



Jersey

## **TRUSTS (JERSEY) LAW 1984**

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Jersey

## TRUSTS (JERSEY) LAW 1984

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Jersey

## TRUSTS (JERSEY) LAW 1984

A **LAW** to make provision with regard to trusts, trustees and persons interested under trusts and for connected purposes

Commencement [[see endnotes](#)]

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### PART 1

#### GENERAL

#### 1 Interpretation

(1) In this Law, unless the context otherwise requires –

“beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised;

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

“corporate trustee” means a trustee which is a corporation;

“corporation” means a body corporate wherever incorporated;

“court” means the Inferior Number of the Royal Court;

“enforcer” shall be construed in accordance with Article 13;

“foreign trust” means a trust whose proper law is the law of some jurisdiction other than Jersey;

“insurance” includes assurance;

“interdict” means a person, other than a minor, who under the law of Jersey or under the law of the person’s domicile does not have legal capacity;

“interest of a beneficiary” means the beneficiary’s interest under a trust and references to the beneficiary’s interest have a corresponding meaning;

“Jersey trust” means a trust whose proper law is the law of Jersey;

“minor” means a person who under the law of Jersey or under the law of the person’s domicile has not reached the age of legal capacity;

“officer” means –

- (a) in the case of a foundation, a member of the council of the foundation;
- (b) in the case of an incorporated limited partnership, a general partner or a limited partner who is participating in the management of the partnership;
- (c) in the case of any corporation other than those mentioned in sub-paragraph (a) and (b), a director, manager, secretary or other similar officer of the corporation;
- (d) in the case of a limited liability partnership, a partner;
- (e) in the case of a separate limited partnership or any partnership with a separate legal personality, except a limited liability partnership, a general partner or a limited partner who is participating in the management of the partnership; or
- (f) in any case other than those mentioned in sub-paragraphs (a), (b), (c), (d) and (e), any other person purporting to act in a capacity described in any of sub-paragraphs (a), (b), (c), (d) and (e);

“personal representative” means the executor or administrator for the time being of a deceased person and, in the context of a Jersey trust, includes the principal heir;

“professional trustee” means a trustee who is registered under Article 9 of the [Financial Services \(Jersey\) Law 1998](#), by the Jersey Financial Services Commission, to carry on trust company business within the meaning of Article 2(3) of that Law;

“property” means property of any description wherever situated, and, in relation to rights and interests includes those rights and interests whether vested, contingent, defeasible or future;

“purpose” means any purpose whatsoever, whether or not –

- (a) involving the conferral of any benefit on any person; or
- (b) consuming or capable of consuming the income or capital of the trust,

including without limitation the acquisition, holding, ownership, management or disposal of property and the exercise of functions;

“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 also means any other terms made applicable by the proper law;

“trust” includes –

- (a) the trust property; and
- (b) the rights, powers, duties, interests, relationships and obligations under a trust;

“trust property” means the property for the time being held in a trust;

“unit trust” means any 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 any property whatsoever.<sup>1</sup>

- (2) This Law shall not be construed as a codification of laws regarding trusts, trustees and persons interested under trusts.

## 2 Existence of a trust

A trust exists where a person (known as a trustee) holds or has vested in the person or is deemed to hold or have vested in the person property (of which the person is not the owner in the person’s own right) –

- (a) for the benefit of any person (known as a beneficiary) whether or not yet ascertained or in existence;
- (b) for any purpose which is not for the benefit only of the trustee; or
- (c) for such benefit as is mentioned in sub-paragraph (a) and also for any such purpose as is mentioned in sub-paragraph (b).

## 3 Recognition of a trust by the law of Jersey

Subject to this Law, a trust shall be recognized by the law of Jersey as valid and enforceable.

## 4 Proper law of a trust

- (1) Subject to Article 41, the proper law of a trust shall be the law of the jurisdiction –
- (a) expressed by the terms of the trust as the proper law; or failing that
- (b) to be implied from the terms of the trust; or failing either
- (c) with which the trust at the time it was created had the closest connection.<sup>2</sup>
- (2) The references in paragraph (1) to “failing that” or “failing either” include references to cases –
- (a) where no law is expressed or implied under sub-paragraph (a) or (b) of that paragraph; and
- (b) where a law is so expressed or implied, but that law does not provide for trusts or the category of trusts concerned.<sup>3</sup>
- (3) In ascertaining, for the purpose of paragraph (1)(c), the law with which a trust had the closest connection, reference shall be made in particular to –
- (a) the place of administration of the trust designated by the settlor;
- (b) the *situs* of the assets of the trust;
- (c) the place of residence or business of the trustee;

- (d) the objects of the trust and the places where they are to be fulfilled.<sup>4</sup>

## **5 Jurisdiction of court**

The court has jurisdiction where –

- (a) the trust is a Jersey trust;
- (b) a trustee of a foreign trust is resident in Jersey;
- (c) any trust property of a foreign trust is situated in Jersey; or
- (d) administration of any trust property of a foreign trust is carried on in Jersey.

## **PART 2**

### **PROVISIONS APPLICABLE ONLY TO A JERSEY TRUST**

## **6 Application of Part 2**

This Part of this Law shall apply only to a Jersey trust.

### *Creation, validity and duration of Jersey trusts*

## **7 Creation of a trust**

- (1) Subject to paragraph (3), a trust may come into existence in any manner.
- (2) Without prejudice to the generality of paragraph (1), a trust may come into existence by oral declaration, or by an instrument in writing (including a will or codicil) or arise by conduct.
- (3) A unit trust may be created only by an instrument in writing.

## **8 Property which may be placed in a trust**

Subject to Article 11(2) –

- (a) any property may be held by or vested in a trustee upon trust; and
- (b) a trustee may accept from any person property to be added to the trust property.

## **9 Extent of application of law of Jersey to creation, etc. of a trust<sup>5</sup>**

- (1) Subject to paragraph (3), any question concerning –
  - (a) the validity or interpretation of a trust;
  - (b) the validity or effect of any transfer or other disposition of property to a trust;
  - (c) the capacity of a settlor;

- (d) the administration of the trust, whether the administration be conducted in Jersey or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment or removal;
- (e) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment and the validity of any exercise of such powers;
- (f) the exercise or purported exercise by a foreign court of any statutory or non-statutory power to vary the terms of a trust; or
- (g) the nature and extent of any beneficial rights or interests in the property,

shall be determined in accordance with the law of Jersey and no rule of foreign law shall affect such question.<sup>6</sup>

- (2) Without prejudice to the generality of paragraph (1), any question mentioned in that paragraph shall be determined without consideration of whether or not –
  - (a) any foreign law prohibits or does not recognise the concept of a trust; or
  - (b) the trust or disposition avoids or defeats rights, claims, or interests conferred by any foreign law upon any person by reason of a personal relationship or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests.<sup>7</sup>
- (2A) Subject to paragraph (2), paragraph (1) –
  - (a) does not validate any disposition of property which is neither owned by the settlor nor the subject of a power of disposition vested in the settlor;
  - (b) does not affect the recognition of the law of any other jurisdiction in determining whether the settlor is the owner of any property or the holder of any such power;
  - (c) is subject to any express provision to the contrary in the terms of the trust or disposition;
  - (d) does not, in determining the capacity of a corporation or other person having legal personality, affect the recognition of the law of its place of incorporation or establishment, as the case may be;
  - (e) does not affect the recognition of the law of any other jurisdiction prescribing the formalities for the disposition of property;
  - (f) does not validate any trust or disposition of immovable property situate in a jurisdiction other than Jersey which is invalid under the law of that jurisdiction; and
  - (g) does not validate any testamentary disposition which is invalid under the law of the testator's domicile at the time of his death.<sup>8</sup>

- (3) The law of Jersey relating to *légitime* shall not apply to the determination of any question mentioned in paragraph (1) unless the settlor is domiciled in Jersey.<sup>9</sup>
- (3A) The law of Jersey relating to conflict of laws (other than this Article) shall not apply to the determination of any question mentioned in paragraph (1).<sup>10</sup>
- (4) No –
- (a) judgment of a foreign court; or
  - (b) decision of any other foreign tribunal (whether in an arbitration or otherwise),
- with respect to a trust shall be enforceable, or given effect, to the extent that it is inconsistent with this Article, irrespective of any applicable law relating to conflict of laws.<sup>11</sup>
- (5) The rule *donner et retenir ne vaut* shall not apply to any question concerning the validity, effect or administration of a trust, or a transfer or other disposition of property to a trust.
- (6) In this Article –
- “foreign” refers to any jurisdiction other than Jersey;
  - “heirship rights” means rights, claims or interests in, against or to property of a person arising or accruing in consequence of his or her death, other than rights, claims or interests created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of his or her property;
  - “*légitime*” and “*donner et retenir ne vaut*” have the meanings assigned to them by Jersey customary law;
  - “personal relationship” includes the situation where there exists, or has in the past existed, any of the following relationships –
- (a) any relationship between a person and the settlor or a beneficiary, by blood, marriage, civil partnership or adoption (whether or not the marriage, civil partnership or adoption is recognised by law);
  - (b) any arrangement between a person and the settlor or a beneficiary such as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parent and child, spouses or civil partners; or
  - (c) any relationship between –
    - (i) a person who has a relationship mentioned in either of paragraphs (a) and (b) with the settlor or a beneficiary, and
    - (ii) a third person who does not have a relationship mentioned in either of paragraphs (a) and (b) with the settlor or a beneficiary.<sup>12</sup>
- (7) Despite Article 59, this Article applies to trusts whenever constituted or created.

**9A Powers reserved by settlor<sup>13</sup>**

(1) The reservation or grant by a settlor of a trust of –

- (a) any beneficial interest in the trust property; or
- (b) any or all of the powers mentioned in paragraph (2),

shall not affect the validity of the trust nor delay the trust taking effect and in construing the terms of the trust, if the trust is not expressed to be a will or testament or to come into effect upon the death of the settlor, it shall be presumed that the trust shall take immediate effect, except as otherwise expressed.<sup>14</sup>

(2) The powers are –

- (a) to revoke, vary or amend the terms of a trust or any trusts or powers arising wholly or partly under it;
- (b) 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;
- (c) to act as, or give directions as to the appointment or removal of –
  - (i) an officer of any corporation, or
  - (ii) an officer of a limited liability partnership, separate limited partnership or any other partnership having separate legal personality,

in which the trust holds an interest whether or not such interest in the corporation or partnership is wholly, partly, directly or indirectly held by the trust;

- (d) to give 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;
- (e) to appoint or remove any trustee, enforcer or beneficiary, or any other person who holds a power, discretion or right, or who acts in connection with the trust or in relation to trust property;
- (f) to appoint or remove an investment manager or investment adviser;
- (g) to change the proper law of the trust;
- (h) 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.<sup>15</sup>

(3) Where a power mentioned in paragraph (2) has been reserved or granted by the settlor, a trustee who acts in accordance with the exercise of the power is not acting in breach of trust.

(3A) The reservation or grant by a settlor of a trust of –

- (a) any beneficial interest in the trust property; or
- (b) any or all of the powers mentioned in paragraph (2),

shall not of itself constitute the settlor or the person to whom the power or beneficial interest is granted, a trustee.<sup>16</sup>

- (4) The States may make Regulations amending paragraph (2).

## 10 Beneficiaries of a trust

- (1) A beneficiary shall be –
- (a) identifiable by name; or
  - (b) ascertainable by reference to –
    - (i) a class, or
    - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.
- (2) The terms of a trust may provide for the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit.
- (3) Subject to Article 30(10), the terms of a trust may impose upon a beneficiary an obligation as a condition for benefit.<sup>17</sup>
- (4) <sup>18</sup>
- (5) <sup>19</sup>
- (6) <sup>20</sup>
- (7) <sup>21</sup>
- (8) <sup>22</sup>
- (9) <sup>23</sup>
- (10) The interest of a beneficiary shall constitute movable property.
- (11) Subject to the terms of the trust, a beneficiary may sell, pledge, charge, transfer or otherwise deal with his or her interest in any manner.
- (12) A settlor or a trustee of a trust may also be a beneficiary of the trust.

### 10A Disclaimer of interest<sup>24</sup>

- (1) Despite the terms of the trust, a beneficiary may disclaim, either permanently or for such period as he or she may specify, the whole or any part of his or her interest under a trust if he or she does so in writing.
- (2) Paragraph (1) applies whether or not the beneficiary has received any benefit from the interest.
- (3) Subject to the terms of the trust, if the disclaimer so provides it may be revoked in accordance with its terms.

## 11 Validity of a Jersey trust

- (1) Subject to paragraphs (2) and (3), a trust shall be valid and enforceable in accordance with its terms.
- (2) Subject to Article 12, a trust shall be invalid –
  - (a) to the extent that –
    - (i) it purports to do anything the doing of which is contrary to the law of Jersey,
    - (ii) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Jersey,
    - (iii) it purports to apply directly to immovable property situated in Jersey, or
    - (iv) it is created for a purpose in relation to which there is no beneficiary, not being a charitable purpose;
  - (b) to the extent that the court declares that –
    - (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty,
    - (ii) the trust is immoral or contrary to public policy, or
    - (iii) the terms of the trust are so uncertain that its performance is rendered impossible.<sup>25</sup>
- (3) Where a trust is created for 2 or more purposes of which some are lawful and others are unlawful –
  - (a) if those purposes cannot be separated the trust shall be invalid;
  - (b) where those purposes can be separated the court may declare that the trust is valid as to the purposes which are lawful.
- (4) Where a trust is partially invalid the court may declare what property is trust property, and what property is not trust property.
- (5) Where paragraph (2)(a)(iii) applies, any person in whom the title to such immovable property is vested shall not be, and shall not be deemed to be, a trustee of such immovable property.
- (6) Property as to which a trust is wholly or partially invalid shall, subject to paragraph (5) and subject to any order of the court, be held by the trustee in trust for the settlor absolutely or if the settlor is dead for his or her personal representative.
- (7) In paragraph (6) “settlor” means the particular person who provided the property as to which the trust is wholly or partially invalid.
- (8) An application to the court under this Article may be made by any person referred to in Article 51(3).

## 12 Trusts for non-charitable purposes<sup>26</sup>

A trust shall not be invalid to any extent by reason of Article 11(2)(a)(iv) if the terms of the trust provide for the appointment of an enforcer in relation to its

non-charitable purposes, and for the appointment of a new enforcer at any time when there is none.

### **13 Enforcers<sup>27</sup>**

- (1) It shall be the duty of an enforcer to enforce the trust in relation to its non-charitable purposes.
- (2) The appointment of a person as enforcer of a trust in relation to its non-charitable purposes shall not have effect if the person is also a trustee of the trust.
- (3) Article 21(4) shall apply to an enforcer as if the reference in sub-paragraph (b) of that paragraph to “a trustee” were a reference to “an enforcer” and the references in that sub-paragraph to the “trustee’s trusteeship” and “such trusteeship” were both references to the “enforcer’s appointment”.

### **14 Resignation or removal of enforcer<sup>28</sup>**

- (1) Subject to paragraph (3), an enforcer may resign his or her office by notice in writing delivered to the trustee.
- (2) A resignation takes effect on the delivery of notice in accordance with paragraph (1).
- (3) A resignation given in order to facilitate a breach of trust shall be of no effect.
- (4) An enforcer shall cease to be enforcer of the trust in relation to its non-charitable purposes immediately upon –
  - (a) the enforcer’s removal from office by the court;
  - (b) the enforcer’s resignation becoming effective;
  - (c) the coming into effect of a provision in the terms of a trust under which the enforcer is removed from office or otherwise ceases to hold office; or
  - (d) the enforcer’s appointment as a trustee of the trust.

### **15 Duration of a Jersey trust<sup>29</sup>**

- (1) Unless its terms provide otherwise, a trust may continue in existence for an unlimited period.
- (2) No rule against perpetuities or excessive accumulations shall apply to a trust or to any advancement, appointment, payment or application of assets from a trust.
- (3) Except where the terms of a trust provide to the contrary, any advancement, appointment, payment or application of assets from that trust to another trust shall be valid even if that other trust may continue after the date by which the first trust must terminate.

*Appointment, retirement and discharge of trustees***16 Number of trustees<sup>30</sup>**

- (1) Subject to the terms of the trust, a trust must have at least one trustee.
- (2) A trust shall not fail on grounds of having fewer trustees than required by this Law or the terms of the trust.
- (3) If the number of trustees falls below the minimum number required by paragraph (1) or, if greater, by the terms of the trust, the required number of new trustees must be appointed as soon as practicable.
- (4) While there are fewer trustees than are required by the terms of the trust, the existing trustees may only act for the purpose of preserving the trust property.

**17 Appointment out of court of new or additional trustee**

- (1) Paragraph (1A) applies if –
  - (a) the terms of a trust do not provide for the appointment of a new or additional trustee;
  - (b) any such terms providing for any such appointment have lapsed or failed; or
  - (c) the person who has the power to make any such appointment is not capable of exercising the power,  
and there is no other power to make the appointment.<sup>31</sup>
- (1A) A new or additional trustee may be appointed by –
  - (a) the trustees for the time being;
  - (b) the last remaining trustee; or
  - (c) the personal representative or liquidator of the last remaining trustee.<sup>32</sup>
- (2) Subject to the terms of the trust, a trustee appointed under this Article shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed a trustee.
- (3) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the court.
- (4) On the appointment of a new or additional trustee anything requisite for vesting the trust property in the trustees for the time being of the trust shall be done.

**18 Prohibition of renunciation after acceptance**

- (1) No person shall be obliged to accept appointment as a trustee, but a person who knowingly does any act or thing in relation to the trust property consistent with the status of a trustee of that property shall be deemed to have accepted appointment as a trustee.

- (2) A person who has not accepted and is not deemed to have accepted appointment as a trustee may disclaim such appointment within a reasonable period of time after becoming aware of it by notice in writing to the settlor or to the trustees.
- (3) If the settlor is dead or cannot be found and there are no other trustees a person to whom paragraph (2) applies may apply to the court for relief from the person's appointment and the court may make such order as it thinks fit.

## **19 Resignation or removal of trustee**

- (1) Subject to paragraph (3), a trustee, not being a sole trustee, may resign his or her office by notice in writing delivered to his or her co-trustees.
- (2) A resignation takes effect on the delivery of notice in accordance with paragraph (1).
- (3) If two or more trustees purport to resign simultaneously, the effect of which would mean that there would be no trustee, the resignations shall have no effect.<sup>33</sup>
- (4) A trustee shall cease to be a trustee of the trust immediately upon –
  - (a) the trustee's removal from office by the court; or
  - (b) the trustee's resignation becoming effective; or
  - (c) the coming into effect of a provision in the terms of a trust under which the trustee is removed from office or otherwise ceases to hold office.
- (5) A person who ceases to be a trustee under this Article shall concur in executing all documents necessary for the vesting of the trust property in the new or continuing trustees.

## **20** <sup>34</sup>

### *Duties of trustees*

## **21 Duties of trustee**

- (1) A trustee shall in the execution of his or her duties and in the exercise of his or her powers and discretions –
  - (a) act –
    - (i) with due diligence,
    - (ii) as would a prudent person,
    - (iii) to the best of the trustee's ability and skill; and
  - (b) observe the utmost good faith.
- (2) Subject to this Law, a trustee shall carry out and administer the trust in accordance with its terms.

- (3) Subject to the terms of the trust, a trustee shall –
  - (a) so far as is reasonable preserve the value of the trust property;
  - (b) so far as is reasonable enhance the value of the trust property.<sup>35</sup>
- (4) Except –
  - (a) with the approval of the court; or
  - (b) as permitted by this Law or expressly provided by the terms of the trust,  
a trustee shall not –
    - (i) directly or indirectly profit from the trustee's trusteeship;
    - (ii) cause or permit any other person to profit directly or indirectly from such trusteeship; or
    - (iii) on the trustee's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.
- (5) A trustee shall keep accurate accounts and records of the trustee's trusteeship.
- (6) A trustee shall keep trust property separate from his or her personal property and separately identifiable from any other property of which he or she is a trustee.
- (7) A trustee of a trust for non-charitable purposes shall, at any time when there is no enforcer in relation to them, take such steps as may be necessary to secure the appointment of a new enforcer.<sup>36</sup>
- (8) Where the trustee of a trust for non-charitable purposes has reason to believe that the enforcer in relation to them is unwilling or refuses to act, or is unfit to act or incapable of acting, the trustee shall apply to the court for the removal of the enforcer and the appointment of a replacement.<sup>37</sup>

## **22 Duty of co-trustees to act together**

- (1) Subject to the terms of the trust, where there is more than one trustee all the trustees shall join in performing the trust.
- (2) Subject to paragraph (3), where there is more than one trustee no power or discretion given to the trustees shall be exercised unless all the trustees agree on its exercise.
- (3) The terms of a trust may empower trustees to act by a majority but a trustee who dissents from a decision of the majority of the trustees may require the trustee's dissent to be recorded in writing.

## **23 Impartiality of trustee**

Subject to the terms of the trust, where there is more than one beneficiary, or more than one purpose, or at least one beneficiary and at least one purpose, a trustee shall be impartial and shall not execute the trust for the advantage of one at the expense of another.<sup>38</sup>

*General powers of trustees***24 Powers of trustee**

- (1) Subject to the terms of the trust and subject to the trustee's duties under this Law, a trustee shall in relation to the trust property have all the same powers as a natural person acting as the beneficial owner of such property.
- (2) A trustee shall exercise the trustee's powers only in the interests of the beneficiaries and in accordance with the terms of the trust.
- (3) The terms of a trust may require a trustee to obtain the consent of some other person before exercising a power or a discretion.
- (4) A person who consents as provided in paragraph (3) shall not by virtue of so doing be deemed to be a trustee.

**25 Delegation by trustee**

- (1) Subject to the terms of the trust, a trustee may delegate the execution or exercise of any of his or her trusts or powers (both administrative and dispositive) and any delegate may further so delegate any such trusts or powers.<sup>39</sup>
- (2) Except where the terms of the trust specifically provide to the contrary, a trustee –
  - (a) may delegate management of trust property to and employ investment managers whom the trustee reasonably considers competent and qualified to manage the investment of trust property; and
  - (b) may employ accountants, advocates, attorneys, bankers, brokers, custodians, investment advisers, nominees, property agents, solicitors and other professional agents or persons to act in relation to any of the affairs of the trust or to hold any of the trust property.
- (3) A trustee shall not be liable for any loss to the trust arising from a delegation or appointment under this Article who, in good faith and without neglect, makes such delegation or appointment or permits the continuation thereof.<sup>40</sup>
- (4) A trustee may authorize a person referred to in paragraph (2) to retain any commission or other payment usually payable in relation to any transaction.

**26 Remuneration and expenses of trustee**

- (1) Unless authorized by –
  - (a) the terms of the trust;
  - (b) the consent in writing of all of the beneficiaries; or
  - (c) any order of the court,

a trustee shall not be entitled to remuneration for his or her services.

- (1A) Despite paragraph (1), where the terms of a trust are silent as to his or her remuneration, a professional trustee shall be entitled to reasonable remuneration for services that the professional trustee provides after this paragraph comes into force.<sup>41</sup>
- (2) A trustee may reimburse himself or herself out of the trust for or pay out of the trust all expenses and liabilities reasonably incurred in connection with the trust.<sup>42</sup>

## **27 Power to appropriate**

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 the trustee thinks fit.

## **28 Corporate trustee acting by resolution**

A corporate trustee may –

- (a) act in connection with a trust by a resolution of such corporate trustee or of its board of directors or other governing body; or
- (b) by such a resolution appoint one or more of its officers or employees to act on its behalf in connection with the trust.

## **29 Disclosure<sup>43</sup>**

- (1) Subject to any order of the court, the terms of a trust may –
- (a) confer upon any person a right to request the disclosure of information or a document concerning the trust;
- (b) determine the extent of the right of any person to information or a document concerning the trust; or
- (c) impose a duty upon a trustee to disclose information or a document concerning the trust to any person.
- (2) Subject to the terms of the trust and to any order of the court –
- (a) a beneficiary under the trust not being a charity;
- (b) a charity which is referred to by name in the terms of the trust as a beneficiary under the trust; or
- (c) an enforcer,
- may request disclosure by the trustee of documents which relate to or form part of the accounts of the trust.
- (3) Subject to any order of the court, a trustee may refuse to comply with –
- (a) a request for disclosure of information or a document concerning the trust under paragraph (1)(a) or any document which relates to or forms part of the accounts of the trust under paragraph (2); or

- (b) any other request for disclosure of information or a document concerning the trust,
- where the trustee in the exercise of its discretion is satisfied that it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole, to refuse the request.
- (4) Notwithstanding paragraphs (1), (2) and (3), subject to the terms of the trust and to any order of the court, a trustee shall not be required to disclose to any person information or a document which –
- (a) discloses the trustee's deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty conferred or imposed upon the trustee;
- (b) discloses the reason for any particular exercise of a power or discretion or performance of a duty referred to in sub-paragraph (a), or the material upon which such reason shall or might have been based; or
- (c) relates to the exercise or proposed exercise of a power or discretion, or the performance or proposed performance of a duty, referred to in sub-paragraph (a).
- (5) Notwithstanding the terms of the trust, on the application of the trustee, an enforcer, a beneficiary or, with leave of the court any other person, the court may make such order as it thinks fit determining the extent to which any person may request or receive information or a document concerning the trust, whether generally or in any particular instance.

*Liability for breach of trust*

**30 Liability for breach of trust**

- (1) Subject to this Law and to the terms of the trust, a trustee shall be liable for a breach of trust committed by the trustee or in which the trustee has concurred.<sup>44</sup>
- (2) A trustee who is liable for a breach of trust shall be liable for –
- (a) the loss or depreciation in value of the trust property resulting from such breach; and
- (b) the profit, if any, which would have accrued to the trust property if there had been no such breach.<sup>45</sup>
- (3) Where there are 2 or more breaches of trust, a trustee shall not set off a gain from one breach of trust against a loss resulting from another breach of trust.
- (3A) A trustee who resigns in order to facilitate a breach of trust shall be liable for that breach as if he or she had not resigned.<sup>46</sup>
- (4) A trustee shall not be liable for a breach of trust committed prior to the trustee's appointment, if such breach of trust was committed by some other person.
- (5) A trustee shall not be liable for a breach of trust committed by a co-trustee unless –

- (a) the trustee becomes aware or ought to have become aware of the commission of such breach or of the intention of his or her co-trustee to commit a breach of trust; and
  - (b) the trustee actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent such breach.
- (6) A beneficiary may –
- (a) relieve a trustee of liability to the beneficiary for a breach of trust;
  - (b) indemnify a trustee against liability for a breach of trust.
- (7) Paragraph (6) shall not apply unless the beneficiary –
- (a) has legal capacity;
  - (b) has full knowledge of all material facts; and
  - (c) is not improperly induced by the trustee to take action under paragraph (6).
- (8) Where 2 or more trustees are liable in respect of a breach of trust, they shall be liable jointly and severally.
- (9) A trustee who becomes aware of a breach of trust to which paragraph (4) relates shall take all reasonable steps to have such breach remedied.
- (10) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from the trustee's own fraud, wilful misconduct or gross negligence.<sup>47</sup>
- (11) <sup>48</sup>

### **31 Trustee acting in respect of more than one trust**

- (1) A trustee acting for the purposes of more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust if the trustee has obtained notice of it by reason of the trustee's acting or having acted for the purposes of another trust.
- (2) A trustee of a trust shall disclose to his or her co-trustee any interest which he or she has as trustee of another trust, if any transaction in relation to the first mentioned trust is to be entered into with the trustee of such other trust.
- (3) Subject to this Law (including in particular Articles 21 and 23), but despite any other enactment or rule of law to the contrary, a person may in the capacity of a trustee of one trust enter into a contract or other arrangement with himself or herself in the person's capacity as a trustee of one or more other trusts.<sup>49</sup>

### **32 Trustee's liability to third parties<sup>50</sup>**

- (1) Where a trustee is a party to any transaction or matter affecting the trust –

- (a) if the other party knows that the trustee is acting as trustee, any claim by the other party shall be against the trustee as trustee and shall extend only to the trust property;
  - (b) if the other party does not know that the trustee is acting as trustee, any claim by the other party may be made against the trustee personally (though, without prejudice to his or her personal liability, the trustee shall have a right of recourse to the trust property by way of indemnity).
- (2) Paragraph (1) shall not affect any liability the trustee may have for breach of trust.

### 33 Constructive trustee

- (1) Subject to paragraph (2), where a person (in this Article referred to as a constructive trustee) makes or receives any profit, gain or advantage from a breach of trust the person shall be deemed to be a trustee of that profit, gain, or advantage.
- (2) Paragraph (1) shall not apply to a *bona fide* purchaser of property for value and without notice of a breach of trust.
- (3) A person who is or becomes a constructive trustee shall deliver up the property of which the person is a constructive trustee to the person properly entitled to it.
- (4) This Article shall not be construed as excluding any other circumstances under which a person may be or become a constructive trustee.

### 34 Position of outgoing trustee<sup>51</sup>

- (1) Subject to paragraph (2), when a trustee resigns, retires, is removed or otherwise ceases to be a trustee, he or she shall duly surrender trust property in his or her possession or under his or her control.<sup>52</sup>
- (2) Article 43A applies where a trustee resigns, retires, is removed or otherwise ceases to be a trustee.<sup>53</sup>
- (2A) <sup>54</sup>
- (3) A trustee who resigns, retires, is removed or otherwise ceases to be a trustee and has complied with paragraph (1) shall be released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or the trustee's duty as a trustee except liability –
  - (a) arising from any breach of trust to which such trustee (or in the case of a corporate trustee any of its officers or employees) was a party or to which the trustee was privy;
  - (b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees.<sup>55</sup>

*Protective trusts; class interests; and certain powers*

**35 Spendthrift or protective trust**

- (1) The terms of a trust may make the interest of a beneficiary liable to termination.
- (2) Without prejudice to the generality of paragraph (1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to –
  - (a) a restriction on alienation or disposal; or
  - (b) diminution or termination in the event of the beneficiary becoming bankrupt or any of his or her property becoming liable to sequestration for the benefit of his or her creditors.
- (3) <sup>56</sup>
- (4) <sup>57</sup>

**36 Class interests**

- (1) Subject to the terms of a trust, the following rules shall apply where a trust or an interest under a trust is in favour of a class of persons –
  - Rule 1 A class closes when it is no longer possible for any other person to become a member of the class.
  - Rule 2 A woman who is over the age of 55 years shall be deemed to be no longer capable of bearing a child.
  - Rule 3 Where any class interest relates to income and for any period there is no member of the class in existence the income shall be accumulated and, subject to Article 15, shall be retained until there is a member of the class in existence or the class closes.
- (2) In this Article “class interest” means a trust or an interest under a trust which is in favour of a class of persons.

**37 Variation of terms of a trust<sup>58</sup>**

Without prejudice to any power of the court to vary the terms of a trust, a trust may be varied in any manner provided by its terms.

**38 Power of accumulation and advancement**

- (1) Subject to Article 15, the terms of a trust may direct or authorize –
  - (a) the accumulation, for any period, of all or part of the income of the trust and its addition to capital; or

- (b) the retention, for any period, of all or part of the income of the trust in its character as income.<sup>59</sup>
- (2) Subject to Article 15, the terms of a trust may direct or authorize the distribution of all or part of the income of the trust and whilst the trust continues in existence and for so long as and to the extent that –
- (a) the income of the trust is not distributed or required to be distributed in accordance with the terms of the trust;
- (b) no trust to accumulate income and add it to capital, or to retain income in its character as income, applies; and
- (c) no power to accumulate income and add it to capital, or to retain income in its character as income, is exercised,
- the income of the trust shall be retained in its character as income.<sup>60</sup>
- (2A) Subject to the terms of the trust, whilst the trust continues in existence, there shall be no time period within which a power to accumulate income and add it to capital, to retain income in its character as income or to distribute income must be exercised.<sup>61</sup>
- (3) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, where a beneficiary is a minor and whether or not the beneficiary's interest –
- (a) is a vested interest; or
- (b) is an interest which will become vested –
- (i) on attaining the age of majority,
- (ii) at any later age, or
- (iii) upon the happening of any event,
- the trustee may –
- (A) accumulate the income attributable to the interest of such beneficiary and add it to capital or retain it in its character as income pending the attainment of the age of majority or such later age or the happening of such event;
- (B) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary;
- (C) advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest.<sup>62</sup>
- (4) The receipt of a parent or the lawful guardian of a beneficiary who is a minor shall be a sufficient discharge to the trustee for a payment made under paragraph (3).
- (5) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, the trustee may advance or apply for the benefit of a beneficiary all or part of the trust property prior to the date of the happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.<sup>63</sup>

- (6) All of the trust property advanced or applied under paragraph (5) shall be brought into account in determining from time to time the share of the beneficiary in the trust property.<sup>64</sup>
- (7) Trust property advanced or applied under paragraph (5) shall not exceed the presumptive, contingent or vested share of the beneficiary in the trust property.<sup>65</sup>

### **39 Power of appointment**

The terms of a trust may confer on the trustee or any other person power to appoint or assign all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person, whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

### **40 Power of revocation**

- (1) A trust and any exercise of a power under a trust may be expressed to be –
  - (a) revocable whether wholly or partly; or
  - (b) capable of variation.
- (2) No such revocation or variation shall prejudice anything lawfully done by a trustee in relation to a trust before the trustee receives notice of such revocation or variation.
- (3) Subject to the terms of the trust, if it is revoked the trustee shall hold the trust property in trust for the settlor absolutely.
- (4) Where a trust is partly revoked paragraph (3) shall apply to the property which is the subject of such revocation.
- (5) In paragraph (3) “settlor” means the particular person who provided the property which is the subject of revocation.
- (6) Notwithstanding paragraphs (3) and (4), Article 43A applies where a trust is wholly or partly revoked.<sup>66</sup>

### **41 Power to provide for change of proper law**

The terms of a trust may provide for the proper law of the trust to be changed from the law of Jersey to the law of another jurisdiction.

#### *Failure, lapse and termination of trusts*

### **42 Failure or lapse of interest**

- (1) Subject to the terms of a trust and subject 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 which is not for his or her sole benefit and the trusts upon which he or she is to hold the property are not declared or communicated to the person,

the interest or property affected by such lapse, termination, lack of beneficiary or lack of declaration or communication of trusts shall be held by the trustee or the person referred to in sub-paragraph (d), as the case may be, in trust for the settlor absolutely or if he or she is dead for his or her personal representative.

- (2) An application to the court under this Article may be made by the Attorney General.<sup>67</sup>
- (3) In paragraph (1) “settlor” means the particular person who provided the interest or property affected as mentioned in that paragraph.<sup>68</sup>
- (4) <sup>69</sup>

### **43 Termination of a Jersey trust**

- (1) On the termination of a trust the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.
- (2) Notwithstanding paragraph (1), Article 43A applies on the termination of a trust.<sup>70</sup>
- (3) Without prejudice to the powers of the court under paragraph (4) and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are interdicts or minors they may require the trustee to terminate the trust and distribute the trust property among them.
- (4) The court may –
  - (a) require the trustee to distribute the trust property;
  - (b) direct the trustee not to distribute the trust property; or
  - (c) make such other order as it thinks fit.
- (5) In this Article “liabilities” includes contingent liabilities.
- (6) An application to the court under this Article may be made by any person referred to in Article 51(3).

#### *Security*<sup>71</sup>

### **43A Security**<sup>72</sup>

- (1) A trustee –
  - (a) who –
    - (i) resigns, retires, is removed or otherwise ceases to be a trustee, or

- (ii) distributes trust property; or
  - (b) of a trust that is terminated or wholly or partly revoked, may, before distributing or surrendering trust property, as the case may be, require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise.
- (2) Where security required to be provided under paragraph (1) is in the form of an indemnity, the indemnity may be provided in respect of –
  - (a) the trustee or a person engaged in the management or administration of the trust on behalf of the trustee;
  - (b) any or all of the present, future or former officers and employees of the trustee or person engaged in the management or administration of the trust on behalf of the trustee; and
  - (c) the respective successors, heirs, personal representatives or estates of the persons mentioned in sub-paragraphs (a) and (b), and any person in respect of whom the indemnity is provided under this paragraph may enforce the terms of the indemnity in their own right (whether or not they are party to the contract or other arrangement providing the indemnity).
- (3) If an indemnity to which paragraph (2) refers is extended or renewed by a contract or other arrangement and that contract or other arrangement provides an indemnity in respect of any of the persons referred to in paragraph (2), any such person may enforce the terms of the indemnity in their own right (whether or not they are party to that contract or other arrangement).

*Powers of the court*

**44 Appointment of resident trustee**

- (1) Where there is no trustee resident in Jersey a beneficiary may apply to the court for the appointment of a person nominated for the purpose in the application, who shall be a person who resides in Jersey, as an additional trustee.
- (2) The court –
  - (a) upon being satisfied that notice of the application by the beneficiary has been served upon the trustees;
  - (b) having heard any representations made by the trustees or any other beneficiary; and
  - (c) having ascertained that the person nominated for the purpose in the application is willing to act,may make an order appointing such person as an additional trustee.

**45 Power to relieve trustee from personal liability**

- (1) The court may relieve a trustee either wholly or partly from personal liability for a breach of trust where it appears to the court that –
  - (a) the trustee is or may be personally liable for the breach of trust;
  - (b) the trustee has acted honestly and reasonably;
  - (c) the trustee ought fairly to be excused –
    - (i) for the breach of trust, or
    - (ii) for omitting to obtain the directions of the court in the matter in which such breach arose.
- (2) Paragraph (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Law.

**46 Power to make beneficiary indemnify for breach of trust**

- (1) Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the court may by order impound all or part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through the trustee.
- (2) Paragraph (1) applies whether or not such beneficiary is a minor or an interdict.

**47 Variation of terms of a Jersey trust by the court and approval of particular transactions**

- (1) Subject to paragraph (2), the court may, if it thinks fit, by order approve on behalf of –
  - (a) a minor or interdict having, directly or indirectly, an interest, whether vested or contingent, under the trust;
  - (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the 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 of persons;
  - (ba) any person, if the court is satisfied that despite reasonable effort to find such person, the person cannot be found;
  - (bb) any person, if the court is satisfied that the person falls within a class of beneficiary and that because of the number of persons falling within that class it is unreasonable for the person to be contacted;
  - (c) any person unborn; or
  - (d) any person in respect of any interest of his or hers that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of the trust or enlarging the powers of the trustee of managing or administering any of the trust property.<sup>73</sup>

- (2) The court shall not approve an arrangement on behalf of any person coming within paragraph (1)(a), (b), (ba), (bb) or (c) unless the carrying out thereof appears to be for the benefit of that person.<sup>74</sup>
- (3) Where in the management or administration of a trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is in the opinion of the court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee by the terms of the trust or by law the court may confer upon the trustee either generally or in any particular circumstances a power for that purpose on such terms and subject to such provisions and conditions, if any, as the court thinks fit and may direct in what manner and from what property any money authorized to be expended and the costs of any transaction are to be paid or borne.
- (4) An application to the court under this Article may be made by any person referred to in Article 51(3).

#### **47A Trusts for charitable or non-charitable purposes<sup>75</sup>**

- (1) Where trust property is held for a charitable or non-charitable purpose and any of the circumstances mentioned in paragraph (2) apply, the court may, on the application of a trustee or the Attorney General, declare that the property or the remainder of the property, as the case may be, shall be held for such other charitable or non-charitable purpose, as the case may be, as the court considers to be consistent with the original intention of the settlor.
- (2) The circumstances are that –
  - (a) the purpose has, as far as is reasonably possible, been fulfilled, has ceased to exist or is no longer applicable;
  - (b) the purpose cannot be carried out having regard to the directions given by the settlor or the spirit of the gift;
  - (c) the purpose provides a use for only part of the trust property;
  - (d) the property, and any other property applicable for a similar purpose, can more effectively be applied to a common purpose, regard being had to the spirit of the gift;
  - (e) the purpose was laid down by reference to an area that is no longer a unit for that purpose, or by reference to a class of persons or to an area that is no longer appropriate, regard being had to the spirit of the gift or the practicality of administering the gift;
  - (f) the purpose has been adequately provided for by other means;
  - (g) in the case of a trust for charitable purposes, the purpose has ceased for what ever reason to be charitable; 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.
- (3) Where trust property is held for a charitable or non-charitable purpose the court may, on the application of a trustee or the Attorney General, approve any arrangement that varies or revokes the purposes 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 suitable and expedient; and
  - (b) is consistent with the original intention of the settlor and the spirit of the gift.
- (4) The court shall not approve an arrangement under paragraph (3) unless it is satisfied that any person with a material interest in the trust has had an opportunity to be heard.

#### **47B Articles 47D to 47J: Interpretation<sup>76</sup>**

- (1) In Articles 47D to 47J –
  - (a) references to a transfer or other disposition of property to a trust, do not include a testamentary disposition;
  - (b) “power” includes a discretion as to the way in which an obligation is performed.
- (2) In Articles 47E and 47G, “mistake” includes (but is not limited to) –
  - (a) a mistake as to –
    - (i) the effect of,
    - (ii) any consequences of, or
    - (iii) any of the advantages to be gained by,a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property;
  - (b) a mistake as to a fact existing either before or at the time of, a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property; or
  - (c) a mistake of law including a law of a foreign jurisdiction.

#### **47C Determination of “mistake”<sup>77</sup>**

The doctrine of “*erreur*” in Jersey customary law as applied to the law of contract, shall not apply to any question concerning the meaning of “mistake” for the purposes of determining an application under Article 47E or 47G.

#### **47D Application of powers under Articles 47E to 47I<sup>78</sup>**

Articles 47E to 47I apply in relation to the transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or

trust property that occurs either before or after the coming into force of the Trusts (Amendment No. 6) (Jersey) Law 2013.

**47E Power to set aside a transfer or disposition of property to a trust due to mistake<sup>79</sup>**

- (1) In this paragraph, “person exercising a power” means a person who exercises a power to transfer or make other disposition of property to a trust on behalf of a settlor.
- (2) The court may on the application of any person specified in Article 47I(1), and in the circumstances set out in paragraph (3), declare that a transfer or other disposition of property to a trust –
  - (a) by a settlor acting in person (whether alone or with any other settlor); or
  - (b) through a person exercising a power,is voidable and –
  - (i) has such effect as the court may determine, or
  - (ii) is of no effect from the time of its exercise.
- (3) The circumstances are where the settlor or person exercising a power –
  - (a) made a mistake in relation to the transfer or other disposition of property to a trust; and
  - (b) would not have made that transfer or other disposition but for that mistake, andthe mistake is of so serious a character as to render it just for the court to make a declaration under this Article.

**47F Power to set aside a transfer or disposition of property to a trust exercised by fiduciary power<sup>80</sup>**

- (1) In this paragraph, “person exercising a power” means a person who exercises a power to transfer or make other disposition of property to a trust on behalf of a settlor and who owes a fiduciary duty to the settlor in relation to the exercise of his or her power.
- (2) The court may on the application of any person specified in Article 47I(1), and in the circumstances set out in paragraph (3), declare that a transfer or other disposition of property to a trust by a settlor (whether alone or with any other settlor) through a person exercising a power, is voidable and –
  - (a) has such effect as the court may determine, or
  - (b) is of no effect from the time of its exercise.
- (3) The circumstances are where, in relation to the exercise of his or her power, the person exercising a power –
  - (a) failed to take into account any relevant considerations or took into account irrelevant considerations; and

- (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for that failure to take into account relevant considerations or that taking into account of irrelevant considerations.
- (4) It does not matter whether or not the circumstances set out in paragraph (3) occurred as a result of any lack of care or other fault on the part of the person exercising a power, or on the part of any person giving advice in relation to the exercise of the power.

**47G Power to set aside the exercise of powers in relation to a trust or trust property due to mistake<sup>81</sup>**

- (1) In this paragraph, “person exercising a power” means a person who, otherwise than in the capacity of trustee, exercises a power over, or in relation to a trust, or trust property.
- (2) The court may on the application of any person specified in Article 47I(2), and in the circumstances set out in paragraph (3), declare that the exercise of a power by a trustee or a person exercising a power over, or in relation to a trust, or trust property, is voidable and –
  - (a) has such effect as the court may determine; or
  - (b) is of no effect from the time of its exercise.
- (3) The circumstances are where the trustee or person exercising a power –
  - (a) made a mistake in relation to the exercise of his or her power; and
  - (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for that mistake, andthe mistake is of so serious a character as to render it just for the court to make a declaration under this Article.

**47H Power to set aside the exercise of fiduciary powers in relation to a trust or trust property<sup>82</sup>**

- (1) In this paragraph, “person exercising a power” means a person who, otherwise than in the capacity of trustee, exercises a power over, or in relation to a trust, or trust property and who owes a fiduciary duty to a beneficiary in relation to the exercise of that power.
- (2) The court may on the application of any person specified in Article 47I(2), and in the circumstances set out in paragraph (3), declare that the exercise of a power by a trustee or a person exercising a power over, or in relation to a trust, or trust property, is voidable and –
  - (a) has such effect as the court may determine; or
  - (b) is of no effect from the time of its exercise.
- (3) The circumstances are where, in relation to the exercise of his or her power, the trustee or person exercising a power –
  - (a) failed to take into account any relevant considerations or took into account irrelevant considerations; and

- (a) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for that failure to take into account relevant considerations, or that taking into account of irrelevant considerations.
- (4) It does not matter whether or not the circumstances set out in paragraph (3) occurred as a result of any lack of care or other fault on the part of the trustee or person exercising a power, or on the part of any person giving advice in relation to the exercise of the power.

#### **47I Applications and orders under Articles 47E to 47H<sup>83</sup>**

- (1) An application under Article 47E(2) or 47F(2) may be made by any settlor or any of his or her personal representatives or successors in title.
- (2) An application under Article 47G(2) or 47H(2) may be made by –
  - (a) the trustee who exercised the power concerned, or the person exercising a power (as the case may be);
  - (b) any other trustee;
  - (c) a beneficiary or enforcer;
  - (d) the Attorney General in relation to a trust containing charitable trusts, powers or provisions;
  - (e) any other person with leave of the court.
- (3) Without prejudice to Article 51 and subject to paragraph (4), the court may, consequential upon a declaration made under any of Articles 47E to 47H, make such order as it thinks fit.
- (4) No order may be made under paragraph (3) which would prejudice any bona fide purchaser for value of any trust property without notice of the matters which render the transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or trust property, voidable.

#### **47J Savings in respect of applications made under Articles 47E to 47H<sup>84</sup>**

Nothing in Articles 47E to 47H shall prejudice –

- (a) any application for a declaration that a transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or trust property, is void or voidable on grounds other than those specified in Articles 47E to 47H; or
- (b) any personal remedy which may be available against a trustee or any other person.

### **PART 3**

#### **PROVISIONS APPLICABLE TO A FOREIGN TRUST**

#### **48 Application of Part 3**

This Part of this Law shall apply only to a foreign trust.

#### **49 Enforceability of a foreign trust**

- (1) Subject to paragraph (2), a foreign trust shall be regarded as being governed by, and shall be interpreted in accordance with its proper law.
- (2) A foreign trust shall be unenforceable in Jersey –
  - (a) to the extent that it purports –
    - (i) to do anything the doing of which is contrary to the law of Jersey,
    - (ii) to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Jersey, or
    - (iii) to apply directly to immovable property situated in Jersey;
  - (b) to the extent that the court declares that the trust is immoral or contrary to public policy.
- (3) Where paragraph (2)(a)(iii) applies, any person in whom the title to such immovable property is vested shall not be, and shall not be deemed to be, a trustee of such immovable property.

### **PART 4**

#### **PROVISIONS OF GENERAL APPLICATION**

#### **50 Application of Part 4**

This Part of this Law shall apply to a Jersey trust and, to the extent that the context admits, shall apply to a foreign trust.

#### **51 Applications to and certain powers of the court**

- (1) A trustee may apply to the court for direction concerning the manner in which the trustee may or should act in connection with any matter concerning the trust and the court may make such order, if any, as it thinks fit.
- (2) The court may, if it thinks fit –
  - (a) make an order concerning –
    - (i) the execution or the administration of any trust,

- (ii) the trustee of any trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and payments, whether payments into court or otherwise,
  - (iii) a beneficiary or any person having a connection with the trust, or
  - (iv) the appointment or removal of an enforcer in relation to any non-charitable purposes of the trust;
- (b) make a declaration as to the validity or the enforceability of a trust;
  - (c) rescind or vary any order or declaration made under this Law, or make any new or further order or declaration.<sup>85</sup>
- (3) An application to the court for an order or declaration under paragraph (2) may be made by the Attorney General or by the trustee, the enforcer or a beneficiary or, with leave of the court, by any other person.<sup>86</sup>
  - (4) Where the court makes an order for the appointment of a trustee it may impose such conditions as it thinks fit, including conditions as to the vesting of trust property.
  - (5) Subject to any order of the court, a trustee appointed under this Article shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed as a trustee.

## **52 Execution of instruments by order of the court**

Where any person neglects or refuses to comply with an order of the court directing the person to execute or make any conveyance, assignment, or other document or instrument or endorsement, for giving effect to any order of the court under this Law, the court may, on such terms and conditions, if any, as may be just, order that the conveyance, assignment, or other document or instrument or endorsement, shall be executed, made or done by such person as the court nominates for the purpose, at the cost of the person in default, or otherwise, as the court directs, and a conveyance, assignment, document, instrument or endorsement so executed, made or done shall operate and be for all purposes available as if it had been executed, made or done by the person originally directed to execute, make or do it.

## **53 Payment of costs**

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

**54 Nature of trustee's estate, following trust property and insolvency of trustee**

- (1) Subject to paragraph (2) –
  - (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) such property shall not be deemed to form part of the trustee's assets.
- (2) Where a trustee is also a beneficiary of the same trust, paragraph (1) shall not apply to the trustee's interest in the trust property as a beneficiary.
- (3) Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered unless it is in the hands of a bona fide purchaser for value without notice of a breach of trust or a person (other than the trustee) deriving title through such a person.<sup>87</sup>
- (4) Where a trustee becomes insolvent or upon distraint, execution or any similar process of law being made, taken or used against any of the trustee's property, the trustee's creditors shall have no right or claim against the trust property except to the extent that the trustee himself or herself has a claim against the trust or has a beneficial interest in the trust.

**55 Protection to persons dealing with trustee**

- (1) A bona fide purchaser for value without actual notice of any breach of trust –
  - (a) may deal with a trustee in relation to trust property as if the trustee was the beneficial owner of the trust property; and
  - (b) shall not be affected by the trusts on which such property is held.
- (2) No person paying or advancing money to a trustee shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the propriety of the transaction or the application of the money.

**56** <sup>88</sup>**57 Limitation of actions or prescription**

- (1) No period of limitation or prescription shall apply to an action brought against a trustee –
  - (a) in respect of any fraud to which the trustee was a party or to which the trustee was privy; or
  - (b) to recover from the trustee trust property –
    - (i) in the trustee's possession,
    - (ii) under the trustee's control, or

- (iii) previously received by the trustee and converted to the trustee's use.
- (2) Where paragraph (1) does not apply, the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is 3 years from –
- (a) the date of delivery of the final accounts to the beneficiary; or
  - (b) the date on which the beneficiary first has knowledge of the breach of trust,
- whichever is earlier.<sup>89</sup>
- (3) Where paragraph (1) does not apply but, when the breach occurs the beneficiary –
- (a) is a minor;
  - (b) is an interdict; or
  - (c) is under any other legal disability,
- the period to which paragraph (2) refers shall not begin to run before the beneficiary ceases to be a minor or interdict or under that other legal disability (as the case may be), or sooner dies.<sup>90</sup>
- (3A) Where paragraph (1) does not apply, the period within which an action founded on breach of trust may be brought against a trustee by an enforcer is 3 years from –
- (a) the date of delivery of the final accounts to the enforcer; or
  - (b) the date on which the enforcer first has knowledge of the breach of trust,
- whichever is earlier.<sup>91</sup>
- (3B) Where paragraph (1) does not apply, the period within which an action founded on breach of trust may be brought against a former trustee by a trustee is 3 years from the date on which the former trustee ceased to be a trustee.<sup>92</sup>
- (3C) Where paragraph (1) does not apply, no action founded on breach of trust may in any event be brought against a trustee by any person after the expiry of the period of 21 years following the occurrence of the breach.<sup>93</sup>
- (4) This Article does not apply to a foreign trust whose proper law is the law of a jurisdiction to which the Convention on the law applicable to trusts and on their recognition, signed at The Hague on 20th October 1984, for the time being extends.<sup>94</sup>

## PART 5

### SUPPLEMENTAL

#### 58 Application of this Law

Subject to Article 59, this Law shall apply to trusts constituted or created either before or after the commencement of this Law.

#### 59 Saving provisions

- (1) Nothing in this Law shall –
  - (a) abridge or affect the powers, responsibilities or duties under any provision of law of the Viscount or any delegate, *tuteur*, special and general attorney, or person acting under the authority of a lasting power of attorney conferred under Part 2 of the [Capacity and Self-Determination \(Jersey\) Law 2016](#);
  - (b) affect the legality or validity of anything done before the commencement of this Law in relation to a trust existing before the commencement of this Law; or
  - (c) affect the legality or validity of any trust arising from a document or disposition executed or taking effect before the commencement of this Law.<sup>95</sup>
- (2) Nothing in this Law shall derogate from the powers of the court which exist independently of this Law –
  - (a) to set aside or reduce any transfer or other disposition of property;
  - (b) to vary any trust;
  - (c) to reduce or vary any testamentary or other disposition;
  - (d) to make an order relating to matrimonial proceedings; or
  - (e) to make an order relating to the avoidance of fraud on creditors.
- (3) Nothing in this Law shall derogate from the provisions of –
  - (a) the [Loi \(1862\) sur les teneures en fidéicommiss et l'incorporation d'associations](#);
  - (b) the [Mental Health \(Jersey\) Law 2016](#);
  - (c) the [Sharing of Church Buildings \(Jersey\) Law 1973](#).<sup>96</sup>
- (4) Nothing in this Law shall affect a personal representative where he or she is acting as such.

#### 60 Rules of Court

The power to make rules of court under the [Royal Court \(Jersey\) Law 1948](#) shall include a power to make rules for the purposes of this Law and proceedings thereunder.

**61 Citation**

This Law may be cited as the Trusts (Jersey) Law 1984.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Trusts (Jersey) Law 1984	<a href="#">L.11/1984</a>	23 March 1984	
Trusts (Amendment) (Jersey) Law 1989	<a href="#">L.9/1989</a>	21 July 1989	
Trusts (Amendment No. 2) (Jersey) Law 1991	<a href="#">L.4/1991</a>	1 October 1991 (R&O.8270)	
Trusts (Amendment No. 3) (Jersey) Law 1996	<a href="#">L.14/1996</a>	24 May 1996	
Trusts (Amendment No. 4) (Jersey) Law 2006	<a href="#">L.21/2006</a>	27 October 2006	<a href="#">P.29/2006</a>
Civil Partnership (Consequential Amendments) (Jersey) Regulations 2012	<a href="#">R&amp;O.47/2012</a>	2 April 2012	<a href="#">P.12/2012</a>
Trusts (Amendment No. 5) (Jersey) Law 2012	<a href="#">L.38/2012</a>	2 November 2012	<a href="#">P.157/2011</a>
Civil Partnership (Consequential Amendments) (No. 2) (Jersey) Regulations 2013	<a href="#">R&amp;O.16/2013</a>	30 January 2013	<a href="#">P.128/2012</a>
Trusts (Amendment No. 6) (Jersey) Law 2013	<a href="#">L.15/2013</a>	25 October 2013	<a href="#">P.62/2013</a>
Trusts (Amendment No. 7) (Jersey) Law 2018	<a href="#">L.22/2018</a>	8 June 2018	<a href="#">P.23/2018</a>
Marriage and Civil Status (Amendment No. 4) (Jersey) Law 2018	<a href="#">L.19/2018</a>	1 July 2018 ( <a href="#">R&amp;O.68/2018</a> )	<a href="#">P.91/2017</a>
Mental Health and Capacity (Consequential Amendment and Transitional Provision) (Jersey) Regulations 2018	<a href="#">R&amp;O.49/2018</a>	1 October 2018 ( <a href="#">R&amp;O.51/2018</a> )	<a href="#">P.48/2018</a>

◦Projets available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

### Table of Renumbered Provisions

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1(2), (3), (4)	spent, omitted from this revised edition
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(1)(b)	repealed by <a href="#">L.9/1989</a>
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(1)(d)	(1)(c)
(3)(b)	spent, omitted from this revised edition
(3)(c)	(3)(b)
(3)(d)	(3)(c)
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57	61

### Table of Endnote References

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- <sup>1</sup> Article 1(1) amended by L.14/1996, L.38/2012, L.22/2018
- <sup>2</sup> Article 4(1) amended by L.4/1991
- <sup>3</sup> Article 4(2) inserted by L.4/1991
- <sup>4</sup> Article 4(3) inserted by L.4/1991
- <sup>5</sup> Article 9 substituted by L.21/2006
- <sup>6</sup> Article 9(1) amended by L.38/2012
- <sup>7</sup> Article 9(2) amended by L.38/2012
- <sup>8</sup> Article 9(2A) inserted by L.38/2012, amended by L.22/2018
- <sup>9</sup> Article 9(3) substituted by L.38/2012
- <sup>10</sup> Article 9(3A) inserted by L.38/2012
- <sup>11</sup> Article 9(4) substituted by L.38/2012
- <sup>12</sup> Article 9(6) amended by R&O.47/2012, L.38/2012, R&O.16/2013, L.19/2018
- <sup>13</sup> Article 9A inserted by L.21/2006
- <sup>14</sup> Article 9A(1) amended by L.22/2018
- <sup>15</sup> Article 9A(2) amended by L.38/2012, L.22/2018

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- <sup>16</sup> Article 9A(3A) inserted by L.22/2018  
<sup>17</sup> Article 10(3) amended by L.4/1991  
<sup>18</sup> Article 10(4) repealed by L.21/2006  
<sup>19</sup> Article 10(5) repealed by L.21/2006  
<sup>20</sup> Article 10(6) repealed by L.21/2006  
<sup>21</sup> Article 10(7) repealed by L.21/2006  
<sup>22</sup> Article 10(8) repealed by L.21/2006  
<sup>23</sup> Article 10(9) repealed by L.21/2006  
<sup>24</sup> Article 10A inserted by L.21/2006  
<sup>25</sup> Article 11(2) amended by L.9/1989, L.14/1996  
<sup>26</sup> Article 12 inserted by L.14/1996  
<sup>27</sup> Article 13 inserted by L.14/1996  
<sup>28</sup> Article 14 inserted by L.14/1996  
<sup>29</sup> Article 15 substituted by L.21/2006  
<sup>30</sup> Article 16 substituted by L.21/2006  
<sup>31</sup> Article 17(1) substituted by L.21/2006  
<sup>32</sup> Article 17(1A) inserted by L.21/2006  
<sup>33</sup> Article 19(3) substituted by L.21/2006  
<sup>34</sup> Article 20 repealed by L.21/2006  
<sup>35</sup> Article 21(3) amended by L.9/1989  
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<sup>37</sup> Article 21(8) inserted by L.14/1996  
<sup>38</sup> Article 23 amended by L.14/1996  
<sup>39</sup> Article 25(1) substituted by L.21/2006  
<sup>40</sup> Article 25(3) amended by L.21/2006  
<sup>41</sup> Article 26(1A) inserted by L.38/2012  
<sup>42</sup> Article 26(2) substituted by L.9/1989  
<sup>43</sup> Article 29 substituted by L.22/2018  
<sup>44</sup> Article 30(1) inserted by L.9/1989  
<sup>45</sup> Article 30(2) amended by L.9/1989  
<sup>46</sup> Article 30(3A) inserted by L.21/2006  
<sup>47</sup> Article 30(10) substituted by L.9/1989  
<sup>48</sup> Article 30(11) repealed by L.22/2018  
<sup>49</sup> Article 31(3) added by L.38/2012  
<sup>50</sup> Article 32 substituted by L.21/2006  
<sup>51</sup> Article 34 heading substituted by L.9/1989  
<sup>52</sup> Article 34(1) amended by L.9/1989, L.22/2018  
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<sup>54</sup> Article 34(2A) repealed by L.22/2018  
<sup>55</sup> Article 34(3) amended by L.9/1989, L.22/2018  
<sup>56</sup> Article 35(3) deleted by L.21/2006  
<sup>57</sup> Article 35(4) deleted by L.21/2006  
<sup>58</sup> Article 37 substituted by L.21/2006  
<sup>59</sup> Article 38(1) substituted by L.22/2018  
<sup>60</sup> Article 38(2) substituted by L.22/2018  
<sup>61</sup> Article 38(2A) inserted by L.22/2018  
<sup>62</sup> Article 38(3) amended by L.22/2018  
<sup>63</sup> Article 38(5) amended by L.22/2018  
<sup>64</sup> Article 38(6) amended by L.22/2018  
<sup>65</sup> Article 38(7) amended by L.22/2018  
<sup>66</sup> Article 40(6) inserted by L.22/2018

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- <sup>67</sup> Article 42(2) substituted by L.21/2006  
<sup>68</sup> Article 42(3) substituted by L.21/2006  
<sup>69</sup> Article 42(4) deleted by L.21/2006  
<sup>70</sup> Article 43(2) substituted by L.22/2018  
<sup>71</sup> Article 43A heading inserted by L.22/2018  
<sup>72</sup> Article 43A inserted by L.22/2018  
<sup>73</sup> Article 47(1) amended by L.22/2018  
<sup>74</sup> Article 47(2) amended by L.22/2018  
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<sup>76</sup> Article 47B inserted by L.15/2013  
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<sup>78</sup> Article 47D inserted by L.15/2013  
<sup>79</sup> Article 47E inserted by L.15/2013  
<sup>80</sup> Article 47F inserted by L.15/2013  
<sup>81</sup> Article 47G inserted by L.15/2013  
<sup>82</sup> Article 47H inserted by L.15/2013  
<sup>83</sup> Article 47I inserted by L.15/2013  
<sup>84</sup> Article 47J inserted by L.15/2013  
<sup>85</sup> Article 51(2) amended by L.14/1996  
<sup>86</sup> Article 51(3) amended by L.14/1996  
<sup>87</sup> Article 54(3) amended by L.9/1989, L.4/1991  
<sup>88</sup> Article 56 repealed by L.21/2006  
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<sup>96</sup> Article 59(3) amended by R&O.49/2018