, at the expense of the person in default (or otherwise, as the court directs); and a thing so done has effect in all respects as if done by the person in default.

Payment of costs.

65. The court may order the costs and expenses of, and incidental to, an application to the court under this Law to be paid from the trust property or in such manner and by such persons as it thinks fit.

Nature of trustee's interest.

66.(1) Subject to subsection (2) -

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(a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust; and

(b) the trust property does not form part of the trustee's estate.

(2) Where a trustee of a trust is also a beneficiary thereof, subsection (1) does not apply to his interest as a beneficiary.

Following trust property.

67. Without prejudice to the personal liability of a trustee, trust property which has been charged or dealt with in breach of trust, or the property into which it has been converted, may be followed and recovered unless -

(a) it is no longer identifiable; or

(b) it is in the hands of a bona fide purchaser for value without notice of the breach of trust or a person (other than the trustee) who derived title through such a purchaser.

Bankruptcy of trustees.

68. Where a trustee becomes bankrupt, or upon his property becoming liable to arrest, (saisie) or similar process of law, his creditors shall have no recourse against the trust property except to

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the extent that the trustee himself has a claim against it or a beneficial interest in it.

Protection for persons dealing with trustees.

69.(1) A bona fide purchaser for value without notice of a breach of trust-

(a) may deal with a trustee in relation to trust property as if the trustee were the beneficial owner thereof; and

(b) is not affected by the trusts on which the property is held.

(2) A person paying or advancing money to a trustee is not concerned to see -

(a) that the money is wanted;

(b) that no more than is wanted is raised; or

(c) that the transaction or the application of the money is proper.

Liability of directors of corporate trustee.

70.(1) Where a breach of trust is committed by a corporate trustee which -
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(a) is a trustee of a Guernsey trust;

(b) is a resident in Guernsey; or

(c) is carrying on business in Guernsey or from an address in Guernsey,
every person who, at the time of the breach, was a director of the trustee shall, subject to subsection (2), be deemed to be a guarantor of the trustee in respect of any damages and costs awarded by the court against the trustee in respect of the breach.

(2) The court may relieve a director of all or part of his personal liability as a guarantor if he satisfies the court that he ought fairly to be so relieved because -

(a) he was not aware of the breach of trust or of the intention to commit it and, in being not so aware, was neither reckless nor negligent; or

(b) he expressly objected, and exercised such rights as he had by way of voting power or otherwise as a shareholder or director or other officer of the company, so as to try to prevent the breach of trust.

(3) For the purposes of subsection (1) -

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(a) "director" includes a person occupying the position of director by whatever name called, a person in accordance with whose directions or instructions the directors of the corporation or of a corporation of which it is a subsidiary (or any of them) are accustomed to act, and a person who alone or with or through an associate is entitled to exercise or control the exercise of one third or more of the voting power at a general meeting of the corporation or of a corporation of which it is a subsidiary;

(b) "subsidiary" means a corporation in respect of which another corporation is entitled to exercise or can control the exercise of one third or more of the voting power;

(c) in paragraph (a) "associate", in relation to a person, means any relative, partner or other person who is, has been or may be influenced by that person.

Limitation and prescription.

71.(1) No period of limitation or prescription applies to an action brought against a trustee -

(a) in respect of any fraud to which the trustee was a party or was privy; or

(b) to recover from the trustee trust property or the proceeds thereof -

(i) held by or vested in him or otherwise in his possession or under his control; or

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(ii) previously received by him and converted to his use.

(2) Subject to subsection (1), the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is -

(a) three years from delivery of the final accounts of the trust to the beneficiary; or

(b) three years from the date on which the beneficiary first has knowledge of the breach of trust,

whichever period first begins to run.

(3) Where the beneficiary is a minor or a person under legal disability, the period referred to in subsection (2) does not begin to run until his minority or disability, as the case may be, ceases.

PART V

SUPPLEMENTAL

Application of Law.

72.(1) Subject to section 74, and except where provision to the contrary is made, this Law applies to trusts created before or after the commencement of this Law.

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(2) This Law, apart from sections 52 to 56, does not apply to a trust in so far as there is vested in the trustees any interest in real property in the Bailiwick of Guernsey.

Interpretation.

73.(1) In this Law, unless the context otherwise requires -

"bankrupt", in relation to -

(a) an individual, includes an individual whose affairs have been declared in a state of "desastre" by his arresting creditors at a meeting held before a Jurat as Commissioner of the Royal Court, and an individual in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929;

(b) a corporation, includes a corporation which is insolvent, and "bankruptcy" shall be construed accordingly;

"beneficiary" means a person entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised;

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"breach of trust" means a breach of any duty imposed on a trustee by this Law or by the terms of the trust;

"Committee" means the States Advisory and Finance Committee or such other authority, board, committee or council of the States as the States may by resolution appoint for the purposes of this Law;

"corporate trustee" means a trustee which is a corporation;

"corporation" means a body corporate wherever incorporated;

"court" means the Royal Court sitting as an Ordinary Court;

"foreign trust" means a trust the proper law of which is not the law of Guernsey;

"functions" includes rights, powers, discretions, obligations, liabilities and duties;

"Guernsey trust" means a trust the proper law of which is the law of Guernsey;

"he", "him" and "his", in relation to a corporation, include "it" and "its";

"Her Majesty's Procureur" includes Her Majesty's Comptroller;

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"insurance" includes assurance;

"interest", in relation to a beneficiary, means his interest under a trust;

"minor" means a person who has not attained full age;

"personal representative" means the executor or administrator of the estate of a deceased person;

"profit" includes gain or advantage;

"property" -

(a) means property of any description, wherever situated, including any share therein, but does not (except in sections 52 to 56 and 74) include real property in the Bailiwick of Guernsey;

(b) in relation to rights and interests, includes rights and interest whether vested, contingent, defeasible or future;

"provisions of this Law" includes the provisions of any order hereunder;

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"settlor" means a person who provides trust property or makes a testamentary disposition

on trust or to a trust;

"terms of a trust" means the written or oral terms of a trust, and any other terms applicable under its proper law;

"trust" includes -

(a) the trust property; and

(b) the functions, interests and relationships under a trust;

"trustee" has the meaning given by section 1, and includes a corporate trustee;

"trust property" means property held on trust;

"unit trust" means a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust in any profits or income arising from the acquisition holding, management or disposal of property.

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(2) For the purposes of this Law, a corporation is resident in the place in which it has its registered office.

(3) Any reference in this Law to an enactment is, unless the context otherwise requires, a reference to that enactment as amended, extended, re-enacted, or applied by or under any other enactment, including this Law.

Savings.

74.(1) Nothing in this Law -

(a) affects the functions under any provision of law of Her Majesty's Sheriff or of any guardian or attorney;

(b) validates an otherwise invalid transfer or disposition of property to a trust;

(c) affects the validity of anything done in relation to a trust before the commencement of this Law;

(d) affects the validity of a trust arising from a document or disposition executed or taking effect before the commencement of this Law;

(e) derogates from any right of a minor to repudiate a transaction on attaining full age.

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(2) Nothing in this Law derogates from the powers of the court which exist independently of this Law-

(a) to set aside, vary or reduce any transfer or other disposition of property, testamentary or otherwise;

(b) in respect of trusts, trustees or trust property;

(c) to make an order relating to matrimonial proceedings;

(d) to make an order relating to the avoidance of fraud on creditors.

(3) Nothing in this Law derogates from the provisions of -

(a) article 29 of the Law entitled "Loi sur les Successions, 1840";

(b) the Law entitled "Loi Supplémentaire à la Loi des Successions, 1890";

(c) section 12 of the Married Women's Property Law, 1928.

(4) Nothing in this Law affects a personal representative acting as such.

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(5) No transfer or disposition of property to a trust is invalidated by application of the principle of "donner et retenir ne vaut".

Citation.

75. This Law may be cited as the Trusts (Guernsey) Law, 1989.

Commencement.

76. This Law shall come into operation on the twenty eighth day after the date of its registration on the records of the Island of Guernsey.