

PROJET DE LOI

ENTITLED

The Trusts (Guernsey) Law, 2007 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. III of 2008. See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264).

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The Trusts (Guernsey) Law, 2007

THE STATES, in pursuance of their Resolution of the 15th December, 2006^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

PRELIMINARY

Existence of a trust.

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

- (a) for the benefit of another person (a "**beneficiary**"), whether or not yet ascertained or in existence, and / or
- (b) for any purpose, other than a purpose for the benefit only of the trustee.

NOTES

The following cases have referred to this Law:

^a Article VIII of Billet d'État No. XXI of 2006.

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In the Matter of X, an Incapable 2007–08 GLR 387;
In re the NAO Settlement (2010) (Unreported, Royal Court, 29th November) (Guernsey Judgment No 40/2010);
Trustee 'T' and Respondents (2011) (Unreported, Royal Court, 4th July) (Guernsey Judgment No. 14/2011);
Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi (2011) (Unreported, Royal Court, 3rd May) (Guernsey Judgment No. 15/2011).

The following cases referred to the Trusts (Guernsey) Law, 1989:

In re Kleinwort Benson (Guernsey) Trustee Limited's Application (1998) 25.GLJ.46;
In re Mr and Mrs W's 1966 Settlement (1998) 25.GLJ.46;
Cross v. Benitrust International (C.I.) Limited (1998) 25.GLJ.47;
In the Matter of Global Energy Technologies Limited (in Compulsory Liquidation) (1998) 26.GLJ.62;
Kennedy & Kodell v. Global Energy Technologies Limited (1998) 26.GLJ.62;
Rowe & Rich v. Cross & Cross (1998) 26.GLJ.85;
Insinger Trust (Guernsey) Limited, as Trustee of the FDS Charitable Trust (1999) 27.GLJ.147;
Heeley v. Chick & Elder; Brown v. Orion Trust (2000) 28.GLJ.39;
Re Estates Dawes (2000) 29.GLJ.56;
Stuart-Hutcheson v. Spread Trustee Company Limited [2002] GLR 3;
Kleinwort Benson (Guernsey) Trustees Limited, Robins and Gilligan v. F.P. Wilson, A.M Wilson and Risk [2003] GLR 2;
In the Matter of the Foster Will Trust 2003–04 GLR 71;
In the Matter of the H. Sossen 1969 Settlement [2004] GLR 4;
A Limited and B Limited v. H.M. Procureur [2004] GLR 17;
In the Matter of the Pelican Trust 2005–06 GLR 20;
H.W. Trust Company Limited v. Cunningham 2005–06 GLR 349;
Wallbrook Trustees (Guernsey) Limited v. Baxter 2005–06 GLR N-21;
In the Matter of the H Trust 2007–08 GLR 118;
In the Matter of the V Settlement 2007–08 GLR 240;
In the Matter of X, an Incapable 2007–08 GLR 387;
Hutcheson and others v. Spread Trustee Company Limited 2009–10 GLR 197;
Spread Trustee Company Limited v. Hutcheson et al (2009) (Unreported, Court of Appeal, 26th November) (Guernsey Judgment No. 49/2009).
In re a Settlement (2011) (Unreported, Royal Court, 28th June) (Guernsey Judgment No. 25/2011);
Spread Trustee Co Ltd v. Hutcheson & ors [2011] UKPC 13.

Validity of trusts.

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

Proper law of trust.

3. (1) Subject to sections 51 and 57, the proper law of a trust is –
- (a) the law chosen by the settlor to be the proper law, the choice being expressed or implied in the terms of the trust, or
 - (b) if no law is so chosen, the law with which the trust has its closest connection at the time of its creation, and in determining the law with which a trust has its closest connection regard shall be had in particular to –
 - (i) the place of administration of the trust designated by the settlor,
 - (ii) the situs of the assets of a trust,
 - (iii) the place of residence or business of the trustee,
 - (iv) the objects of the trust and the places where they are to be fulfilled.

(2) A trust the proper law of which is the law of Guernsey is referred to in this Law as a "**Guernsey trust**".

(3) For the purposes of subsection (1)(a), where the proper law of a trust is expressed (in whatever terms) to be the law of the Bailiwick of Guernsey, without further particularity, the proper law of the trust shall be deemed to be the law of Guernsey.

NOTE

The following case has referred to section 3:

Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi (2011) (Unreported, Royal Court, 3rd May) (Guernsey Judgment No. 15/2011).

Jurisdiction of court.

4. (1) The Royal Court sitting as an Ordinary Court ("**the Royal Court**") has jurisdiction in respect of –

- (a) a Guernsey trust, and
- (b) any other trust –
 - (i) a trustee of which is resident in Guernsey,
 - (ii) any property of which is situated or administered in Guernsey, or
 - (iii) the terms of which provide that the Royal Court is to have jurisdiction.

(2) For the purposes of subsection (1)(b)(iii), where the terms of

a trust provide, in whatever terms and without further particularity, that the courts of the Bailiwick, or the courts of Guernsey, are to have jurisdiction, the terms of the trust shall be deemed to provide that the Royal Court is to have jurisdiction,

NOTE

The following case has referred to section 4:

Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi (2011) (Unreported, Royal Court, 3rd May) (Guernsey Judgment No. 15/2011).

PART II

PROVISIONS APPLICABLE ONLY TO GUERNSEY TRUSTS

Application of Part II.

- 5.** This Part of this Law applies only to Guernsey trusts.

Creation, validity and duration of Guernsey trusts

Creation of a trust.

- 6.** (1) Subject to subsections (2), (3) and (4), a trust may be created –
- (a) by oral declaration,
 - (b) by an instrument in writing,
 - (c) by conduct, or
 - (d) in any other manner whatsoever.

- (2) A unit trust may be created only by an instrument in writing.
- (3) A trust of real property situated in Guernsey may be created only by an instrument in writing.
- (4) Nothing in subsection (3) –
 - (a) applies in relation to a trust of real property created before the commencement of this Law, or
 - (b) affects the creation or operation of resulting, implied or constructive trusts.
- (5) No technical expressions are needed for the creation of a trust.

NOTE

The following case has referred to section 6:

Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi (2011) (Unreported, Royal Court, 3rd May) (Guernsey Judgment No. 15/2011).

Property which may be held on trust.

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

Beneficiaries of a trust.

8. (1) A beneficiary shall be –
- (a) identifiable by name, or
 - (b) ascertainable by reference to –
 - (i) a class, or
 - (ii) a relationship to another person, whether or not living at the time of the creation of the trust or at the time by reference to which, under the terms of the trust, members of a class are to be determined.

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

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

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

NOTE

The following case has referred to section 8:

Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi (2011) (Unreported, Royal Court, 3rd May) (Guernsey Judgment No. 15/2011).

Disclaimer of beneficial interest.

9. (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 –

(a) may be temporary, and

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

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

Nature of beneficial interest.

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

Validity and enforceability of trust.

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

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

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

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

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- (c) it has no beneficiary identifiable or ascertainable under section 8(1), unless –
 - (i) it is for a charitable purpose, and / or
 - (ii) it is for a non-charitable purpose in relation to which it is valid and enforceable by virtue of section 12(1), or
 - (d) the Royal Court declares that –
 - (i) it was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty,
 - (ii) it is immoral or contrary to public policy,
 - (iii) its terms are so uncertain that its performance is rendered impossible, or
 - (iv) the settlor was, at the time of its creation, incapable of creating such a trust.
- (3) Where some of the terms of a trust are invalid but others are not –
- (a) if the terms cannot be separated, the trust is invalid,
 - (b) if the terms can be separated, the Royal Court may

declare that the trust is valid as to the terms which are valid.

(4) Where a trust is partially invalid, the Royal Court may declare what property is and what property is not to be held subject to the trust.

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

(6) An application to the Royal Court under this section may be made by any person mentioned in section 69(2).

Trusts for non-charitable purposes; and enforcers.

12. (1) A trust for or including non-charitable purposes created by an instrument in writing and the terms of which provide for –

- (a) the appointment of an enforcer in relation to the trust's non-charitable purposes, and
- (b) the appointment of a new enforcer at any time when there is none,

is valid and enforceable in relation to its non-charitable purposes.

(2) It is the fiduciary duty of an enforcer to enforce the trust in relation to its non-charitable purposes.

(3) The appointment of a person as enforcer of a trust has no effect if the person is also a trustee of the trust.

(4) An enforcer may resign his office by delivering a written notice of resignation to the trustees.

(5) Subject to subsection (6), a resignation takes effect –

(a) on delivery of the notice, or

(b) on such later date or on the happening of such later event as may be specified therein.

(6) A resignation given to facilitate a breach of trust or a breach of the enforcer's fiduciary duty has no effect.

(7) An enforcer ceases to be the enforcer of a trust immediately on –

(a) his removal from office by the Royal Court,

(b) his resignation becoming effective,

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

(d) his appointment as a trustee of the trust.

(8) A trustee of a trust which includes non-charitable purposes which is valid and enforceable by virtue of subsection (1) shall, at any time when there is no enforcer in relation to those purposes, take such steps as may be

necessary to secure the appointment of an enforcer.

(9) Where the trustee of a trust which includes non-charitable purposes which is valid and enforceable by virtue of subsection (1) has reason to believe that the enforcer in relation to those purposes –

- (a) is unwilling or is refusing to act,
- (b) is bankrupt or otherwise unfit to act, or
- (c) is incapable of acting,

the trustee shall apply to the Royal Court for the removal of the enforcer and the appointment of a replacement.

(10) For the avoidance of doubt, the settlor or a corporation can be appointed as an enforcer.

(11) The terms of a trust for non-charitable purposes may provide for the addition, variation or removal of a non-charitable purpose of the trust or for the exclusion of a non-charitable purpose from the objects of the trust.

Duty of enforcer not to profit from his office.

- 13.** (1) An enforcer shall not –
- (a) derive, directly or indirectly, any profit from his appointment,
 - (b) cause or permit any other person to so derive any such profit, or

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

except –

- (i) with the approval of the Royal Court,
- (ii) as permitted by the provisions of this Law, or
- (iii) as expressly provided by the terms of the trust.

(2) An enforcer is entitled to be paid, and shall be reimbursed, by the trustees from the trust property for all expenses and liabilities properly incurred in connection with the trust.

Application of Guernsey law to questions of validity.

14. (1) Subject to the terms of the trust, all questions arising in relation to a Guernsey trust or any disposition of property to or upon such a trust, including (without limitation) questions as to –

- (a) the capacity of the settlor,
- (b) the validity, interpretation or effect of the trust or disposition or any variation or termination thereof,
- (c) the administration of the trust, whether it is conducted in Guernsey or elsewhere, including (without limitation) questions as to the functions, appointment

and removal of trustees and enforcers,

- (d) the existence and extent of any functions in respect of the trust, including (without limitation) powers of variation, revocation and appointment, and the validity of the exercise of any such function,
- (e) the distribution of the trust property,

are to be determined according to the law of Guernsey without reference to the law of any other jurisdiction.

For these purposes "**the law of Guernsey**" does not include the Guernsey rules of private international law, except those set out in this section.

(2) Subsection (1) –

- (a) does not validate any disposition of property which is neither owned by the settlor nor the subject of a power of disposition vested in the settlor,
- (b) does not affect the recognition of the law of any other jurisdiction in determining whether the settlor is the owner of any property or the holder of any such power,
- (c) is subject to any express provision to the contrary in the terms of the trust or disposition,
- (d) does not, in determining the capacity of a corporation,

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affect the recognition of the law of its place of incorporation,

- (e) does not affect the recognition of the law of any other jurisdiction prescribing the formalities for the disposition of property,
- (f) subject to subsection 3, does not validate any trust or disposition of real property situate in a jurisdiction other than Guernsey which is invalid under the law of that jurisdiction, and
- (g) subject to subsection 3, does not validate any testamentary disposition which is invalid under the law of the testator's domicile at the time of his death.

(3) No Guernsey trust, and no disposition of property to or upon such a trust, is void, voidable, liable to be set aside, invalid or subject to any implied condition, nor is the capacity of any settlor, trustee, enforcer, trust official or beneficiary to be questioned, nor is any settlor, trustee, enforcer, trust official, beneficiary or third party to be subjected to any obligation or liability or deprived of any right, claim or interest, by reason that –

- (a) the laws of any other jurisdiction prohibit or do not recognise the concept of a trust, or
- (b) the trust or disposition –
 - (i) avoids or defeats or potentially avoids or defeats rights, claims, interests, obligations or

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liabilities conferred or imposed by the law of any other jurisdiction on any person –

(A) by reason of a personal relationship to a settlor or any beneficiary, or

(B) by way of foreign heirship rights, or

(ii) contravenes or potentially contravenes any rule of law, judgment, order or action of any other jurisdiction intended to recognise, protect, enforce or give effect to any such rights, claims, interests, obligations or liabilities.

(4) Notwithstanding any legislation or other rule of law for the time being in force in relation to the recognition or enforcement of judgments, no judgment or order of a court of a jurisdiction outside Guernsey shall be recognised or enforced or give rise to any right, obligation or liability or raise any estoppel if and to the extent that –

(a) it is inconsistent with this Law, or

(b) the Royal Court, for the purposes of protecting the interests of the beneficiaries or in the interests of the proper administration of the trust, so orders.

(5) This section applies –

(a) whenever the trust or disposition arose or was made,

(b) notwithstanding any other provision of this Law.

(6) In relation to a Guernsey trust of personal property or any disposition of such property to or upon such a trust, the law of Guernsey relating to *légitime* and the rights of a surviving spouse apply only where the settlor is domiciled there at the time of his death.

NOTE

The following case has referred to section 14:

Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi (2011) (Unreported, Royal Court, 3rd May) (Guernsey Judgment No. 15/2011).

Reservation or grant of certain powers does not invalidate trust.

15. (1) A trust is not invalidated by the reservation or grant by the settlor (whether to the settlor or to any other person) of all or any of the following powers or interests –

- (a) a power to revoke, vary or amend the terms of the trust or any trusts or functions arising thereunder, in whole or in part,
- (b) a power to advance, appoint, pay or apply the income or capital of the trust property or to give directions for the making of any such advancement, appointment, payment or application,
- (c) a power to act as, or give directions as to the appointment or removal of, a director or other officer

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of any corporation wholly or partly owned as trust property,

- (d) a power to give directions to the trustee in connection with the purchase, retention, sale, management, lending or charging of the trust property or the exercise of any function arising in respect of such property,
- (e) a power to appoint or remove any trustee, enforcer, trust official or beneficiary,
- (f) a power to appoint or remove any investment manager or investment adviser or any other professional person acting in relation to the affairs of the trust or holding any trust property,
- (g) a power to change the proper law of the trust or the forum for the administration of the trust,
- (h) a power to restrict the exercise of any function of a trustee by requiring that it may only be exercised with the consent of the settlor or any other person identified in the terms of the trust,
- (i) a beneficial interest in the trust property.

(2) The reservation, grant or exercise of a power or interest referred to in subsection (1) does not –

- (a) constitute the holder of the power or interest a trustee,
- (b) subject to the terms of the trust, impose any fiduciary duty on the holder, or
- (c) of itself render any trustee liable in respect of any loss to the trust property.

(3) A trustee who acts in compliance with the valid exercise of any power referred to in subsection (1) does not, by reason only of such compliance, act in breach of trust.

Duration of trust, etc.

16. (1) Subject to the terms of the trust and subsection (2) –

- (a) there is no limit on the period for which a trust may continue to be valid and enforceable, and
- (b) for the avoidance of doubt, no rule against perpetuities or remoteness of vesting or any analogous rule applies to a trust or to any advancement, appointment, payment or application of property from a trust.

(2) A trust created before the commencement of this Law shall terminate on the expiration of 100 years from the date of its creation, unless –

- (a) it is a trust for charitable purpose, or
- (b) it is terminated sooner.

(3) Except where the terms of a trust expressly provide to the contrary, no advancement, appointment, payment or application of income or capital from the trust to another trust is invalidated solely by reason of that other trust continuing to be valid and enforceable beyond the date on which the first trust must terminate.

Appointment, retirement and discharge of trustees

Number of trustees.

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

- (a) only one trustee was originally appointed,
- (b) a corporate trustee resident in Guernsey is acting,
- (c) the Public Trustee is acting, or
- (d) the terms of the trust provide otherwise.

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

NOTE

The following case has referred to section 17:

Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi (2011) (Unreported, Royal Court, 3rd May) (Guernsey Judgment No. 15/2011).

Appointment of new or additional trustees.

18. (1) Where –

- (a) the terms of a trust contain no provision for the appointment of a new or additional trustee,
- (b) any such provision has lapsed or failed, or
- (c) the person with power to make any such appointment is not capable of exercising the power,

a new or additional trustee may be appointed by –

- (i) the existing trustee,
- (ii) the last remaining trustee,
- (iii) the personal representative or liquidator of the last remaining trustee, or
- (iv) the Royal Court.

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

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

(4) On the appointment of a new or additional trustee, anything

necessary to vest the trust property in him jointly with his co-trustees (if any) shall be done.

No renunciation after acceptance.

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

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

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

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

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

Resignation or removal of trustees.

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

(2) Subject to subsection (3) and to the terms of the trust, a resignation takes effect –

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- (a) on delivery of the notice, or
- (b) on such later date or on the happening of such later event as may be specified therein.

(3) A resignation –

- (a) given to facilitate a breach of trust, or
- (b) which would result in there being no trustee or less than the number required by section 17(1),

has no effect.

(4) A trustee ceases to be a trustee immediately on –

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

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

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

Position of continuing trustees on reduction in number of trustees.

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

- (a) the necessary number of additional trustees shall be appointed, and
- (b) until the required number is reached, the existing trustee shall act only to preserve the trust property.

Duties of trustees

General fiduciary duties.

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

(2) A trustee shall execute and administer the trust and shall exercise his functions under it –

- (a) in accordance with the provisions of this Law, and
- (b) subject to those provisions –
 - (i) in accordance with the terms of the trust, and
 - (ii) only in the interests of the beneficiaries or the advancement of the charitable or non-charitable purpose, as the case may be.

Duty to get in and preserve trust property.

23. A trustee shall, subject to the terms of the trust and to the provisions of this Law –

- (a) ensure that the trust property is held by or vested in him or is otherwise under his control, and
- (b) preserve and enhance, so far as is reasonable, the value of the trust property.

Duty of trustee not to profit from trusteeship.

24. A trustee shall not –

- (a) derive, directly or indirectly, any profit from his trusteeship,
- (b) cause or permit any other person to so derive any such profit, or
- (c) on his own account enter into any transaction with his co-trustees, or relating to the trust property, which may result in any such profit,

except –

- (i) with the approval of the Royal Court,
- (ii) as permitted by the provisions of this Law, or
- (iii) as expressly provided by the terms of the trust.

Duty to keep accounts.

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

Duty to give information.

26. (1) A trustee shall, at all reasonable times, at the written request of –

- (a) any enforcer, or
- (b) subject to the terms of the trust –
 - (i) any beneficiary (including any charity named in the trust),
 - (ii) the settlor, or
 - (iii) any trust official,

provide full and accurate information as to the state and amount of the trust property.

(2) Where the terms of the trust prohibit or restrict the provision of any information described in subsection (1), a trustee, beneficiary, trust official or settlor may apply to the Royal Court for an order authorising or requiring the provision of the information.

(3) The person applying to the Royal Court for an order under subsection (2) must show that the provision of the information is necessary or

expedient –

- (a) for the proper disposal of any matter before the court,
- (b) for the protection of the interests of any beneficiary,
or
- (c) for the proper administration or enforcement of the trust.

(4) In its application to a trust arising from a document or disposition executed or taking effect before the 18th April, 1989^b, subsection (1) only operates for the benefit of a beneficiary whose interest in the trust property became vested before that date, but this subsection does not prejudice any rights that the beneficiary may have under the terms of the trust.

Duty to keep trust property separate.

27. 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.

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

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

^b The 18th April, 1989 was the date of commencement of the Trusts (Guernsey) Law, 1989.

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

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

(5) Notwithstanding the provisions of subsections (1) to (4), but subject to the provisions of subsection (6), in the case of a trust in respect of which the Public Trustee has been appointed to act as trustee under the Public Trustee (Bailiwick of Guernsey) Law, 2002 –

- (a) the Public Trustee shall act alone in the execution of the trust,
- (b) functions conferred on the trustees shall be exercised by the Public Trustee without the agreement of any other trustee, and
- (c) the functions of any trustee other than the Public Trustee shall cease,

for so long as the appointment of the Public Trustee continues.

(6) Any provision of paragraphs (a) to (c) of subsection (5) may be disapplied in any particular case by –

- (a) the Public Trustee in writing,
- (b) the court appointing the Public Trustee, at the time of the appointment, or

- (c) the Royal Court, at any other time.

Impartiality of trustees.

29. (1) Where a trust has –

- (a) more than one beneficiary or charitable or non-charitable purpose, or
- (b) a beneficiary and a charitable or non-charitable purpose,

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

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

General powers of trustees

Powers of trustees in relation to property.

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

Power to sue and compromise.

31. (1) A trustee may sue and be sued as trustee.

(2) A trustee may without the sanction of the Royal Court compromise or settle any action or claim brought by or against the trustee or in any way relating to the trust or the trust property.

Consultation by trustees.

32. (1) A trustee may, at the expense of the trust property, consult professional persons in relation to the affairs of the trust.

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

(3) A person shall not, by virtue of being so consulted or giving or refusing such consent –

(a) be deemed to be a trustee, or

(b) if the terms of the trust so provide, be under any fiduciary duty to the beneficiaries or the settlor.

Delegation by trustees.

33. (1) A trustee shall not delegate his functions unless permitted to do so –

(a) by the provisions of this Law or by the terms of the trust, or

(b) in the case of the Public Trustee, by the provisions of the Public Trustee (Bailiwick of Guernsey) Law, 2002.

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

- (a) delegate the management of trust property to, and appoint, investment managers whom the trustee reasonably considers to be competent and qualified to manage the investment of the trust property,
- (b) appoint professional persons to act in relation to the affairs of the trust or to hold any trust property, and
- (c) authorise any such manager or person to retain any commission or other payment usually payable for services of the description rendered.

(3) A trustee who, without any breach on his part of section 22(1), makes or permits the continuation of a delegation or appointment under subsection (2), is not liable for any loss to the trust arising from the delegation or appointment.

Powers of attorney.

34. (1) Unless the terms of the trust provide to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding 3 years the performance of any trust or function vested in him (alone or jointly) as trustee.

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

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

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

shall –

- (a) if the donor is an individual, be signed by him, or by his direction and in his presence, in the presence of a witness, who shall also sign, or
- (b) if the donor is a corporate trustee, be executed by the donor in accordance with its articles of association or its other documents of constitution.

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

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

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

- (a) the date of commencement and duration of the power of attorney,
- (b) the name and address of the donee,
- (c) the reason for giving the power of attorney, and
- (d) the trust or function delegate.

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

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

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

(10) The period referred to in subsection (1) does not apply to a power of attorney given as part of any arrangement –

(a) for the subordination of debts, or

(b) to confer security over the trust property,

and "security" includes any mortgage, charge, hypothèque, lien or other security, including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993^c.

Remuneration and expenses of trustees.

35. (1) Unless authorised by –

(a) the terms of the trust,

^c Order in Council No. III of 1993.

- (b) the consent in writing of every beneficiary, or
- (c) an order of the Royal Court,

a trustee is not entitled to remuneration for his services.

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

(3) For the avoidance of doubt, and subject to the terms of the trust, the cost of purchasing and maintaining professional indemnity insurance is, for the purposes of subsection (2), an expense properly incurred in connection with the trust, but not to the extent that the insurance is against the trustee's liability for a breach of trust arising from his own fraud, wilful misconduct or gross negligence.

(4) Notwithstanding the provisions of subsection (1), but without prejudice to the provisions of subsection (2), the Public Trustee may, in the case of a trust in respect of which he has been appointed to act as trustee under the Public Trustee (Bailiwick of Guernsey) Law, 2002, pay from the trust property, and reimburse himself from the trust property for, all fees payable to the Public Trustee pursuant to the provisions of the said Law in connection with the trust, unless –

- (a) the court appointing the Public Trustee directs otherwise at the time of the appointment, or
- (b) the Royal Court directs otherwise at any other time.

Power to appropriate.

36. 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.

Corporate trustee may act by resolution.

37. A corporate trustee may –

- (a) act in connection with a trust by a resolution of the corporate trustee or of its board of directors or other governing body, or
- (b) by such a resolution appoint an officer or employee, or a committee of officers or employees or both, to act on its behalf in connection with the trust.

Non-disclosure of deliberations or letters of wishes.

38. (1) A trustee is not, subject to the terms of the trust and to any order of the Royal Court, obliged to disclose –

- (a) documents which reveal –
 - (i) his deliberations as to how he should exercise his functions as trustee,
 - (ii) the reasons for any decision made in the exercise of those functions,
 - (iii) any material upon which such a decision was or might have been based,

(b) any letter of wishes.

(2) A "**letter of wishes**" is a letter or other document intimating how the settlor or beneficiary wishes the trustees to exercise any of their functions.

(3) The person applying to the Royal Court for an order under this section for the disclosure of any document must show that the disclosure is necessary or expedient –

(a) for the proper disposal of any matter before the court,

(b) for the protection of the interests of any beneficiary,
or

(c) for the proper administration or enforcement of the trust.

Liability for breach of trust

Liability for breach of trust.

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

(a) any loss or depreciation in value of the trust property resulting from the breach, and

(b) any profit which would have accrued to the trust had there been no breach.

(2) A trustee may not set off a profit accruing from one breach of

trust against a loss or depreciation in value resulting from another.

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

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

(a) he becomes or ought to have become aware of the breach or of the intention of his co-trustee to commit the breach, and

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

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

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

(7) The terms of a trust may not –

(a) relieve a trustee of liability for a breach of trust arising from his own fraud, wilful misconduct or gross negligence, or

(b) grant him any indemnity against the trust property in respect of any such liability.

(8) For the avoidance of doubt, and without prejudice to any other provision of this Law –

- (a) subsection (7) applies to a trust whenever created, and
- (b) a term of a trust is invalid to the extent that it purports to –
 - (i) relieve a trustee of liability for a breach of trust arising from his own fraud, wilful misconduct or gross negligence, or
 - (ii) grant him any indemnity against the trust property in respect of any such liability.

Beneficiary may relieve or indemnify trustee.

40. (1) A beneficiary may –

- (a) relieve a trustee of liability to him for any breach of trust,
 - (b) indemnify a trustee against liability for any breach of trust.
- (2) Subsection (1) does not apply if the beneficiary –
- (a) is a minor or a person under legal disability,
 - (b) does not have a full knowledge of all material facts, or

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

Trustees of more than one trust.

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

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

Dealings by trustees with third parties.

42. (1) Subject to subsection (3), where, in a transaction or matter affecting a trust, a trustee informs a third party that he is acting as trustee or the third party is otherwise aware of the fact, the trustee does not incur any personal liability and a claim by the third party in respect of the transaction or matter extends only to the trust property.

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

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

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

(4) This section applies to a transaction notwithstanding the *lex causae* of the transaction, unless the terms of the transaction expressly provide to the contrary.

Position of outgoing trustees.

43. (1) When a trustee resigns or is removed –

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

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

(2) Where the security to be given for the purposes of subsection (1)(b) is to be given by way of indemnity against the trust property, the indemnity shall not, except with leave of the Royal Court or with the consent of all beneficiaries, be greater than that to which the trustee would have been entitled had he remained a trustee.

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

However, a trustee is not by reason only of such compliance relieved of any liability –

- (a) arising from a breach of trust to which he (or, in the case of a corporate trustee, any of its officers or employees) was a party or was privy,
- (b) in respect of an action to recover from him (or, in the case of a corporate trustee, any of its officers or employees) trust property or the proceeds thereof in his possession.

(4) An indemnity given in writing by a trustee or beneficiary and expressed to be in favour of a trustee who has previously resigned or been removed from office (a "**previous trustee**") is, subject to its terms, enforceable by the previous trustee against the indemnifying party notwithstanding that the previous trustee is not a party to or signatory of the indemnity.

Trustees' lien.

44. (1) For the purpose of securing a trustee's right to pay from the trust property, and to be reimbursed from the trust property for, all expenses and liabilities properly incurred in connection with the trust, a trustee is entitled to a non-possessory lien over the trust property in respect of all such expenses and liabilities (existing, future, contingent or otherwise).

(2) The lien –

- (a) continues after the trustee ceases to be a trustee and has duly surrendered all trust property in accordance with section 43, and
- (b) is without prejudice to any indemnity or other security

to which the trustee is entitled.

(3) The lien attaches to any trust property, except to the extent that –

(a) the lien is expressly waived or released, or

(b) the property –

(i) is no longer identifiable,

(ii) is in the hands of a bona fide purchaser for value or a person (other than the trustees) who derived title through such a purchaser, or

(iii) comprises real property.

(4) Subject to subsection (3), in this section "**trust property**" includes property that has ceased to be held on trust by reason of distribution from the trust (including a distribution on termination of the trust) or otherwise and property into which trust property has been converted.

(5) The lien granted under subsection (1) is the right of the trustee, where he is not exonerated or reimbursed from the trust property, to follow, recover and appropriate the trust property for the purpose of realisation, payment and reimbursement.

Protective trusts, class interests and certain powers

Protective trusts.

45. The terms of a trust may make the interest of a beneficiary –
- (a) liable to termination,
 - (b) subject to a restriction on alienation or dealing, or
 - (c) subject to diminution or termination in the event of the beneficiary becoming bankrupt or any of his property becoming liable to arrest, saisie, or similar process of law.

Class interests.

46. Where a trust is in favour of a class of persons then, subject to the terms of the trust –
- (a) the class closes when it is no longer possible for any other person to become a member of the class,
 - (b) a woman over the age of 60 years shall be deemed to be no longer capable of bearing a child, and
 - (c) where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and, subject to section 16(2), retained until a member of the class exists or the class closes.

Power of variation.

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

(2) This section is in addition to sections 57 to 61.

Power of accumulation and advancement.

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

For the avoidance of doubt, no rule limiting the period of accumulations or any analogous rule applies to a trust or to any advancement, appointment, payment or application of assets from a trust.

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

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

- (a) where a beneficiary is a minor (whether or not his interest is vested), apply the income attributable to his interest, or any part of that income, to or for his maintenance, education or other benefit,
- (b) advance or apply for the benefit of a beneficiary part of the trust property prior to the happening of the event on which he is to become absolutely entitled thereto.

- (4) Subject to the terms of the trust –
- (a) any trust property advanced or applied under this section shall be brought into account in determining the beneficiary's share in the trust property, and
 - (b) no part of the trust property so advanced or applied shall exceed the beneficiary's vested, presumptive or contingent share in the trust property.

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

Power of appointment.

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

Power of revocation.

50. (1) A trust and any power or exercise of a power under a trust may be expressed to be capable of –

- (a) revocation, in whole or in part, or
- (b) variation.

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

variation.

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

Change of proper law.

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

(2) Subsection (1) is without prejudice to the powers of the Royal Court under section 57.

(3) A change in the proper law of a trust does not affect the legality or validity of, or render any person liable in respect of, anything done before the change.

Failure, lapse and termination of trusts

Failure or lapse of interest.

52. Subject to the terms of the trust and to any order of the Royal Court, where –

- (a) an interest lapses,
- (b) a trust terminates,
- (c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust,

or

- (d) property is vested in a person otherwise than for his sole benefit, but the trusts on which he is to hold the property are not declared or communicated to him,

the interest or property concerned shall be held by the trustees on trust for the settlor absolutely or, if he is dead, for his personal representative.

Termination of trusts.

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

(2) The trustees may however require that they be provided with reasonable security for liabilities (existing, future, contingent or otherwise) before so distributing the trust property.

(3) Without prejudice to the powers of the Royal Court under subsection (4), and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained, and none is a minor or a person under legal disability, they may require the trustees to terminate the trust and distribute the trust property among them.

(4) The Royal Court, on the application of any person mentioned in section 69(2), may –

- (a) direct the trustees to distribute, or not to distribute, the trust property, or

- (b) make such other order in respect of the termination of the trust and the distribution of the trust property as it thinks fit.

Powers of the court

Appointment of resident trustees.

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

(2) The Royal Court –

- (a) if satisfied that notice of the application has been served on the existing trustees,
- (b) having heard any representations of the existing trustees, of the settlor or his personal representatives, of the other beneficiaries, and of any other person described in section 32(2), and
- (c) having ascertained that the person nominated is willing to act,

may appoint that person as an additional trustee.

Power to relieve trustees from personal liability.

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

- (a) has acted honestly and reasonably, and
- (b) ought fairly to be excused –
 - (i) for the breach of trust,
 - (ii) for omitting to obtain the directions of the court in the matter in which the breach arose.

Power to make beneficiaries indemnify.

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

Variation, etc of trusts

Variation of trusts on behalf of minors, etc.

57. (1) The Royal Court, on the application of any person mentioned in section 69(2), on behalf of –

- (a) a minor or a person under legal disability having, directly or indirectly, an interest, vested or contingent, under a trust,
- (b) any person unborn,
- (c) any person, ascertained or not, who may become entitled, directly or indirectly, to an interest under a

trust, as being (at a future date or on the happening of a future event) a person of any specified description or a member of any specified class,

(d) any person, in respect of an interest that may accrue to him by virtue of the exercise of a discretionary power on the failure or determination of an existing interest, or

(e) with leave of the Royal Court, any other person,

may, subject to subsection (2), approve any arrangement which varies or revokes the terms of a trust or enlarges or modifies the powers of management or administration of any trustees, whether or not there is another person with a beneficial interest who is capable of assenting to the arrangement.

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

NOTE

The following cases have referred to section 57:

In the Matter of X, an Incapable 2007–08 GLR 387;
Trustee 'T' and Respondents (2011) (Unreported, Royal Court, 4th July) (Guernsey Judgment No. 14/2011);
In re a Settlement (2011) (Unreported, Royal Court, 28th June) (Guernsey Judgment No. 25/2011).

Approval of particular transactions.

58. Where in the management or administration of a trust a transaction

is, in the opinion of the Royal Court, expedient, but cannot be effected because the necessary power is not vested in the trustees by the terms of the trust or by law, the Royal Court, on the application of any person mentioned in section 69(2) –

- (a) may confer on the trustees, generally or in any particular circumstances, the necessary power, on such terms and conditions as the court thinks fit, and
- (b) may direct the manner in which, and the property from which, any monies authorised to be expended, and the costs of any transaction, are to be paid or borne.

Charitable and non-charitable trusts – "cy-près".

59. Where trust property is held for a charitable or non-charitable purpose and –

- (a) the purpose has been, as far as may be, fulfilled,
- (b) the purpose cannot be carried out, or not according to the directions given and to the spirit of the gift,
- (c) the purpose provides a use for part only of the property,
- (d) the property, and other property applicable for a similar purpose, can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be applied to a common purpose,

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- (e) the purpose was laid down by reference to –
 - (i) an area which was then, but has since ceased to be, a unit for some other purpose, or
 - (ii) a class of persons or to an area which has for any reason since ceased to be –
 - (A) suitable, , or
 - (B) practicable in administering the gift,
- regard being had to the spirit of the gift,
- (f) the purpose has been adequately provided for by other means,
 - (g) in the case of a charitable purpose, the purpose has ceased to be charitable (by being useless or harmful to the community or otherwise), or
 - (h) the purpose has ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift,

the property, or the remainder of the property, as the case may be, shall be held for such other charitable or non-charitable purpose as the Royal Court, on the application of –

- (i) Her Majesty's Procureur,
- (ii) the trustees, or
- (iii) in the case of a non-charitable purpose, the enforcer,

may declare to be consistent with the original intention of the settlor.

General power to vary.

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

- (a) is now suitable or expedient, and
- (b) is consistent with the original intention of the settlor and the spirit of the gift.

(2) The Royal Court may dispense with the consideration set out in subsection (1)(b) if satisfied that the original intention of the settlor cannot be ascertained.

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

Trusts created by Order in Council.

61. Sections 57 to 60 do not apply to trusts created by an Order in Council of Her Majesty.

Judgment against trustee to be binding on beneficiaries.

62. (1) Any order, judgment or finding of law or fact of the Royal Court in an action against a trustee founded on breach of trust is binding on all beneficiaries of the trust, whether or not yet ascertained or in existence, and whether or not minors or persons under legal disability.

(2) Subsection (1) applies in respect of a beneficiary only if –

- (a) he was represented in the proceedings (whether personally, or by his guardian, or as the member of a class, or otherwise), or
- (b) if not so represented, he had notice of the proceedings and a reasonable opportunity of being heard.

"Notice" in paragraph (b) means 14 days' notice or such other period as the Court may direct.

(3) This section is without prejudice to the powers of the Royal Court in respect of representative proceedings and class actions.

Settlement of action against trustee by alternative dispute resolution to be binding on beneficiaries.

63. (1) Where –

- (a) the terms of a trust direct or authorise, or the Court so

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orders, that any claim against a trustee founded on breach of trust may be referred to alternative dispute resolution ("**ADR**"),

- (b) such a claim arises and, in accordance with the terms of the trust or the Court's order, is referred to ADR, and
- (c) the ADR results in a settlement of the claim which is recorded in a document signed by or on behalf of all parties,

the settlement is binding on all beneficiaries of the trust, whether or not yet ascertained or in existence, and whether or not minors or persons under legal disability.

(2) Subsection (1) applies in respect of a beneficiary only if –

- (a) he was represented in the ADR proceedings (whether personally, or by his guardian, or as the member of a class, or otherwise), or
- (b) if not so represented, he had notice of the ADR proceedings and a reasonable opportunity of being heard,

and only if, in the case of a beneficiary who is not yet ascertained or in existence, or who is a minor or person under legal disability, the person conducting the ADR proceedings certifies that he was independently represented by a person appointed for the purpose by a court of law.

"**Notice**" in paragraph (b) means 14 days' notice or such other period as the person conducting the ADR proceedings may direct.

(3) A person who represents a beneficiary in the ADR proceedings for the purposes of subsection (2)(a) is under a duty of care to the beneficiary.

(4) For the avoidance of doubt, the ADR proceedings need not be conducted in Guernsey or in accordance with the procedural law of Guernsey.

(5) In this section –

"**ADR**" includes conciliation, mediation, early neutral evaluation, adjudication, expert determination and arbitration, and

"**proceedings**" includes oral and written proceedings.

PART III

PROVISIONS APPLICABLE ONLY TO FOREIGN TRUSTS

Application of Part III.

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

Enforceability of foreign trusts.

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

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

- (a) it purports to do anything contrary to the law of Guernsey,
- (b) it confers or imposes any right or function the exercise or discharge of which would be contrary to the law of Guernsey, or
- (c) the Royal Court declares that it is immoral or contrary to public policy.

PART IV
PROVISIONS OF GENERAL APPLICATION

Application of Part IV.

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

Rules of Royal Court.

67. (1) The Royal Court sitting as a Full Court may by order make rules dealing with all procedural and incidental matters arising under this Law, and generally for carrying this Law into effect.

(2) Rules under subsection (1) may, without limitation, regulate and prescribe –

- (a) the procedure, including the method of pleading, and the practice to be followed in proceedings,
- (b) the means by which matters may be proved, and

- (c) the manner and the way in which evidence may be adduced.

Applications for directions.

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

General powers of court.

69. (1) On the application of any person mentioned in subsection (2), the Royal Court may –

- (a) make an order in respect of –
 - (i) the execution, administration or enforcement of a trust,
 - (ii) a trustee, including an order as to the exercise by a trustee of his functions, the removal of a trustee (if, for example, he refuses or is unfit to act, or he is incapable of acting or is bankrupt, or his property becomes liable to arrest, saisie, or similar process of law), the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments, whether into court or otherwise,
 - (iii) a beneficiary, or any person connected with a

trust,

- (iv) any trust property, including an order as to the vesting, preservation, application, distribution, surrender or recovery thereof,
 - (v) an enforcer, in relation to any non-charitable purpose of a trust, including an order as to the exercise by an enforcer of his functions, the removal of an enforcer (if, for example, he refuses or is unfit to act, or he is incapable of acting or is bankrupt, or his property becomes liable to arrest, saisie, or similar process of law), and the appointment, remuneration or conduct of an enforcer,
- (b) make a declaration as to the validity or enforceability of a trust,
 - (c) rescind or vary an order or declaration under this Law or make a new or further order or declaration.
- (2) An application under subsection (1) may be made by –
- (a) Her Majesty's Procureur,
 - (b) a trustee,
 - (c) a settlor,

- (d) a beneficiary,
 - (e) a person described in section 32(2),
 - (f) in relation to a non-charitable purpose, the enforcer,
 - (g) with leave of the Royal Court, any other person.
- (3) Where the Royal Court appoints or removes a trustee under this section –
- (a) it may impose such requirements and conditions as it thinks fit, including requirements and conditions as to the vesting of trust property,
 - (b) subject to the court’s order, a trustee appointed by the court has the same functions, and may act in all respects, as if he had been originally appointed a trustee.

NOTE

The following case has referred to section 69:

Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi (2011) (Unreported, Royal Court, 3rd May) (Guernsey Judgment No. 15/2011).

Powers of court in event of default.

70. If a person does not comply with an order of the Royal Court under this Law requiring him to do anything, the Royal Court may, on such terms and

conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the court, at the expense of the person in default (or otherwise as the court directs), and a thing so done has effect in all respects as if done by the person in default.

Payment of costs.

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

Nature of trustee's interest.

72. (1) Subject to subsection (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) the trust property does not form part of the trustee's estate.

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

Following trust property.

73. With prejudice to the personal liability of a trustee, trust property which has been charged or dealt with in breach of trust, or the property into which it has been converted, may be followed and recovered unless –

- (a) it is no longer identifiable, or

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

Bankruptcy of trustees.

74. Where a trustee becomes bankrupt, or upon his property becoming liable to arrest, saisie or similar process of law, his creditors have no recourse against the trust property except to the extent that the trustee himself has a claim against it or a beneficial interest in it.

Protection for persons dealing with trustees.

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

- (a) may deal with a trustee in relation to trust property as if the trustee were the beneficial owner thereof, and
- (b) is not affected by the trusts on which the property is held.

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

- (a) that the money is wanted,
- (b) that no more than is wanted is raised, or

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

Limitation and prescription.

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

- (a) in respect of any fraud to which the trustee was a party or was privy, or
- (b) to recover from the trustee trust property or the proceeds thereof –
 - (i) held by or vested in him or otherwise in his possession or under his control, or
 - (ii) previously received by him and converted to his use.

(2) Subject to subsections (1) and (3), the period within which an action founded on breach of trust may be brought against a trustee is –

- (a) three years from the date on which the claimant first has knowledge of the breach, or
- (b) where the claimant was at the time of the breach of trust a minor or a person under legal disability –
 - (i) three years from the date on which his guardian

first has knowledge of the breach, or

- (ii) three years from the date on which the claimant ceased to be a minor or a person under legal disability,

whichever first occurs.

(3) Subject to subsection (1), no action founded on breach of trust may be brought against a trustee after the expiration of 18 years immediately following the date of the breach.

Constructive trusts.

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

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

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

PART V
SUPPLEMENTAL

Application of Law.

78. Subject to section 83, and except where provision to the contrary is made, this Law applies to trusts created before or after the commencement of this

Law.

Constitution of Royal Court.

79. For the purposes of this Law the Royal Court may be properly constituted by the Bailiff sitting unaccompanied by the Jurats.

NOTES

The following cases have referred to section 79:

In re the NAO Settlement (2010) (Unreported, Royal Court, 29th November) (Guernsey Judgment No. 40/2010);

Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi (2011) (Unreported, Royal Court, 3rd May) (Guernsey Judgment No. 15/2011).

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Interpretation.

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

"bankrupt", in relation to –

(a) an individual, includes an individual –

(i) whose affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner of the

Royal Court, the Court of Alderney or the Court of the Seneschal,

- (ii) against whom an interim vesting order has been made in respect of any real property in the Bailiwick,
 - (iii) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929^d,
- (b) a corporation, includes a corporation –
- (i) in respect of which a liquidator (provisional or otherwise) has been appointed or which (otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding-up) has passed a special resolution requiring it to be wound up voluntarily, or
 - (ii) which is otherwise insolvent,

and "**bankruptcy**" shall be construed accordingly,

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

^d Ordres en Conseil Vol. VIII, p. 310.

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

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

"corporation" means a body corporate wherever incorporated,

"disposition" includes any means by which property or any interest therein is created, transferred, dealt with, extinguished or charged, and related expressions shall be construed accordingly,

"enforcer": see section 12,

"foreign heirship right" means any right, claim or interest arising under the law of a jurisdiction other than Guernsey in, against or to the property of any person arising, accruing or existing in consequence of, or in anticipation of, that person's death, other than a right, claim or interest created by will or expressed in any other voluntary disposition by that person or resulting from an express limitation in the disposition of the property to that person,

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

"formalities", in relation to a disposition of property, means the documentary and other actions required generally by the law of the jurisdiction in question for any such disposition of any such property, 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 includes any special formalities required by reason of the party effecting the disposition being a minor, a person under legal disability or a corporation,

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

"guardian", in relation to a minor, includes a parent,

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

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

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

"insurance" includes assurance,

"instrument in writing" means any executed document including, for the avoidance of doubt, a will or codicil,

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

trust,

"letter of wishes" : see section 38(2),

"marriage" includes any formal arrangement howsoever described between two people, regardless of gender, pursuant to which the law of any jurisdiction confers or imposes rights, claims, interests, obligations, liabilities or duties analogous to those of husband or wife,

"minor" means, subject to the terms of the trust, a person who has not attained the age of 18 years,

"personal relationship" includes every form of relationship by blood, adoption, marriage or cohabitation regardless of whether the law of any jurisdiction recognises the validity, legitimacy or existence of the relationship, and includes a former personal relationship which has in law or in fact terminated.

A personal relationship also exists between two persons if a personal relationship exists between each of them and a third person,

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

"profit" includes gain or advantage,

"property" –

- (a) means real and personal property of any description, wherever situated, and any share, right or interest

therein, and includes tangible or intangible property and any debt or thing in action,

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

"provisions of this Law" includes the provisions of any Ordinance hereunder,

"Public Trustee" means the Public Trustee appointed under section 1 of the Public Trustee (Bailiwick of Guernsey) Law, 2002^e,

"purpose" means any purpose whatsoever, whether or not involving the conferral of any benefit on any person, and includes, without limitation, the holding or ownership of property and the exercise of functions,

"Royal Court" means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 78,

"settlor" means a person who directly or indirectly provides trust property or makes a testamentary disposition on trust or to a trust,

"States" means the States of Guernsey,

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

^e No. III of 2003.

"third party" means a person other than a settlor, trustee, enforcer, trust official or beneficiary,

"trust" includes –

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

"trustee" has the meaning given by section 1, and includes a corporate trustee and the Public Trustee when acting as trustee pursuant to the provisions of the Public Trustee (Bailiwick of Guernsey) Law, 2002,

"trust official" means a person having a function or holding an office in respect of the trust other than a settlor, trustee, enforcer or beneficiary,

"trust property" means property held on trust,

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

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

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification),

extended or applied.

Power to amend Law by Ordinance.

81. (1) The States may by Ordinance amend this Law.

(2) An Ordinance under this section may, for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.

General provisions as to subordinate legislation.

82. (1) An Ordinance or rule under this Law –

- (a) may be amended or repealed by a subsequent Ordinance or rule, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient including, in the case of an Ordinance, provision amending any enactment.

(2) Any power conferred by this Law to make an Ordinance or rule may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to

which it is exercised –

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

Repeals and transitional provisions.

83. (1) The following enactments are repealed –

- (a) the Trusts (Guernsey) Law, 1989^f,
- (b) the Trusts (Amendment) (Guernsey) Law, 1990^g, and
- (c) section 25(1) of the Public Trustee (Bailiwick of Guernsey) Law, 2003^h.

(2) Anything done before the date of commencement of this Law or in the process of being done on that date under the Trusts (Guernsey) Law, 1989

^f Ordres en Conseil Vol. XXXI, p. 217.

^g Ordres en Conseil Vol. XXXII, p. 385.

^h Order in Council No. III of 2003.

which could be done under this Law shall have effect as if done or, as the case may be, may be continued under this Law.

(3) For the avoidance of doubt, a director or former director of a corporate trustee shall not, after the date of commencement of this Law, be under any duty, obligation or liability as guarantor by virtue of section 70 of the Trusts (Guernsey) Law, 1989 except by virtue of any proceedings instituted prior to that date against the trustee in respect of a breach of trust committed by the trustee.

(4) Any reference, however expressed, in –

(a) any enactment, statutory instrument or rule of court,
or

(b) any trust instrument, will, settlement or other
instrument of whatever nature,

to the Trusts (Guernsey) Law, 1989 or any provision of that Law shall, unless the contrary intention appears, be construed after the date of commencement of this Law as a reference to this Law or, as the case may be, to the corresponding provision of this Law.

Savings.

84. (1) Nothing in this Law –

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

(b) subject to section 14, validates an otherwise invalid disposition of property to a trust,

Consolidated text

- (c) affects the validity of anything done in relation to a trust before the commencement of this Law,
- (d) affects the validity of a trust arising from a document or disposition executed or taking effect before the commencement of this Law,
- (e) derogates from any right of a minor to repudiate a transaction on attaining full age,
- (f) disappplies or derogates from any rule of law or custom relating to the formalities required for the disposition of real property in Guernsey.

(2) Nothing in this Law derogates from the powers of the Royal Court which exist independently of this Law –

- (a) to set aside, vary or reduce any transfer or other disposition of property, testamentary or otherwise,
- (b) in respect of trusts, trustees or trust property,
- (c) to make an order relating to matrimonial proceedings,
- (d) to make an order relating to the avoidance of fraud on creditors.

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

- (a) article 29 of the Law entitled "Loi sur les Successions, 1840"ⁱ,
 - (b) the Law entitled "Loi supplémentaire à la Loi des Successions, 1890"^j,
 - (c) section 12 of the Married Women's Property Law, 1928^k.
- (4) Nothing in this Law affects a personal representative acting as such.
- (5) No transfer or disposition of property to a trust is invalidated by application of the principle of "donner et retenir ne vaut".

NOTES

In accordance with the provisions of the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1) and section 1(2), with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, a person shall attain full age on attaining the age of eighteen instead of on attaining the age of twenty and the reference in this section to "full age" shall be construed accordingly.

The Loi supplémentaire à la Loi des Successions, 1890 has since been repealed by the Inheritance (Guernsey) Law, 2011, section 2(a), with effect from 2nd April, 2012.

Citation.

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- ⁱ Ordres en Conseil Vol. I, p. 51, Vol. II p. 59
 - ^j Ordres en Conseil Vol. II, p. 323.
 - ^k Ordres en Conseil Vol. VIII, p. 213.

85. This Law may be cited as the Trusts (Guernsey) Law, 2007.

Commencement.

86. This Law shall come into operation on the 28th day after the date of its registration on the records of the Island of Guernsey.

NOTE

The Law was registered on the Records of the Island of Guernsey on 18th February, 2008.
