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THE FRAUDULENT DISPOSITIONS LAW (15 OF 1989)

(1996 Revision)

Consolidated with Law 2 of 1990.

Revised under the authority of the Law Revision Law (19 of 1975).

Originally enacted-

Law 15 of 1989-7th September, 1989.
Law 2 of 1990-20 February, 1990.

Revised this 13th day of August, 1996.

FRAUDULENT DISPOSITIONS LAW

(1996 Revision)

ARRANGEMENT OF SECTIONS

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FRAUDULENT DISPOSITIONS LAW

(1996 Revision)

1. This Law may be cited as the Fraudulent Dispositions Law (1996 Revision). Short title
2. In this Law- ~~Definition~~
Definition
 - “creditor” means a person to whom an obligation is owed;
 - “disposition” has the same meaning as in Part VI of the Trusts Law (1996 Revision);
 - “intent to defraud” means an intention of a transferor wilfully to defeat an obligation owed to a creditor;
 - “obligation” means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had notice;
 - “relevant disposition” means a disposition to which section 4(1) applies;
 - “transferor” means the person who, as owner or as the holder of a power in that behalf directly or indirectly, makes a relevant disposition or causes it to be made;
 - “transferee” means the person to whom a relevant disposition is made and shall include any successor in title; and
 - “undervalue” in relation to a disposition of property, means-
 - (a) the provision of no consideration for the disposition; or
 - (b) a consideration for the disposition the value of which in money or money’s worth is significantly less than the value of the property the subject of the disposition.
3. With effect from the 1st May, 1990 this Law shall apply, in place of the law in effect prior to that date, to every disposition of property made before or after the 1st May, 1990, by any person and whether or not the property, the subject of the disposition, is situate in the Islands or elsewhere; save that in any action or proceeding commenced prior to the 1st May, 1990 or within six months of that date, but in respect of a disposition made prior to that date this Law shall have no application and the law to be applied shall be that in effect prior to the 1st May, 1990. Application

Fraudulent Dispositions Law (1996 Revision)

- Avoidance of fraudulent disposition
4. (1) Subject to this Law, every disposition of property made with an intent to defraud and at an undervalue shall be voidable at the instance of a creditor thereby prejudiced.
- (2) The burden of establishing an intent to defraud for the purposes of this Law shall be upon the creditor seeking to set aside the disposition.
- (3) No action or proceedings shall be commenced under this Law unless commenced within six years of the date of the relevant disposition.
- Saving of certain rights
5. In the event that any disposition shall be set aside under this Law, then -
- (a) if the Court is satisfied that the transferee has not acted in bad faith-
- (i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the Court); and
- (ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee (and of any predecessor transferee who has not acted in bad faith); and
- (b) if the Court is satisfied that a beneficiary of a trust has not acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust, or any other person, and otherwise properly exercised.
- Extent of avoidance of relevant dispositions
6. A disposition shall be set aside under this Law only to the extent necessary to satisfy the obligation to a creditor at whose instance the disposition has been set aside together with such costs as the Court may allow.
- Law not to validate certain dispositions
7. Nothing in this Law shall validate any disposition of property which is neither owned by the transferor nor the subject of a power in that behalf vested in the transferor and nor does this Law affect the recognition of foreign laws in determining whether the transferor is the owner of such property or the holder of such power.
- Relationship with Trusts Law (1996 Revision)
8. Nothing in this Law shall create or enable any right, claim or interest on behalf of a creditor or person which right, claim or interest would be avoided or defeated by Part VI of the Trusts Law (1996 Revision).

Publication in revised form authorised by the Governor in Council this 13th day of August, 1996.

Meredith Hew
Acting Clerk of Executive Council