

Jersey Law 11/1984

TRUSTS (JERSEY) LAW, 1984

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TRUSTS (JERSEY) LAW, 1984

A LAW to make provision with regard to trusts, trustees and persons interested under trusts and for connected purposes, sanctioned by Order of Her Majesty in Council of the

14th day of MARCH, 1984.

(Registered on the 23rd day of March, 1984).

STATES OF JERSEY.

The 31st day of May, 1983.

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law: -

PART I

PRELIMINARY

ARTICLE 1

Interpretation of terms

(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;

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“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;

“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 his domicile does not have legal capacity;

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

“Jersey” means the Island;

“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 his domicile has not reached the age of legal capacity;

“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;

“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;

“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;

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“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.

(2) Where in this Law there is a reference to an Article by number only, and without further identification, such reference shall be construed as a reference to the Article of that number contained in this Law.

(3) Where in any Article or other division of this Law there is a reference to a Part, paragraph, sub-paragraph or clause by number or letter only, and without further identification, such reference shall be construed as a reference to the Part, paragraph, sub-paragraph or clause of that number or letter contained in the Article or other division of this Law in which such reference occurs.

(4) Unless the context otherwise requires, where this Law refers to any enactment, the reference is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

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

ARTICLE 2

Existence of a trust

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

- (a) for the benefit of any person (known as a beneficiary) whether or not yet ascertained or in existence; or
- (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).

ARTICLE 3

Recognition of a trust by the law of Jersey

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

ARTICLE 4

Proper law of a trust

Subject to Article 37, 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) intended by the settlor as the proper law; or failing either
- (c) with which the trust at the time it was created had the closest connexion.

ARTICLE 5

Jurisdiction of court

The court has jurisdiction where –

- (a) the trust is a Jersey trust; or
- (b) a trustee of a foreign trust is resident in Jersey; or
- (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 II

PROVISIONS APPLICABLE ONLY TO A JERSEY TRUST

ARTICLE 6

Application of Part II

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

Creation, validity and duration of Jersey trusts

ARTICLE 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.

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

ARTICLE 8

Property which may be placed in a trust

Subject to paragraph (2) of Article 10 –

- (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.

ARTICLE 9

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 paragraph (3) of Article 30, the terms of a trust may impose upon a beneficiary an obligation as a condition for benefit.

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- (4) A beneficiary may disclaim his whole interest.
- (5) A disclaimer under paragraph (4) shall be irrevocable.
- (6) Subject to the terms of the trust, a beneficiary may disclaim part of his interest.
- (7) Paragraph (6) shall apply whether or not the beneficiary has received some benefit from his interest.
- (8) A disclaimer shall be in writing.
- (9) Subject to the terms of the trust, a disclaimer made under paragraph (6) may be temporary and, if so provided in the writing effecting the disclaimer, shall be capable of revocation in the manner and under the circumstances therein mentioned or referred to.
- (10) The interest of a beneficiary shall constitute moveable property.
- (11) Subject to the terms of the trust, a beneficiary may sell, pledge, charge, transfer or otherwise deal with his interest in any manner.
- (12) A settlor or a trustee of a trust may also be a beneficiary of the trust.

ARTICLE 10

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) 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; or

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- (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; or
 - (iii) it purports to apply directly to immoveable 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
 - (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.
- (3) Where a trust is created for two 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 clause (iii) of sub-paragraph (a) of paragraph (2) applies, any person in whom the title to such immoveable property is vested shall not be, and shall not be deemed to be, a trustee of such immoveable property.

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(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 he is dead for his 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 paragraph (3) of Article 47.

ARTICLE 11

Duration of a Jersey trust

(1) Subject to paragraph (2), a trust may continue until the one hundredth anniversary of the date on which it came into existence and if not sooner terminated shall then terminate.

(2) Paragraph (1) shall not apply to a trust for a charitable purpose.

Appointment, retirement and discharge of trustees.

ARTICLE 12

Number of trustees

(1) Subject to the terms of the trust, the number of trustees shall be not less than two, unless only one trustee was originally appointed.

(2) Where there is no trustee or less than the number required under paragraph (1) a trust shall not fail on that account.

ARTICLE 13

Appointment out of court of new or additional trustee

(1) Where the terms of a trust contain no provision for the appointment of a new or additional trustee – the trustees for the time being or the last remaining trustee or the personal representative or the liquidator of the last remaining trustee may appoint a new or additional trustee.

(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 he 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.

ARTICLE 14

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 his appointment and the court may make such order as it thinks fit.

ARTICLE 15

Resignation or removal of trustee

(1) Subject to paragraph (3), a trustee, not being a sole trustee, may resign his office by notice in writing delivered to his co-trustees.

(2) A resignation takes effect on the delivery of notice in accordance with paragraph (1).

(3) A resignation –

- (a) given in order to facilitate a breach of trust; or
- (b) which would result in there being no trustee or fewer than the number of trustees required under paragraph (1) of Article 12,

shall have no effect.

(4) A trustee shall cease to be a trustee of the trust immediately upon –

- (a) his removal from office by the court; or
- (b) his resignation becoming effective; or
- (c) the coming into effect of a provision in the terms of a trust under which he is removed from office or otherwise ceases to hold his 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.

ARTICLE 16

Position of continuing trustees on reduction in number of trustees

Subject to the terms of the trust, where the number of trustees falls below the minimum number required under paragraph (1) of Article 12, the required number of new trustees shall be appointed and until such minimum number is reached the surviving or continuing trustees shall act only for the purpose of preserving the trust property.

Duties of trustees

ARTICLE 17

Duties of trustee

(1) A trustee shall in the execution of his duties and in the exercise of his powers and discretions –

- (a) act –
 - (i) with due diligence;
 - (ii) as would a prudent person;
 - (iii) to the best of his 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) A trustee shall –
- (a) subject to the terms of the trust, so far as is reasonable preserve the value of the trust property;
 - (b) ensure that the trust property is vested in him or under his control; and

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(c) subject to the terms of the trust, so far as is reasonable enhance the value of the trust property.

(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 his trusteeship; or

(ii) cause or permit any other person to profit directly or indirectly from such trusteeship; or

(iii) on his 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 his trusteeship.

(6) A trustee shall keep trust property separate from his personal property and separately identifiable from any other property of which he is a trustee.

ARTICLE 18

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.

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(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 his dissent to be recorded in writing.

ARTICLE 19

Impartiality of trustee

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

General powers of trustees

ARTICLE 20

Powers of trustee

(1) Subject to the terms of the trust and subject to his 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 his 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.

ARTICLE 21

Delegation by trustee

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

(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 paragraph (2) who, in good faith and without neglect, makes such delegation or appointment or permits the continuation thereof.

(4) A trustee may authorise a person referred to in paragraph (2) to retain any commission or other payment usually payable in relation to any transaction.

ARTICLE 22

Remuneration and expenses of trustee

- (1) Unless authorised by –
 - (a) the terms of the trust; or
 - (b) the consent in writing of all of the beneficiaries; or

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- (c) any order of the court;

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

- (2) A trustee may reimburse himself for or pay out of the trust all expenses properly incurred by him in connexion with the trust.

ARTICLE 23

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 he thinks fit.

ARTICLE 24

Corporate trustee acting by resolution

A corporate trustee may –

- (a) act in connexion 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 connexion with the trust.

ARTICLE 25

Trustee may refuse to make disclosure

Subject to the terms of the trust and subject to any order of the court, a trustee shall not be required to disclose to any person, any document which –

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- (a) discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred or imposed upon him; or
- (b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based; or
- (c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty; or
- (d) relates to or forms part of the accounts of the trust,

unless, in a case to which sub-paragraph (d) applies, that person is a beneficiary under the trust not being a charity, or a charity which is referred to by name in the terms of the trust as a beneficiary under the trust.

Liability for breach of trust

ARTICLE 26

Liability for breach of trust

(1) A trustee who commits or concurs in 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.

(2) Where there are two 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.

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(3) A trustee shall not be liable for a breach of trust committed prior to his appointment, if such breach of trust was committed by some other person.

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

- (a) he becomes aware or ought to have become aware of the commission of such breach or of the intention of his co-trustee to commit a breach of trust; and
- (b) he 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.

(5) 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.

(6) Paragraph (5) 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 (5).

(7) Where two or more trustees are liable in respect of a breach of trust, they shall be liable jointly and severally.

(8) A trustee who becomes aware of a breach of trust to which paragraph (3) relates shall take all reasonable steps to have such breach remedied.

(9) Subject to the terms of the trust, a trustee shall not be liable –

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- (a) for the default of a co-trustee unless –
 - (i) he concurs in the default of that trustee; or
 - (ii) he fails to take reasonable care to prevent it;
 - (b) for any loss to the trust property unless such loss is due to –
 - (i) his wilful default, act or concurrence; or
 - (ii) his neglect or failure to exercise reasonable care to prevent such loss.
- (10) This Article is in addition to Article 52 (which relates to the liability of directors of a corporate trustee).

ARTICLE 27

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 he has 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-trustee 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 trustee of such other trust.

ARTICLE 28

Dealings by trustee with third parties

(1) Where in any transaction or matter affecting a trust a trustee informs a third party that he is acting as trustee, a claim by such third party in relation thereto shall extend only to the trust property.

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(2) Where in any such transaction or matter a trustee fails to inform a third party that he is acting as trustee –

- (a) he shall be personally liable to such third party in respect thereof; and
- (b) he shall have a right of recourse to the trust property by way of indemnity against such personal liability unless he acted in breach of trust.

(3) In this Article “third party” means any person not being a settlor, trustee or beneficiary of the trust.

ARTICLE 29

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 he 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 he 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.

ARTICLE 30

Indemnity of retiring trustee

(1) When a trustee resigns, retires or is removed, he shall duly surrender trust property in his possession or under his control.

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(2) A trustee who resigns, retires or is removed 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 his duty as a trustee except actions –

- (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 he was privy;
- (b) to recover from such trustee trust property or the proceeds of trust property in the possession of such trustee or previously received by such trustee (or in the case of a corporate trustee by any of its officers or employees) and converted to his or its use or not surrendered as required by paragraph (1).

(3) Any provision in the terms of a trust purporting to indemnify a trustee to an extent greater than is provided by this Article shall be invalid.

Protective trusts; class interests; and certain powers

ARTICLE 31

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 property becoming liable to sequestration for the benefit of his creditors.

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(3) A trust under which the interest of a beneficiary is subject to restriction, diminution or termination under paragraph (2) is a spendthrift or protective trust.

(4) A provision in the terms of a trust requiring the interest of a beneficiary in trust property to be held upon a spendthrift or protective trust shall be construed as a requirement that the interest of the beneficiary be subjected to restriction, diminution or termination as mentioned in paragraph (2).

ARTICLE 32

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 fifty-five 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 11, 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.

ARTICLE 33

Power to provide for variation of terms of trust

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

(2) This Article is in addition to Article 43 (which provides for the variation of the terms of a Jersey trust by the court).

ARTICLE 34

Power of accumulation and advancement

(1) Subject to Article 11, the terms of a trust may direct or authorize the accumulation for any period of all or part of the income of the trust.

(2) Subject to paragraph (3), income of the trust which is not accumulated under paragraph (1) shall be distributed.

(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 his interest –

- (a) is a vested interest; or
- (b) is an interest which will become vested –
 - (i) on attaining the age of majority; or
 - (ii) at any later age; or
 - (iii) upon the happening of any event,

the trustee may –

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- (A) accumulate the income attributable to the interest of such beneficiary 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.

(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 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.

(6) Any part 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.

(7) No part of the trust property advanced or applied under paragraph (5) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

ARTICLE 35

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.

ARTICLE 36

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 he 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.

ARTICLE 37

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

ARTICLE 38

Failure or lapse of interest

(1) Subject to the terms of a trust and subject to any order of the court, where –

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- (a) an interest lapses; or
- (b) a trust terminates; or
- (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 sole benefit and the trusts upon which he is to hold the property are not declared or communicated to him,

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 is dead for his personal representative.

(2) Where an interest or property is held by the trustee for a charitable purpose which has ceased to exist or is no longer applicable, that interest or property shall be held for such other charitable purpose as the court may declare to be consistent with the original intention of the settlor.

(3) In paragraphs (1) and (2) “settlor” means the particular person who provided the interest or property affected as mentioned in paragraph (1).

(4) An application to the court under this Article may be made by the Attorney General.

ARTICLE 39

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.

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(2) Notwithstanding paragraph (1), the trustee may retain sufficient assets to make reasonable provision for liabilities.

(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; or

(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 paragraph (3) of Article 47.

Powers of the court

ARTICLE 40

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;

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- (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.

ARTICLE 41

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) he is or may be personally liable for the breach of trust;
- (b) he has acted honestly and reasonably;
- (c) he 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.

ARTICLE 42

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 him.

(2) Paragraph (1) applies whether or not such beneficiary is a minor or an interdict.

ARTICLE 43

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; or
- (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; or
- (c) any person unborn; or
- (d) any person in respect of any interest of his 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.

(2) The court shall not approve an arrangement on behalf of any person coming within sub-paragraph (a), (b) or (c) of paragraph (1) unless the carrying out thereof appears to be for the benefit of that person.

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(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 authorised 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 paragraph (3) of Article 47.

PART III

PROVISIONS APPLICABLE TO A FOREIGN TRUST

ARTICLE 44

Application of Part III

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

ARTICLE 45

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 –

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- (i) to do anything the doing of which is contrary to the law of Jersey; or
 - (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 immoveable property situated in Jersey;
- (b) to the extent that the court declares that the trust is immoral or contrary to public policy.

(3) Where clause (iii) of sub-paragraph (a) of paragraph (2) applies, any person in whom the title to such immoveable property is vested shall not be, and shall not be deemed to be, a trustee of such immoveable property.

PART IV

PROVISIONS OF GENERAL APPLICATION

ARTICLE 46

Application of Part IV

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.

ARTICLE 47

Applications to and certain powers of the court

(1) A trustee may apply to the court for direction concerning the manner in which he may or should act in connexion with any matter concerning the trust and the court may make such order, if any, as it thinks fit.

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- (2) The court may, if it thinks fit –
- (a) make an order concerning –
- (i) the execution or the administration of any trust; or
 - (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; and
 - (iii) a beneficiary or any person having a connexion with 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.

(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 or a beneficiary or, with leave of the court, by any other person.

(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 he had been originally appointed as a trustee.

ARTICLE 48

Execution of instruments by order of the court

Where any person neglects or refuses to comply with an order of the court directing him to execute or make any conveyance, assignment, or other document or instrument or indorsement, 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 indorsement, 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 indorsement 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.

ARTICLE 49

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.

ARTICLE 50

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 his assets.

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(2) Where a trustee is also a beneficiary of the same trust, paragraph (1) shall not apply to his 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 –

- (a) it is not identifiable; or
- (b) it is in the hands of a bona fide purchaser for value without notice of a breach of trust.

(4) Where a trustee becomes insolvent or upon distraint, execution or any similar process of law being made, taken or used against any of his property his creditors shall have no right or claim against the trust property except to the extent that the trustee himself has a claim against the trust or has a beneficial interest in the trust.

ARTICLE 51

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.

ARTICLE 52

Liability of directors of a corporate trustee

(1) This Article applies to a corporate trustee which, being constituted or operated for the purpose of acting as a trustee (whether or not it is also constituted or operated for other purposes) –

- (a) is a trustee of a Jersey trust; or
- (b) is resident in Jersey; or
- (c) is carrying on business in Jersey or from an address in Jersey.

(2) Where a breach of trust has been committed by a corporate trustee to which this Article applies, every person who at the time of the commission of the breach of trust was a director of such corporate trustee shall be deemed to be a guarantor of such corporate trustee in respect of any pecuniary damages and costs awarded by the court against such corporate trustee in respect of such breach:

Provided always that the Court may relieve a director either wholly or partly from personal liability as a guarantor of such corporate trustee where it appears to the Court that he ought fairly to be excused from such liability, because –

- (a) he has proved that he was not aware of such breach of trust being contemplated or committed, and in being not so aware, was not behaving in a reckless or negligent manner; or
 - (b) he expressly objected, and exercised such rights as he had by way of voting power or otherwise as a shareholder, director or other officer of the company so as to try to prevent the commission of such breach of trust.
- (3) For the purposes of paragraph (2) –

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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 either 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) where used in this paragraph “associate” in relation to a person means any relative, partner or other person who is, has been or may be influenced by that person.

ARTICLE 53

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 he was privy; or
 - (b) to recover from the trustee trust property –
 - (i) in his possession; or
 - (ii) under his control; or
 - (iii) previously received by him and converted to his use.
- (2) Save as provided in paragraph (1), the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is –

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- (a) three years from the 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 occurrence of a breach of trust,

whichever period shall first begin to run.

(3) Where the beneficiary is a minor the period referred to in paragraph (2) shall not begin to run before the day on which the beneficiary ceases to be a minor.

PART V

SUPPLEMENTAL

ARTICLE 54

Application of this Law

Subject to Article 55, this Law shall apply to trusts constituted or created either before or after the commencement of this Law.

ARTICLE 55

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 curator, tuteur, or special and general attorney;
 - (b) give validity to any transfer or disposition of property to a trust which would not otherwise be a valid transfer or disposition;

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- (c) 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
- (d) affect the legality or validity of any trust arising from a document or disposition executed or taking effect before the commencement of this Law.

(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; or
- (b) to vary any trust; or
- (c) to reduce or vary any testamentary or other disposition; or
- (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;¹
- (b) the Probate (Jersey) Law, 1949;²
- (c) the Mental Health (Jersey) Law, 1969.³
- (d) the Sharing of Church Buildings (Jersey) Law, 1973.⁴

¹ Tomes I–III, page 258 and Volume 1963–1965, page 527.

² Tome VII, page 517.

³ Volume 1968–1969, page 345.

⁴ Volume 1973–1974, page 125.

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(4) Nothing in this Law shall affect a personal representative where he is acting as such.

ARTICLE 56

Rules of court

The power to make rules of court under the Royal Court (Jersey) Law, 1948,⁵ shall include a power to make rules for the purposes of this Law and proceedings thereunder.

ARTICLE 57

Short title

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

R.S. GRAY,

Deputy Greffier of the States.

⁵ Tome VII, page 502 and Volume 1979–1981, page 195.