

**ISLE OF MAN**  
**TRUSTS ACT 1995**

**ARRANGEMENT OF SECTIONS**

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## AN ACT

to make further provision relating to the governing law of trusts; for the exclusion of foreign law in relation to trusts governed by Manx law; and for connected purposes.

We, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):-

### **Application of Act.**

1.(1) This Act applies to every trust and every disposition of property in trust which is -

(a) made on or after the date on which this Act comes into operation; or

(b) made before that date but the governing law of which is changed to the law of the Island after that date in accordance with section 3,

but does apply to -

(i) a testamentary trust or disposition unless the trust or disposition is valid under the law of

the domicile of the testator at death; or

(ii) a trust or disposition of immovable property unless the trust or disposition is valid under the law of the jurisdiction where the immovable property is situated.

(2) In subsection (1), "property" includes property situate in the Island or elsewhere.

#### **Governing law.**

2.(1) A term of trust selecting the law of the Island to govern the trust is valid, effective and conclusive regardless of any other circumstances.

(2) A term of trust -

(a) that the law of the Island is to govern a particular aspect of the trust; or

(b) that the Island or the courts of the Island are the forum for the administration of the trust,

is conclusive evidence, subject to the other terms of the trust, that the settlor intended the law of the Island to be the governing law of the trust and the term is valid and effective accordingly.

#### **Change of governing law.**

3.(1) If the terms of a trust so provide, the governing law of the trust may be changed to or

from the law of the Island if -

(a) in the case of a change to the law of the Island, the change is recognised by the prior governing law of the trust; or

(b) in the case of a change from the law of the Island -

(i) the validity of the trust; and

(ii) the respective rights or interests of the beneficiaries or potential beneficiaries;

is recognised by the new governing law.

(2) A change in the governing law shall not affect the legality or validity of, nor render any person liable for, any thing done before the change.

**Matters determined by governing law.**

4.(1) Subject to subsections (3) and (4), all questions arising in respect of -

(a) a trust which is governed by the law of the Island;

(b) any disposition of property upon the trusts of such a trust;

(c) any of the matters referred to in Article 8 of the Convention set out in the Schedule to the Recognition of Trusts Act 1988; and

(d) to the extent that they are not embraced by paragraphs (a) to (c), the matters specified in subsection (2),

are to be determined according to the law of the Island, without reference to the laws of any other jurisdiction with which the trust or disposition may be connected.

(2) The matters referred to in subsection (1)(d) are -

(a) the capacity of any settlor;

(b) the validity of a disposition or its construction or effect;

(c) 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;

(d) any other question relating to -

(i) the administration of the trust and its assets, whether the administration is conducted in the Island or elsewhere; or

(ii) the capacity, powers, duties, obligations, liabilities and rights of trustees.

(3) Subsection (1) shall not affect the recognition of -

(a) the law of the place of incorporation of a body corporate as regards the capacity of that body;

(b) foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property.

(4) This section is subject to the express terms of a trust or disposition.

#### **Exclusion of foreign law.**

5. Without prejudice to the generality of section 4, no trust governed by the law of the Island and no disposition of property to be held upon the trusts of such a trust is void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of any settlor to be questioned by reason that -

(a) the law of any foreign jurisdiction prohibits or does not recognise the concept of a trust;

or

(b) the trust or disposition -

(i) avoids or defeats any right, claim or interest conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights; or

(ii) contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to such a right, claim or interest.

### **Interpretation.**

6. In this Act -

"disposition" includes -

(a) every form of conveyance, transfer, assignment, sale, gift, lease, licence, mortgage, charge, pledge, encumbrance or other transaction (absolute or limited) by which any legal or equitable interest in property is created, transferred or extinguished;

(b) the disposal of an interest in or right over property by the exercise of a power of

appointment, power of maintenance, power of advancement or other authority, and also includes the conferring or variation or surrender of such powers or authority;

(c) a contract to make any disposition referred to in paragraph (a) or (b);

"foreign law" means the law of any country or territory outside the Island other than a provision in an Act of Parliament or any instrument of a legislative character under such an Act which extends to the Island as part of the law of the Island;

"formalities" in relation to a disposition means the documentary and other actions required generally by the laws of a relevant jurisdiction for all dispositions in the like form concerning property of the like nature, without regard to -

(a) the fact that the particular disposition is made in trust;

(b) the terms of the trust;

(c) the circumstances of the parties to the disposition; or

(d) any other particular circumstances,

but include any special formalities required by reason that the party effecting the disposition is not of full age, is subject to a mental or bodily infirmity or is a corporation;

"heirship rights" means any right, claim or interest in, against or to the property of a person arising or accruing in consequence of that person's death, other than any such right, claim or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property to such person;

"personal relationship" includes every form of relationship by blood or marriage and, but without prejudice to the generality of the foregoing words in this definition, a personal relationship between two persons exists if -

- (a) one is the child of the other, natural or adopted (whether or not the adoption is recognised by law), legitimate or illegitimate; or
- (b) one is married to the other (whether or not the marriage is recognised by law); or
- (c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parent and child or husband and wife; or
- (d) personal relationships exist between both of them and a third person,

but no change in circumstances causes a personal relationship, once established, to terminate;

"settlor" in relation to a trust means and includes each and every person who, directly or indirectly, on behalf of himself or on behalf of any other or others, as owner or as the holder of a power in that behalf, makes a disposition of property to be held in such trust or declares or otherwise creates such trust, and includes a person who assigns property to a trust;

"term" includes both an express and an implied term.

#### **Short title and commencement.**

7.(1) This Act may be cited as the Trusts Act 1995.

(2) This Act shall come into operation on such day as may be appointed by order made by the Treasury and different days may be so appointed for different provisions and for different purposes.



**Isle of Man**

*Ellan Vannin*

**AT 8 of 1988**

# **RECOGNITION OF TRUSTS ACT 1988**





**Isle of Man**

*Ellan Vannin*

## RECOGNITION OF TRUSTS ACT 1988

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**Isle of Man***Ellan Vannin*

## RECOGNITION OF TRUSTS ACT 1988

*Received Royal Assent:* 30 March 1988  
*Passed:* 19 April 1988  
*Commenced:* 1 July 1989

**AN ACT** to enable the Convention on the law applicable to trusts and on their recognition to be extended to the Isle of Man.

### **1 Applicable law and recognition of trusts<sup>1</sup>**

- (1) The provisions of the Convention set out in the Schedule shall have the force of law in the Island.
- (2) Those provisions shall, so far as applicable, have effect not only in relation to the trusts described in Articles 2 and 3 of the Convention but also in relation to any other trusts of property arising under the law of the Island or by virtue of a judicial decision whether in the Island or elsewhere.
- (3) In accordance with Articles 15 and 16 such provisions of the law as are there mentioned shall, to the extent there specified, apply to the exclusion of the other provisions of the Convention.
- (4) In Article 17 the reference to a State includes a reference to any country or territory (whether or not a party to the Convention, and including a part of the United Kingdom) which has its own system of law.
- (5) Article 22 shall not be construed as affecting the law to be applied in relation to anything done or omitted before the commencement of this Act.

### **2 Short title etc**

- (1) This Act may be cited as the Recognition of Trusts Act 1988.
- (2) This Act shall come into operation on such day as the Governor in Council may by order appoint.<sup>2</sup>
- (3) This Act binds the Crown.



**SCHEDULE****CONVENTION ON THE LAW APPLICABLE TO TRUSTS AND  
ON THEIR RECOGNITION**

## Section 1

## CHAPTER 1- SCOPE

*Article 1*

This Convention specifies the law applicable to trusts and governs their recognition.

*Article 2*

For the purposes of this Convention, the term 'trust' refers to the legal relationship created- inter vivos or on death- by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the following characteristics —

- (a) the assets constitute a separate fund and are not a part of the trustee's own estate;
- (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- (c) the trustee has the power and the duty, in respect of which he is accountable to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

*Article 3*

The Convention applies only to trusts created voluntarily and evidenced in writing.

*Article 4*

The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.

*Article 5*

The Convention does not apply to the extent that the law specified by Chapter II does not provide for trusts or the category of trusts involved.

## CHAPTER II- APPLICABLE LAW

*Article 6*

A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

Where the law chosen under the previous paragraph does not provide for trusts or the category of trust involved, the choice shall not be effective and the law specified in Article 7 shall apply.

*Article 7*

Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

In ascertaining the law with which a trust is most closely connected 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.

*Article 8*

The law specified by Article 6 or 7 shall govern the validity of the trust, its construction, its effects and the administration of the trust.

In particular that law shall govern —

- (a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
- (b) the rights and duties of trustees among themselves;
- (c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;
- (d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;
- (e) the powers of investment of trustees;
- (f) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;
- (g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;

- (h) the variation or termination of the trust;
- (i) the distribution of the trust assets;
- (j) the duty of trustees to account for their administration.

*Article 9*

In applying this Chapter a severable aspect of the trust, particularly matters of administration, may be governed by a different law.

*Article 10*

The law applicable to the validity of the trust shall determine whether that law or the law governing a severable aspect of the trust may be replaced by another law.

CHAPTER III- RECOGNITION

*Article 11*

A trust created in accordance with the law specified by the preceding Chapter shall be recognised as a trust.

Such recognition shall imply, as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his capacity as trustee, and that he may appear or act in this capacity before a notary or any person acting in an official capacity.

In so far as the law applicable to the trust requires or provides, such recognition shall imply, in particular —

- (a) that personal creditors of the trustees shall have no recourse against the trust assets;
- (b) that the trust assets shall not form part of the trustee's estate upon his insolvency or bankruptcy;
- (c) that the trust assets shall not form part of the matrimonial property of the trustee or his spouse nor part of the trustee's estate upon his death;
- (d) that the trust assets may be recovered when the trustee, in breach of trust, has mingled trust assets with his own property or has alienated trust assets. However, the rights and obligations of any third party holder of the assets shall remain subject to the law determined by the choice of law rules of the forum.

*Article 12*

Where the trustee desires to register assets, movable or immovable, or documents of title to them, he shall be entitled, in so far as this is not prohibited by or inconsistent

with the law of the State where registration is sought, to do so in his capacity as trustee or in such other way that the existence of the trust is disclosed.

*Article 14*

The Convention shall not prevent the application of rules of law more favourable to the recognition of trusts.

CHAPTER IV- GENERAL CLAUSES

*Article 15*

The Convention does not prevent the application of provisions of the law designated by the conflicts rules of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating in particular to the following matters —

- (a) the protection of minors and incapable parties;
- (b) the personal and proprietary effects of marriage;
- (c) succession rights, testate and intestate, especially the indefeasible shares of spouses and relatives;
- (d) the transfer of title to property and security interests in property;
- (e) the protection of creditors in matters of insolvency;
- (f) the protection, in other respects, of third parties acting in good faith.

If recognition of a trust is prevented by application of the preceding paragraph, the court shall try to give effect to the objects of the trust by other means.

*Article 16*

The Convention does not prevent the application of those provisions of the law of the forum which must be applied even to international situations, irrespective of rules of conflict of laws.

*Article 17*

In the Convention the word 'law' means the rules of law in force in a State other than its rules of conflict of laws.

*Article 18*

The provisions of the Convention may be disregarded when their application would be manifestly incompatible with public policy.

*Article 22*

The Convention applies to trusts regardless of the date on which they were created.

**ENDNOTES****Table of Legislation History**

<b>Legislation</b>	<b>Year and No</b>	<b>Commencement</b>

**Table of Renumbered Provisions**

<b>Original</b>	<b>Current</b>

**Table of Endnote References**


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<sup>1</sup> CMnd 9494

<sup>2</sup> ADO (whole Act) 1/7/1989 (GC205/89).