TURKS AND CAICOS ISLANDS

THE TRUSTS ORDINANCE 1990

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«minor» means a person who either under the law of the Islands or under the law of his domicile has not reached the age of legal capacity;

«personal relationship» includes every form of relationship by blood or marriage, including former marriage, and in particular 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 each of them and a third person,

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

«personal representative» means the executor or administrator for the time being of a deceased person;

«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;

«terms of a trust» means the written or oral terms of a trust, and any other terms made applicable by the laws governing its validity, construction or administration;

«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 trust;

«Turks and Caicos Trust» means a trust as to which the law governing validity is the law of the Islands;

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

Existence of a trust

3. 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 which does not form, or which has ceased to form, part of his own estate -

(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 paragraph (a) and also for any such purpose as is mentioned in paragraph (b).

Applicable law of a trust

4.(1) Subject to subsection (3) and

(a) the trust is a Turks and Caicos Trust; or

(b) a trustee of a foreign trust is resident in the Islands; or

(c) a trust property of a foreign trust is situated in the Islands; or

(d) administration of any trust property of a foreign trust is carried on in the Islands.

PART II - Provisions applicable only to a Turks and Caicos Trust

Application of Part II

6. This Part applies only to a Turks and Caicos Trust of Part II

Creation of a Trust

7.(1) Subject to subsection (3), a trust may come into existence in any manner.

(2) Without prejudice to the generality of subsection (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.

Property which may be placed in a trust

8. Subject to section 12(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.

Beneficiaries of a trust

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

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

Disclaimer of a beneficial trust

10.(1) Subject to the terms of the trust, a beneficiary may disclaim his interest or any part of it, whether or not he has received any benefit from it.

(2) A disclaimer shall be in writing and subject to the terms of the trust, may, be temporary and may, if the disclaimer so provides, be revoked in the manner and circumstances described or referred to therein.

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

Nature of beneficial interest

11. The interest of a beneficiary is movable property and, subject to the terms of the trust, may be sold, pledged, charged, or otherwise dealt with in any manner applicable to such property.

Validity of a Turks and Caicos Trust

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

(2) A trust shall be invalid and unenforceable:

(a) to the extent that:

(i) it purports to do anything the doing of which is contrary to the law of the Islands; or

(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 the Islands; or

(iii) 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, misrepresentation or in breach of fiduciary duty; or

(ii) the terms of the trust or its subject 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 exclusively for the purposes which are lawful unless a distinct share of income or capital of the trust is allocated for an unlawful purpose in which case the trust shall be invalid as to that share.

(4) Property in respect of which a trust is wholly or partially invalid shall, subject to any order of the Court, be held by the trustee for the settlor absolutely or if he is dead for his personal representative.

(5) In subsection (4), «settlor» means the person who provided the property in respect of which the trust is wholly or partially invalid.

Application of foreign laws

13.(1) All questions arising in regard to a trust which is for the time being governed by the laws of the Islands or in regard to any disposition of property upon the trusts thereof including, without prejudice to the generality of the foregoing, questions as to -

(i) the capacity of any settlor;

(ii) any aspect of the validity of the trust or disposition or the interpretation or effect thereof;

(iii) the administration of the trust, whether the administration be conducted in the Islands or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment and removal; or

(iv) 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 thereof, are to be determined according to the laws of the Islands, without reference to the laws of any other jurisdiction with which the trust or disposition may be connected, provided only that -

(a) this section does not validate any disposition of property which is neither owned by the settlor nor the subject of a power in that behalf vested in the settlor, nor does this section affect the recognition of foreign laws in determining whether the settlor is the owner, of such property or the holder of such a power;

(b) this section takes effect subject to any express contrary term of the trust or disposition;

(c) as regards the capacity of a corporation this section does not affect the recognition of the laws of its place of incorporation;

(d) this section does not affect the recognition of foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property;

(e) this section does not validate any trust or disposition of real property situate in a jurisdiction other than the Islands which is invalid according to the laws of such jurisdiction;

(f) this section does not validate any testamentary trust or disposition which is invalid according to the laws of the testator's domicile.

(2) Without limiting the generality of subsection (1), it is expressly declared that no trust governed by the laws of the Islands and no disposition of property to be held upon the trusts thereof 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 laws of any foreign jurisdiction prohibits or do not recognise the concept of a trust; or

(b) the trust or disposition avoids or defeats rights, claims or interests conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests.

Duration of a Turks and Caicos Trust

14.(1) An instrument creating or varying a trust may provide for the duration and date of termination of the trust.

(2) The rule of law known as the rule against perpetuities and accumulation shall not apply to a Turks and Caicos trust.

(3) For the avoidance of doubt it is declared that the rule referred to in subsection (2) includes:

(a) the application or effect of that rule in respect of accumulations; and

(b) the rule of law prohibiting trusts of perpetual duration.

Number of trustees

15.(1) Subject to the terms of the trust, the number of trustees shall not be less than two, unless one trustee was originally appointed or the sole trustee is a corporation.

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

Appointment out of Court of new or additional trustee

16.(1) Where the terms of a trust contain no provision for the appointment of a new or additional trustees for the time being or the last or 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 section 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.

Prohibition of renunciation after acceptance

17.(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 is are no other trustees a person to

whom subsection (2) applies may apply to the Court for relief from his appointment and the Court may make such order as it thinks fit.

Resignation or removal of a trustee

18.(1) Subject to subsection (3), a trustee, not being a sole trustee, may resign his office by notice in writing delivered to his co-trustees, but such resignation shall not take effect until the resigning trustee has executed the documents and performed the acts necessary to vest the trust property in the new or continuing trustees.

(2) A resignation:

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

(b) which would result in there being no trust or fewer than the number of trustees required under section 15(1), shall have no effect.

(3) 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 operation of a provision in the terms of a trust under which he is removed from office or otherwise ceases to hold office.

Position of continuing trustees on reduction in number of trustees

19. Subject to the terms of the trust, where the number of trustees falls below the minimum number required under section 15(1), the required number of new trustees shall be appointed and until such minimum number is reached the surviving or continuing trustees shall act for the purpose of preserving the trust property.

Duties of trustee

20.(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

(a) observe the utmost good faith.

(2) Subject to this Ordinance, a trustee shall carry out and administer the trust in accordance with its terms.

(3) A trustee shall, subject to the terms of the trust, preserve and enhance so far as is reasonable the value of the trust property.

(4) Except -

(a) with the approval of the Court; or

(b) as permitted by this Ordinance 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 own property and separately identifiable from any other property of which he is trustee.

Duty of co-trustees to act together

21.(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 subsection (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 his dissent to be recorded in writing.

Impartiality of trustee

22. 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 act fairly as between one and the other.

Powers of trustee

23.(1) Subject to the terms of the trust and subject to his duties under this Ordinance, 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 interest 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 discretion.

(4) Subject to the terms of the trust, a person whose consent is required as provided in subsection (3) shall -

(a) not to be deemed to be a trustee by reason only of such requirement or of the giving or withholding of such consent or of any act incidental thereto;

(b) be entitled to remuneration and reimbursement of expenses in respect of services rendered in connection with the giving or withholding of consent or of any act incidental thereto.

Delegation by trustee

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

(2) Except where the terms of the trust specifically provide to the contrary, a trustee, whether or not there is any necessity:

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

(b) may employ professional or skilled 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 subsection (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 subsection (2) to retain any commission or other payment usually payable in relation to any transaction.

(5) Where a trustee enters into an agreement for the employment of an investment manager under subsection (2)(a) he may agree on the same terms as are customarily found in an agreement between the investment manager and beneficial (as opposed to fiduciary) owners of property and he shall not be liable for breach of trust by virtue of agreeing to such

terms except that he shall not agree to any term excluding or limiting the liability of the investment manager for negligent performance of duties unless he considers that in all the circumstances a prudent man of business would accept such a term.

Remuneration and expenses of trustee

25.(1) Unless authorised by -

(a) the terms of the trust; or

(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 services.

(2) A trustee may reimburse himself or pay out of the trust all expenditure properly incurred by him in connection with the trust.

Power to appropriate

26. Subject to this Ordinance and 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.

Corporate trustee acting by resolution

27. 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.

Trustee may refuse to make disclosure

28. 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:

(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 reasons 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 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

29.(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 unless they arise in the same transaction or result from the same unauthorised policy.

(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; and

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

(6) Subsection (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 subsection (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 subsection (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:

(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; or

(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) A term of a trust shall be invalid if it purports to relieve a trustee from liability arising from his own fraud, wilful misconduct or negligence.

Trustee acting in respect of more than one trust

30.(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 purpose 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.

Dealing by trustee with third party

31.(1) Subject to subsection (2), and without prejudice to the liability of a trustee for any breach of trust, 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.

(2) Where the circumstances set out in subsection (1) exist, and the transaction or matter involved a breach of trust, and the third party knew that it involved a breach of trust, the third party shall have no claim against the trust property.

(3) 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.

(4) In this section «third party» means any person not being a settlor, trustee or beneficiary of the trust.

Constructive trustee

32.(1) Subject to subsection (2), where a person (in this section referred to as a constructive trustee) makes or receives any profit, gain or advantage from breach of trust he shall be deemed to be a trustee of that profit, gain or advantage and of any property which represents it or is obtained by application of it.

(2) Subsection (1) shall not apply to a bona fide purchaser or property for value and without notice of a breach of trust or from a person who derives title from such a purchaser unless that person has, at the time of deriving title, notice of a breach of trust.

(3) A person who is or becomes a construtive trustee shall deliver up the property of which he is a constructive trustee to the person properly entitled to it.

(4) This section shall not be construed as excluding any other circumstance under which a person may be or become a constructive trustee.

Position of outgoing trustee

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

(2) A trustee who resigns, retires or is removed and has complied with subsection (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 liability:

(a) arising from such 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; or

(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, officer or employees.

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

Protective trusts

34.(1) The terms of a trust may make the interest of a beneficiary liable to termination.

(2) Without prejudice to the generality of subsection (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 insolvent or any of his property becoming liable to sequestration for the benefit of his creditors.

(3) A trust under which the interest of a beneficiary is subject to restriction, diminution or termination under section (2) may be referred to as a protective trust.

Class interests

35.(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 shall be retained until there is a member of the class in existence or the class closes.

(2) In this section «class interest» means a trust or an interest under a trust which is in favour of a class of persons.

Power to provide for variation of terms of trust

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

(2) This section is in addition to section 47 (which provides for the variation of the terms of a Turks and Caicos Trust by the Court).

Power of accumulation and advancement

37.(1) The terms of the trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

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

(3) Subject to the terms of the trust and subject to any prior interest or charges affecting the trust property, where a beneficiary is a minor and whether or not his beneficiary is a minor and whether or not his interest is vested or contingent the trustee may -

(a) accumulate the income attributable to the interest of such beneficiary;

(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 all or part of the capital to which his share of income is attributable.

(4) The receipt of a parent or the lawful guardian of a beneficiary who is a minor shall be sufficient discharge to the trustee for a payment made under subsection (3).

(5) Subject to the terms of the trust and subject to any prior interest of 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 subsection (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 subsection (5) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

Power of appointment

38. The terms of a trust may confer on the trustee or any other person power to appoint or assign all or 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 beneficiary of the trust immediately prior to such appointment or assignment.

Power of revocation

39.(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 received 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 subsection (3) shall apply to the property which is the subject of such revocation.

(5) In subsection (3) «settlor» means the particular person who provided the property which is the subject of revocation.

Power to provide for change of applicable law

40. The terms of a trust may provide for the law referred to in section 4(1) or the law governing a severable aspect thereof to be changed from the law of the Islands to the law of another jurisdiction but such provision shall not be valid unless the terms also provide that -

(a) the change cannot invalidate any other terms of the trust, any purpose of the trust and any interest of a beneficiary; and

(b) the change is consistent with the intention of the settlor.

Failure of lapse of interest

41.(1) Subject to the terms of a trust and subject to any order of the Court, where:

(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 determination or communication of trusts shall be held by the trustee or the person referred to in paragraph (d), as the case may be, in trust for the settlor absolutely or if he is dead for his personal representative.

(2) In subsection (1) «settlor» means the particular person who provided the interest or property affected as mentioned in subsection (1).

Application of cy-pres of charitable gift

42.(1) Subject to subsection (2), the circumstances in which the original purpose of a charitable gift can be altered to allow the property given or part of it to be applied cy-pres shall be as follows -

(a) where the original purposes, in whole or in part -

(i) have been as far as may be fulfilled; or

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

(b) where the original purposes provide for part only of the property available by virtue of the gift; or

(c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or

(d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose or by reference to a class or persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practicable in administering the gift; or

(e) where the original purposes, in whole or in part, have, since they were laid down -

(i) been adequately provided for by other means; or

(ii) ceased as being useless or harmful to the community or for other reasons, to be in law charitable; or

to the Court for the appointment of a person nominated for the purpose in the application, who shall be a person who resides in the Islands, as an additional trustee.

(2) The Court -

(a) upon being satisfied that the 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 any order appointing such person as an additional trustee.

Termination of a Turks and Caicos trust.

43.(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 subsection (1), the trustee may retain sufficient assets to make reasonable provision for liabilities whether existing, future, contingent or otherwise.

(3) Without prejudice to the powers of the Court and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are minors or persons other than minors who under the law of the Islands or of their domicile do not have legal capacity, they may require the trustee to terminate the trust and distribute the trust property among them.

Appointment of resident trustee

44.(1) Where there is no trustee resident in the Islands 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 the Islands, as an additional trustee.

(2) The Court -

(a) upon being satisfied that the 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.

Power to relieve trustee from personal liability

45.(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: personal liability

(a) he is or may be personally liable for the breach of trust; and

(b) he has acted honestly and reasonably; and

(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) Subsection (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance.

Power to make beneficiary indemnify for breach of trust

46.(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) Subsection (1) applies whether or not such beneficiary is a minor or a person other than a minor, who under the law of the Islands or under the law of his domicile does not have legal capacity.

Variation of a Turks and Caicos Trust by Court and approval of particular transactions

47.(1) Subject to subsection (2), the Court may, if it thinks fit, by order approve on behalf of -

(a) a minor or a person other than a minor who under the law of the Islands or his domicile does not have legal capacity, 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 or may be 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 paragraphs (a), (b) or (c) of subsection (1) unless the carrying out thereof appears to be for the benefit of that person.

(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 the 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) This section applies to a trust whose law governing administration is the law of the Islands.

PART III - Provisions Applicable To A Foreign Trust

Application of Part III

48. This Part applies only to a foreign trust. of Part III

Enforceability of a foreign trust

49.(1) Subject to subsection (2), a foreign trust or a severable aspect thereof shall be governed by the foreign law applicable to the validity, construction and administration thereof.

(2) A foreign trust shall be enforceable in the Islands except to the extent that it purports to do anything the doing of which is contrary to the law of the Islands or to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of the Islands.

PART IV - Provisions Of General Application

Application of Part IV

50. This Part applies to a Turks and Caicos Trust and, to the extent that the context admits, applies to a foreign trust.

Vesting of trust property in new or continuing trustees

51.(1) Where a new trustee is appointed by instrument in writing, then -

(a) If the instrument contains a declaration by the appointer to the effect

(iii) a beneficiary or any person having a connection with the trust;

(b) such property shall not be deemed to form part of his assets.

(2) Where a trustee is also a beneficiary of the same trust, subsection (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 possession of a person to whom section 32(2) applies.

(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.

Protection from personal liability of persons dealing with trustees

56.(1) Subject to subsection (3) a bona fide purchaser for value -

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

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

(2) Subject to subsection (3), 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 of the application of the money.

(3) A person who deals with a trustee shall not be personally liable in respect of any breach of trust on the part of the trustee unless, in respect of that dealing that person -

(a) has actual knowledge of the breach of trust; or

(b) wilfully disregards circumstances which would cause an honest and reasonable person to conclude, on a balance of probabilities, that a breach of trust exists; or

(c) would have actual knowledge of the breach of trust if he made the enquiries which would be made in the circumstances by an honest and reasonable man.

(4) For the purposes of subsection (3), it shall be presumed that an honest and reasonable man would, if the circumstances reasonably so required, seek professional advice including, where appropriate, legal advice.

Liability of directors of a corporate trustee

57.(1) This section 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 Turks and Caicos Trust;

(b) is resident in the Islands; or

(c) is carrying on business in the Islands or from an address in the Islands.

(2) Where a breach of trust has been committed by a corporate by a corporate trustee to which this section 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 breach of trust.

(3) For the purposes of subsection (2) -

(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 subsection «associate» in relation to a person, means any relative, partner or other persons or other person who is, has been or may be influenced by that person.

Limitation of actions or prescriptions

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

(a) three years from 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, which ever period shall first begin to run.

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

PART V - Supplemental

Application of Ordinance

59. Subject to section 60, this Ordinance shall apply to trust constituted or created either before or after the commencement of this Ordinance.

Saving provisions

60.(1)

(c) affect the legality of a trust arising from a document or disposition executed or taking effect before the commencement of this Ordinance.

(2) Nothing in this Ordinance shall derogate from the powers of the Court which exist independently of this Ordinance:

(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.

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

61. *Repealed*

Rules of Court

62. The Court may make rules of Court for the purposes of proceedings under this Ordinance.