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TRUSTS LAW

(2009 Revision)

Law 6 of 1967 consolidated with Laws 39 of 1967, 10 of 1971, 27 of 1977 (part), 8 of 1979 (part), 18 of 1986, 23 of 1991 (part), 7 of 1995 (part), 5 of 1998, 20 of 2006 and 9 of 2008 and with the Trustees Law (Cap. 175), the Trustees (Charitable Purposes) Vesting Law (Cap. 176), the Trusts (Foreign Element) Law, 1987 (17 of 1987) as amended by Law 6 of 1995 and the Special Trusts (Alternative Regime) Law, 1997 (18 of 1997).

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Consolidated and revised this 16th day of June, 2009.

Note (not forming part of the Law): This revision replaces the 2007 Revision which should now be discarded.

TRUSTS LAW

(2009 Revision)

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TRUSTS LAW

(2009 Revision)

PART I - Introductory

1. This Law may be cited as the Trusts Law (2009 Revision). Short title

2. In this Law - Definitions
 - “authorised investments” means investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law;
 - “commencement date” means the 18th February, 1967;
 - “contingent right” as applied to land, includes a contingent or executory interest, a possibility coupled with an interest whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;
 - “convey” and “conveyance” as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or other transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;
 - “Court” means the Grand Court of the Cayman Islands;
 - “exempted trust” means a trust registered as an exempted trust under Part VI;
 - “income” includes rents and profits;
 - “hereditaments” mean real property which, under an intestacy, devolves on the next of kin;
 - “land” includes land of any tenure, houses and other buildings, mines and minerals, and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over, or derived from land, and also an undivided share in land;
 - “mines and minerals”, in the definition of “land”, includes any strata or seam of minerals or substances in or under any land and powers of working and winning the same;
 - “mortgage” and “mortgagee” include a charge or chargee by way of mortgage and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

“new trustee” includes an additional trustee;

“pay” and “payment”, as applied in relation to stocks and securities and in connection with the expression “into court”, include the deposit or transfer of the same in or into court;

“personal representative” means the executor or administrator for the time being of a deceased person;

“possessed” applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;

“possession” includes receipt of rents and profits or the right to receive the same, if any;

“property” includes real and personal property, and any estate, share and interest in any property, real or personal, and any debt, thing in action and other right or interest, whether in possession or not;

“rights” include estates and interests;

“sale” includes an exchange;

“securities” include stocks, funds and shares and, so far as relate to payments into court, has the same meaning as in the enactments relating to funds in court;

“securities payable to bearer” include securities transferable by delivery or by delivery and endorsement;

“stock” includes fully paid up shares and, so far as relates to vesting orders made by the Court under this Law, includes any fund, annuity or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

“transfer”, in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee;

“trust” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expressions “trust” and “trustee” extend to implied and constructive trusts, to cases where the trustee has a beneficial interest in the trust property and to the duties incident to the office of a personal representative;

“trustee” where the context admits, includes a personal representative;

2007 Revision

“trust corporation” means a body corporate incorporated under the Companies Law (2007 Revision) with a registered office in the Islands or a body corporate registered as a foreign company under Part IX of the Companies Law (2007 Revision) and in both cases holding a licence to carry on trust business granted under the Banks and Trust Companies Law (2009 Revision);

2009 Revision

“trust for sale”, in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale; and

“trustees for sale” mean the persons (including a personal representative) holding land on trust for sale.

PART II - Appointment and Discharge of Trustees

3. (1) Where, at the commencement date, there are more than four trustees of a settlement of land, or more than four trustees holding land on trust for sale, no new trustees shall (except where, as a result of the appointment, the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.

Limitation on the number of trustees

(2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement date-

- (a) the number of trustees shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy; and
- (b) the number of trustees shall not be increased beyond four.

(3) Subsections (1) and (2) apply to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply-

- (a) in the case of land vested in trustees for charitable, ecclesiastical or public purposes; or
- (b) where the net proceeds of the sale of the land are held for like purposes.

4. (1) Where a trustee, either original or substituted and whether appointed by the Court or otherwise, is dead, remains out of the Islands for more than twelve months, desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, refuses or is unfit to act therein is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this Law on the number of trustees-

Power of appointing new or additional trustees

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or
- (b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustee or trustees for the time being, or the personal representatives of the last surviving or continuing trustee,

may, by deed, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of the Islands, desiring to be discharged, refusing or being unfit or being incapable or being an infant, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and this section shall apply accordingly, but subject to the restrictions imposed on the number of trustees.

(3) Where a corporation, being a trustee, is or has been dissolved, either before or after the commencement date, then, for the purposes of this section, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

(4) The power of appointment given by subsection (1) or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee, who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the Court or otherwise, then-

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,

may, by deed, appoint another person or persons to be an additional trustee or trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(6) Every new trustee appointed under this section as well before as after all the trust property becomes by law, assurance or otherwise, vested in him, shall have the same powers, authorities and discretions, and may in all respects act as if

he had been originally appointed a trustee by the instrument, if any, creating the trust.

(7) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of this section.

(8) Where a person of unsound mind, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by the Court to make the appointment.

5. (1) Where an infant or a person out of the Islands is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement date (in this subsection called “the deceased”) to a devise or legacy, to the residue of the estate of the deceased or any share therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant or person out of the Islands, the personal representatives of the deceased may, by writing, appoint a trust corporation of two or more persons not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, legacy, residue or share for the infant or the person out of the Islands and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed.

Power to appoint trustees of property belonging to infants or to persons out of the Islands

(2) On such appointment under subsection (1), the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any investment authorised by this Law.

(3) Where a personal representative has, before the commencement date, retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the Court made before such commencement date, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into Court.

6. On the appointment of a trustee for the whole or any part of trust property-

(a) the number of trustees may, subject to the restrictions imposed by this Law on the number of trustees, be increased;

Supplemental provisions as to appointment of trustees

- (b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed;
- (c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but except where only one trustee was originally appointed, or where a contrary intention is expressed in, or evidenced by, the trust instrument, a trustee shall not be discharged from his trust unless there is either a trust corporation or at least two individuals to act as trustees to perform the trust; and
- (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

Evidence as to a
vacancy in a trust

7. (1) A statement, contained in any instrument coming into operation after the commencement date by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the Islands for more than twelve months, refuses, is unfit to act or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration express or implied, consequent on the appointment, shall be valid.

Retirement of trustee
without new
appointment

8. (1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid, by deed, declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed, consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Law without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

9. (1) Where, by a deed, a new trustee is appointed to perform any trust-

Vesting of trust property
in new or continuing
trustees

- (a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who, by virtue of the deed, become or are the trustees for performing the trust, the deed, shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and
- (b) if the deed is made after the commencement date and does not contain such a declaration, the deed shall, subject to any express provisions to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.

(2) Where, by a deed, a retiring trustee is discharged under the statutory power without a new trustee being appointed -

- (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates; and
- (b) if the deed is made after the commencement date and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interest and rights with respect to which a declaration could have been made.

(3) An express vesting declaration whether made before or after the commencement date shall, notwithstanding that the estate, interest and right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provisions to the contrary contained in the deed of appointment or discharge) to vest in the persons referred to in subsections (1) and (2), as the case may require, such estates, interest and rights as are capable of being and ought to be vested in those persons.

- (4) This section does not extend-
 - (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
 - (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture; or
 - (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under a law.

- (5) In subsection (4)-

“lease” includes an underlease and an agreement for a lease or underlease.

Power of Court to
appoint new trustees

10. (1) The Court may, whenever it is expedient to appoint a new trustee or trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(2) The Court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, is a person of unsound mind, is a bankrupt or is a corporation which is in liquidation or has been dissolved.

(3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) Nothing in this section gives power to appoint an executor or administrator.

Power to authorise
remuneration

11. Where the Court appoints a corporation to be a trustee either solely or jointly with another person, the Court may authorise the corporation to charge such remuneration for its services as trustee as the Court may think fit.

Powers of new trustee
appointed by the Court

12. Every trustee appointed by the Court shall, as well before as after the trust property becomes by law, assurance or otherwise, vested in him, have the same

powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

PART III - Presumption of Lifetime Effect and Reserved Powers

13. (1) In construing the terms of any instrument stipulating the trusts and powers in and over the property, if the instrument is not expressed to be a will, testament or codicil and is not expressed to take effect only upon the death of the settlor, it shall be presumed that all such trusts (and in particular the duty of the trustees to the beneficiaries to administer the trust in accordance with its terms) and powers were intended by the settlor to take immediate effect upon the property being identified and vested in the trustee, save as otherwise expressly, or by necessary implication, provided in the instrument.

Presumption of immediate effect

(2) Subsection (1) shall apply notwithstanding-

- (a) that the trust may have been created in order to avoid the application upon the settlor's death of laws relating to wills, probate or succession;
- (b) that during the lifetime of the settlor, beneficiaries of the trust may not be ascertainable;
- (c) that beneficial interests may only vest in remainder or may remain contingent or subject to defeasance by the exercise of reserved powers or otherwise; or
- (d) that the settlor may be one of the trustees.

(3) Subsection (1) does not apply in the case of a declaration by a person constituting himself the sole trustee of a property to which he was beneficially entitled.

14. (1) The reservation or grant by a settlor of a trust of-

Reserved powers

- (a) any power to revoke, vary or amend the trust instrument or any trusts or powers arising thereunder in whole or in part;
- (b) a general or special power to appoint either income or capital of the trust property;
- (c) any limited beneficial interest in the trust property;
- (d) a power to act as a director or officer of any company wholly or partly owned by the trust;
- (e) a power to give binding directions to the trustee in connection with the purchase, holding or sale of the trust property;
- (f) a power to appoint, add or remove any trustee, protector or beneficiary;
- (g) a power to change the governing law and the forum for administration of the trust; or

- (h) a power to restrict the exercise of any powers or discretions of the trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person specified in the trust instrument,

shall not invalidate the trust or affect the presumption under section 13(1).

- (2) In this Part-

“settlor” has the meaning ascribed to that term in section 87.

Indemnity of trustees

15. A trustee who has acted in compliance with, or as a result of an otherwise valid exercise of, any of the powers referred to in section 14(1) shall not be acting in breach of trust.

PART IV - Administration of Trusts

General Powers of Trustees

Power of trustees for sale to sell by auction or private contract

16. (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical or made in any other way.

Power to postpone sale

17. (1) A power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears.

(2) Where there is a power to postpone the sale then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion, for any indefinite period; nor shall a purchaser of a legal estate be concerned in any case with any directions respecting the postponement of a sale.

(3) Subsections (1) and (2) apply whether the trust for sale is created before, on or after the commencement date.

(4) Where a disposition or settlement coming into operation after the commencement date contains a trust either to retain or sell land the same shall be construed as a trust to sell the land with power to postpone the sale.

18. (1) Where any property, vested in trustees by way of security, becomes, by virtue of the statutes of limitation, an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust for sale.

Trust for sale of mortgaged property where right of redemption is barred

(2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable; but this subsection operates without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainder-man.

(3) This section does not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions.

19. (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

Power to sell subject to depreciatory conditions

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

(4) This section applies to sales made before or after the commencement date.

20. (1) The receipt in writing of a trustee for any money, securities or other personal property or effects payable, transferable or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

Power of trustees to give receipts

(2) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

- Power to compound liabilities
21. A personal representative, or two or more trustees acting together, may-
- (a) accept any property, real or personal, before the time at which it is made transferable or payable;
 - (b) sever and apportion any blended trust funds or property;
 - (c) pay or allow any debt or claim on any evidence that he or they think sufficient;
 - (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed;
 - (e) allow any time of payment of any debt; or
 - (f) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust,
- and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.
- Power to raise money by sale, mortgage or otherwise
22. (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession.
- (2) Subsection (1) applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust.
- Protection to purchasers and mortgagees dealing with trustees
23. No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.
- Devolution of power of trustees
24. (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivor or survivors of them for the time being.
- (2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.
- (3) In subsection (2)-

“personal representative” does not include an executor who has renounced or has not proved.

25. (1) A trustee may insure, against loss or damage by fire, any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding the value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

Power to insure

(2) Subsection (1) does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

26. (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power, statutory or otherwise, or in performance of any covenant or of any obligation, statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.

Application of insurance money where policy kept up under any trust, power or obligation

(2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into Court.

(3) Any such money-

- (a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust; or
- (b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the Court, in rebuilding, reinstating, replacing or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing contained in this section shall prejudice or affect the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating or repairing the property lost or damaged, or the rights of any mortgagee, lessor or lessee, whether under any law or otherwise.

(6) This section applies to policies effected either before, on or after the commencement date, but only to money received after such date.

Deposit of documents
for safe custody

27. Trustees may deposit any documents held by them relating to the trust, or to trust property, with any banker, banking company or other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

Reversionary interests,
valuations and audit

28. (1) Where trust property includes any share or interest in property not vested in the trustees, the proceeds of the sale of any such property or any other thing in action, the trustees on the same falling into possession or becoming payable or transferable may-

- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
- (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
- (c) allow any deductions for duties, costs, charges and expenses which they think proper or reasonable; and
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release,

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission-

- (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or in which such share, interest or other thing in action as aforesaid is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested,

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share, interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any law, from time to time (by duly qualified agents), ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

29. (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether attorney-at-law, banker, stockbroker or other person to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

Power to employ agents

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in and executing and perfecting assurances of, or managing, cultivating or otherwise administering, any property subject to the trust or forming part of the testator's or intestate's estate in any place outside the Islands, or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by

reason only of their having made such appointment, be responsible for any loss arising thereby.

(3) Without prejudice to such general power of appointing agents, a trustee-

- (a) may appoint an attorney-at-law to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the attorney-at-law to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
- (b) shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the attorney-at-law shall have the same statutory validity and effect as if the person appointing the attorney-at-law had not been a trustee; and
- (c) may appoint a banker or attorney-at-law to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or attorney-at-law to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making such appointment:

Provided that nothing in this subsection shall exempt a trustee from any liability which he would have incurred if this Law had not been passed, in case he permits any such money, valuable consideration or property to remain in the hands or under the control of the banker or attorney-at-law for a period longer than is reasonably necessary to enable the banker or attorney-at-law, as the case may be, to pay or transfer the same to the trustee.

(4) Subsection (3) applies whether the money or valuable consideration or property was or is received before or after the commencement date.

Power to concur with others

30. Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representative may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding

that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

31. Where an executor or administrator has given such or the like notices as, in the opinion of the court in which such executor or administrator is sought to be charged, would have been given by the Court in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time limited in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator has not had notice at the time of the distribution of the said assets or part thereof as the case may be; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

Distribution of assets
after notice by executor
or administrator

Powers of Maintenance and Advancement, and Protective Trusts

32. (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property-

Power to apply income
for maintenance and to
accumulate surplus
income during a
minority

- (a) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is-
 - (i) any other fund applicable to the same purpose; or
 - (ii) any person bound by law to provide for his maintenance or education; and
- (b) if such person on attaining the age of eighteen years has not a vested interest in such income, the trustees shall henceforth pay the income of that property and of any accretion thereto under subsection (2) to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that in deciding whether the whole or any part of the income of the property is, during a minority, to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and

generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for this purpose, then so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations-

- (a) if any such person-
 - (i) attains the age of eighteen years or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest, or
 - (ii) on attaining the age of eighteen years or on marriage under that age, becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest, in trust for such person absolutely, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and
- (b) in any other case, notwithstanding that such person had a vested interest in such income, as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom,

but the trustees may, at any time during the infancy of such person, if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing *in loco parentis* to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five per cent per annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to

the annuitant for the same period for which the annuity is payable, save that, in any case, accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

33. (1) Trustees may, at any time or times, pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may in their absolute discretion think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs: Power of advancement

Provided that-

- (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property;
- (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property, the money so paid or applied shall be brought into account as part of such share; and
- (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(2) Subsection (1) applies only where the trust property consists of money or securities or of property held upon trust for sale, calling in and conversion, and such money or securities, or the proceeds of such sale, calling in and conversion are not by law or in equity considered as land.

34. (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called “the principal beneficiary”) for the period of his life or for any less period, then, during that period (in this section called “trust period”) the said income shall, without prejudice to any prior interest, be held on the following trusts- Protective trusts

- (a) upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until

any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;

- (b) if the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons-
 - (i) the principal beneficiary and his or her spouse, if any, and his or her children or more remote issue, if any; or
 - (ii) if there is no spouse or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be, as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) Subsection (1) does not apply to trusts coming into operation before the commencement date, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section operates to validate any trusts which would, if contained in the instrument creating the trust, be liable to be set aside.

Investment of Trust Funds

- Authorised investments
35. A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not -
- (a) in any securities in which trustees in England are for the time being authorised by the law of England to invest trust funds;
 - (b) in any securities the interest on which is for the time being guaranteed by the Government of the Islands, or in any public debentures issued under the authority of and guaranteed by any law in force in the Islands;
 - (c) upon freehold securities in the Islands by way of first mortgages thereon; or

(d) on first mortgage of leasehold property in the Islands held for an unexpired term of not less than sixty years at a peppercorn rent, and may also, from time to time, vary such investment.

36. (1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments:

Investment in bearer securities

Provided that securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

(2) A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of subsection (1) be deemed to be such an express prohibition as aforesaid.

(3) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

37. Every power conferred by sections 35 and 36 shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

Discretion of trustees

38. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law.

Power to retain investment which has ceased to be authorised

39. (1) A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court-

Loans and investments by trustees not chargeable as breaches of trust

- (a) that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere;
- (b) that the amount of the loan does not exceed two-thirds of the value of the property as stated in the report; and
- (c) that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require if, in the opinion of the Court, the title accepted be such as a person acting with prudence and caution would have accepted.

(3) This section applies to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement date.

Liability for loss by reason of improper investment

40. (1) Where a trustee improperly advances trust money on a mortgage security which would at the time of investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section applies to investments made before as well as after the commencement date.

Powers supplementary to powers of investment

41. (1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding seven years from the time when the loan was made, provided interest be paid within a specified time not exceeding thirty days after it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.

(2) On a sale of land for an estate in fee simple, trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a charge by way of first mortgage of the land sold, with or without the security of any other property, such charge or mortgage, if any buildings are comprised in the mortgage, to contain a covenant by the mortgager to keep them insured against loss or damage by fire to the full value thereof. The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such charge or mortgage, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being sufficient at the date of the charge or mortgage.

(3) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement-

(a) for the reconstruction of the company;

- (b) for the sale of all or any part of the property and undertaking of the company to another company;
- (c) for the amalgamation of the company with another company; and
- (d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them,

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed, purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(4) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may, as to all or any of such securities, exercise such right and apply capital money subject to the trust in payment of the consideration, renounce such right or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith:

Provided that the consideration for any such assignment shall be held as capital money of the trust.

(5) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(6) Where the loan referred to in subsection (1), or the sale referred to in subsection (2), is made under the order of the Court, the powers conferred by subsections (1) and (2) shall apply only if and as far as the Court may, by order, direct.

42. (1) Trustees may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income.

Power to deposit money at bank and to pay calls

(2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

Protection and Indemnity of Trustees

Protection against liability in respect of rents and covenants

43. (1) Where a personal representative or trustee liable as such for-
- (a) any rent, covenant or agreement reserved by or contained in any lease;
 - (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent-charge; or
 - (c) any indemnity given in respect of any rent, covenant or agreement referred to paragraph (a) or (b),

satisfies all liabilities under the lease or grant which may have accrued, or been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee or other person entitled to call for a conveyance thereof, and thereafter-

- (i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant; and
- (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) In this section-

“grant” applies to a grant whether the rent is created by limitation, grant, reservation or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant;

“lease” includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; and

“lessee” and “grantee” include persons respectively deriving title under them.

44. (1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale, or personal representatives, may give notice by advertisement in a local newspaper, and such other like notices, including notices elsewhere than in the Islands, as would, in any special case, have been directed by the Court in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than twenty-eight days, fixed in the notice, or where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

Protection by means of advertisement

(2) At the expiration of the time fixed by the notice, the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person who may have received it.

(3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

45. A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

Protection in regard to notice

46. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability, bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Exoneraton of trustees in respect of certain powers of attorney

Provided that-

- (a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made; and
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Implied indemnity of trustees

47. (1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust money or securities may be deposited, nor for any other loss, unless the same happens through his own wilful default.

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

Application to the Court for advice and directions

48. Any trustee or personal representative shall be at liberty, without the institution of suit, to apply to the Court for an opinion, advice or direction on any question respecting the management or administration of the trust money or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the Court shall think expedient; and the trustee or personal representative acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee or personal representative in the subject matter of the said application:

Provided, that this shall not indemnify any trustee or personal representative in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee or personal representative shall have been guilty of any fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction, and the costs of such application as aforesaid shall be in the discretion of the Court.

Form of application

49. Where any such application shall be made under section 48, a Judge may require the petitioner to attend him by his attorney-at-law either in Chambers or in Court, where he deems it necessary to have the assistance of an attorney-at-law.

Powers of the Court to make Vesting and other Orders

50. Where-

Vesting orders of land

- (a) the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power;
- (b) a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person-
 - (i) is under disability;
 - (ii) is out of the jurisdiction of the Court; or
 - (iii) cannot be found, or being a corporation, has been dissolved;
- (c) it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;
- (d) it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
- (e) there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
- (f) a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a lease of the right, and has wilfully refused or neglected to convey the land or interest or increase the right for twenty-eight days after the date of the requirement; or
- (g) land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the Court to be expedient,

the Court may make an order (in this Law called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the Court may direct or releasing or disposing of the contingent right to such person as the Court may direct:

Provided that-

- (i) where the order is consequential on the appointment of a trustee, the land or interest therein shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and

- (ii) where the order relates to a trustee entitled or formerly entitled jointly with another person and such trustee is under disability or out of the jurisdiction of the Court or cannot be found or, being a corporation, has been dissolved, the land interest or right shall be vested in such other person who remains entitled, either alone or with any other person the Court may appoint.

Orders as to contingent rights of unborn persons

51. Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on any trust, the Court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Vesting order in place of conveyance by infant mortgagee

52. Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the Court may make an order vesting, releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

Vesting order consequential on order for sale or mortgage of land

53. Where the Court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Law, and the Court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the Court thinks fit in the purchaser, mortgagee or any other person.

Vesting order consequential on judgment for specific performance, etc.

54. Where a judgment is given for the specific performance of a contract concerning any interest in land, for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the Court may declare-

- (a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Law; or
- (b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Law,

and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

55. A vesting order under sections 50 to 54 shall, in the case of a vesting order consequential on the appointment of a trustee, have the same effect-

Effect of vesting orders

- (a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the Court directs; or
- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the Court directs,

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

56. In all cases where a vesting order can be made under sections 50 to 54, the Court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate section.

Power to appoint person to convey

57. (1) Where-

Vesting orders as to stock and things in action

- (a) the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power;
- (b) a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person, to stock or to a thing in action-
 - (i) is under disability;
 - (ii) is out of the jurisdiction of the Court;
 - (iii) cannot be found, or, being a corporation, has been dissolved;
 - (iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled; or
 - (v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action

for twenty-eight days next after an order of the Court for that purpose has been served on him;

- (c) it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (d) stock is standing in the name of a deceased person whose personal representative is under disability; or
- (e) stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient,

the Court may make an order vesting the right to transfer or call for a transfer of stock, to receive the dividends or income thereof or to sue for or recover the thing in action in any such person as the Court may appoint:

Provided that where-

- (i) the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and
- (ii) the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in the last mentioned person either alone or jointly with any other person whom the Court may appoint.

(2) In all cases where a vesting order can be made under subsection (1), the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court, may transfer the stock to himself or any other person, according to the order, and all companies shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section it shall not be lawful for any company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The Court may make declarations and give directions concerning the matter in which the right to transfer any stock or thing in action vested under this Law is to be exercised.

(6) The provisions as to vesting orders shall apply to shares in ships registered under the Acts of Parliament or other law relating to merchant shipping as if they were stock.

58. The powers conferred as to vesting orders may be exercised for vesting any interest in land, stock or thing in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustees was made by instrument under a power or by the Court under its general or statutory jurisdiction.

Vesting orders of charity property

59. Where an infant is beneficially entitled to any property the Court may, with a view to the application of the capital or income thereof for the maintenance, education or benefit of the infant, make an order-

Vesting orders in relation to infant's beneficial interests

(a) appointing a person to convey such property; or

(b) in the case of stock or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, to receive the dividends or income thereof or to sue for and recover such thing in action, upon such terms as the Court may think fit.

60. Where a vesting order is made as to any land founded on an allegation-

Orders made upon certain allegation to be conclusive evidence

(a) of the personal incapacity of a trustee or mortgagee;

(b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the Court or cannot be found, or being a corporation has been dissolved;

(c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor;

(d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or

(e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested,

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section does not prevent the Court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

61. In all cases where the Court shall, under this Law, make a vesting order, or any order having the effect of a conveyance or assignment of any land or interest therein, or having the effect of release or disposition of the contingent right of an unborn person, or class of unborn persons, in any land an office copy of such

Orders of Court to be registered

order shall be registered in the office of the Registrar of Lands, and such order shall take effect upon and from the time of the registration of such office copy.

Registration of vesting order made by court in England

62. (1) Where the court in England has made a vesting order under the Trustee Act, 1925 of the United Kingdom in respect of land or personal estate in the Islands, and the vesting order so made is produced to the Registrar of Lands for registration, such vesting order shall, on payment of a fee of two dollars, be registered in the office of the Registrar of Lands.

(2) For the purposes of this section, a duplicate of a vesting order sealed with the seal of the court making the same or a copy thereof certified as correct by the officer having the custody of the original order, shall have the same effect as the original.

(3) In this section-

UK Act

“court” has the same meaning as the court referred to in section 67 of the Trustee Act, 1925 of the United Kingdom.

Power of Court to authorise dealings with trust property

63. (1) Where, in the management or administration of any property vested in trustees, any sale, lease, mortgage, 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 trustees by the trust instrument, if any, or by law, the Court may, by order, confer upon the trustees, either generally or in any particular instance, the necessary power for that purpose, on such terms, and subject to such provision and conditions, if any, as the Court may think fit, and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The Court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the Court under this section may be made by the trustees or any of them, or by any person beneficially interested under the trust.

Persons entitled to apply for orders

64. (1) An order under this Law for the appointment of a new trustee or concerning any interest in land, stock or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Law concerning any interest in land, stock or thing in action subject to a mortgage may be made on the application of any person

beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

65. Where in any action the Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in the action, to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his attorney-at-law at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to give judgment in absence of a trustee

66. The Court may order the costs and expenses incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the Court may seem just.

Power to charge costs on trust estate

67. If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust whether the transaction alleged to be a breach of trust occurred before or after the commencement date, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same.

Power to relieve trustee from personal liability

68. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the Court seems just, for impounding all or any part of the, interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

Power to make beneficiary indemnify for breach of trust

(2) This section applies to breaches of trust committed before as well as after the commencement date.

Payment into Court

69. (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into Court; and the same shall, subject to rules of court, be dealt with according to the order of the Court.

Payment into Court by trustees

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the Court may order the payment into court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker or other depository, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

Charitable Purposes-Vesting

Real property transferred for religious, etc., purposes to vest in trustees and their successors

70. (1) Wherever freehold, leasehold or other landed property has been or is acquired-

- (a) by any congregation or society of persons associated for religious purposes;
- (b) for the promotion of education;
- (c) for any charitable purpose or any purpose concerned with or dependant on charity;
- (d) as a chapel, meeting house or other place of religious worship;
- (e) as a burial-ground or cemetery;
- (f) as a hospital, poorhouse, asylum or other institution for a charitable purpose or any purpose concerned with or dependant on charity;
- (g) as a dwelling-house and glebe for the minister of such congregation;
- (h) as a school-house and schoolmaster's house and grounds;
- (i) as a college, academy or seminary and grounds; or
- (j) as a hall or rooms for the meeting or transaction of the business of such congregation or society, or for the furtherance of its objects,

and whenever the transfer, conveyance, assignment or other assurance of such property has been or may be taken to or in favour of a trustee or trustees, to be from time to time appointed, or of any party or parties named in such transfer,

conveyance, assignment or other assurance, or subject to any trust for the congregation or society, or of the individuals composing the same, such transfer, conveyance, assignment or other assurance shall not only vest the freehold, leasehold or other property thereby conveyed or otherwise assured in the party or parties therein named, but shall also effectually vest such property in their successors in office for the time being, and the old continuing trustees, if any, jointly, or if there be no old continuing trustees, then wholly in such successors for the time being, who may be chosen and appointed in the manner provided or referred to in or by such transfer, conveyance, assignment or other assurance, or in any separate deed or instrument declaring the trusts thereof; or if no mode of appointment be therein prescribed or referred to, or if the power of appointment be lapsed, then in such manner as shall be agreed upon by such congregation or society, upon such or the like trusts, and with, under and subject to the same powers and provisions as are contained or referred to in such transfer, conveyance, assignment or other assurance, or in any such separate deed or instrument, or upon which such property is held; and that without the necessity of any transfer, assignment, conveyance or other assurance whatsoever, and whether such formality shall or shall not have been prescribed in the original transfer, conveyance, assignment or other assurance, or in any such separate deed or instrument as aforesaid.

(2) Subsection (1) shall not invalidate the appointment of a new trustee or trustees, or the transfer or transmission of the legal estate in any such property in the manner provided by law.

(3) For the purpose of preserving evidence thereof, every such choice and appointment of a new trustee or trustees shall be made to appear by some deed under the hand and seal of the chairman for the time being of the meeting at which such choice and appointment shall be made, and shall be executed in the presence of such meeting, and attested by two or more witnesses, and in the Form in the Schedule, or as near thereto as the circumstances will allow; and the same shall be received as evidence in all courts and proceedings and in the Land Register in the same manner, and on the like proof, as other transfers, deeds and conveyances, and shall be evidence of the truth of the several matters and things therein contained; and the same may be proved, recorded or registered in like manner as other deeds and instruments and such record shall enjoy all the privileges by law attached to the other instruments registerable or recordable in the Land Register under the Registered Land Law (2004 Revision).

2004 Revision

Charitable purposes

71. A trust shall not fail to qualify as a trust for charitable purposes only because those purposes may in part benefit the public or a section of the public outside the Islands.

PART V - Variation of Trusts

Jurisdiction of Court to vary trusts

72. (1) Where property, whether real or personal, is held on trusts whensoever arising, under any will, settlement or other disposition, the Court may if it thinks fit, by order, approve on behalf of-

- (a) any person having, directly or indirectly an interest, whether vested or contingent, under the trusts who by reason of infancy or other incapacity is incapable of assenting;
- (b) any person (whether ascertained or not) who may have become entitled, directly or indirectly, to an interest under the trusts 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, so however that this paragraph shall not include any person who would be of that description or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the Court;
- (c) any unborn person; or
- (d) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined,

any arrangement (by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trusts or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts:

Provided that, except by virtue of paragraph (d), the Court shall not approve an arrangement on behalf of any person unless the carrying out thereof would be for the benefit of that person.

(2) In subsection (1)-

“discretionary interest” means an interest arising under the trust specified in paragraph (a) of section 34(1);

“principal beneficiary” has the same meaning as in section 34(1); and

“protective trusts” mean an interest specified in paragraphs (a) and (b) of section 34(1) or any like trusts.

(3) Nothing in this section shall apply to trusts affecting property settled by any law of the Islands.

PART VI - Exempted Trusts

73. The Governor shall appoint such person as he may, from time to time, think fit to be the Registrar of Trusts for the purpose of registering, controlling and otherwise dealing with exempted trusts in accordance with this Part.

Registrar of Trusts to be appointed

74. (1) Where the Registrar of Trusts is satisfied that the beneficiaries under any trust do not and are not likely to include any person at any time resident or domiciled in the Islands (other than any object of a charitable trust or power) he may, upon application made by the trustees at any time, register such trust as an exempted trust.

Registration of exempted trusts

(2) After the Registrar of Trusts has registered a trust as an exempted trust, it shall not cease to be an exempted trust by reason of the fact that any beneficiary is at any time resident or domiciled in the Islands but any such beneficiary shall nevertheless be subject to section 81(3).

(3) The Registrar of Trusts may, if he thinks fit, decline to approve for registration or to register any trust without giving any reason for so declining.

(4) The Registrar of Trusts may, if he thinks fit, (but subject to section 83) decline to consider any application under this section or any submission under section 82 unless the applicant procures from such of the beneficiaries then in existence and ascertained as the Registrar of Trusts may specify a declaration that he is not and does not intend to become resident or domiciled in the Islands.

75. Upon the registration of any trust as an exempted trust (or if the registration of a trust takes effect under section 82, then upon receipt of any draft document as there mentioned) the Registrar of Trusts shall issue to the trustees thereof a certificate to that effect and the trustees shall pay to the Registrar of Trusts a registration fee of five hundred dollars.

Certificate and registration fee

76. (1) Trustees making application to the Registrar of Trusts for the registration of any trust under this Part shall lodge with the Registrar of Trusts all and any documents containing or recording the trusts, powers and provisions thereof together with a copy of such documents.

Documents to be lodged

(2) The Registrar shall retain in each case every such document and shall (if such be the case) certify that the copy is a true copy thereof and shall return the certified copy to the trustees.

77. (1) The trustees shall, from time to time, furnish the Registrar of Trusts with such accounts, minutes and information relating to the trust as the Registrar may, from time to time, require.

Accounts, minutes and information

(2) The Registrar of Trusts shall keep and maintain a file containing every document lodged under section 76 together with all accounts, minutes and letters or other documents containing information furnished to him which shall be open to inspection by any trustee of the trust or any person specifically so authorised by the provisions of the trust and by the Registrar of Trusts and shall not be open to inspection by any other person, but a person entitled to inspection of the file shall be entitled to take copies of the contents thereof and in the course of any proceedings to produce or (as the case may be) require the Registrar of Trusts to produce the file and the contents thereof in evidence, and the same shall be admissible as *prima facie* evidence of the facts and matters therein appearing.

Annual fee

78. In March of each year the trustees of every exempted trust shall pay to the revenues of the Islands an annual fee of five hundred dollars.

Failure to comply with section 77 or 78

79. Where the trustees of any exempted trust fail to comply with section 77 or 78 and receive written notice to this effect from the Registrar of Trusts, then if sections 77 and 78 have not been complied with within twenty-eight days (or such further period as the Registrar of Trusts may allow) of the receipt of such notice by the trustees, the Court may, upon application made by the Registrar of Trusts, remove any one or more of the trustees and appoint a trustee or trustees in his or their place and generally make such order (including any order as to costs, payment and reimbursement of any fee and of any costs) as the Court may think fit.

Liability for false statements

80. Whoever knowingly furnishes to the Registrar of Trusts any false declaration, document, account, minute or information or permits the same to be so furnished knowing it to be false shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars and to imprisonment for three months.

Power to give undertaking as to tax liability

81. (1) The Governor in Cabinet may give an undertaking to the trustees of an exempted trust who make application therefor that no law which is hereafter enacted in the Islands imposing any tax or duty to be levied on income or on capital assets, gains or appreciation or any tax in the nature of estate duty or inheritance tax shall apply to any property comprised in or any income arising under such exempted trust or to the trustees or the beneficiaries thereof in respect of any such property or income.

(2) Any such undertaking under subsection (1) may be for any period not exceeding fifty years from the date of the creation of the exempted trust and may be in such form as the Governor in Cabinet shall determine.

(3) Notwithstanding subsections (1) and (2) and anything contained in any such undertaking, a beneficiary who is at any time resident or domiciled in the

Islands shall be liable in and in respect of such time to all and any tax and duty as if such undertaking had never been given and nothing in this section shall be construed as exempting any other person resident or domiciled in the Islands from any law imposing any tax or duty referred to in this Law.

82. Any person intending to create any trust otherwise than by will or codicil (or any person on his behalf) may submit to the Registrar of Trusts a draft of any document expressed to contain or record the trusts, powers and provisions thereof and any person intending to be a trustee thereof may apply to the Governor for an undertaking in accordance with section 81 whereupon the Registrar (on being satisfied in accordance with section 74) may approve the same for registration, and the Governor shall be at liberty to give such undertaking under section 81, and such registration and undertaking shall take effect and shall take effect only on the creation of the trust in accordance with such draft within twenty-eight days (or such further period as the Registrar of Trusts may allow) of such approval or the giving of such undertaking (whichever shall later occur) and the trustees shall nevertheless forthwith lodge with the Registrar the documents creating the trust in accordance with section 76.

Submission of trust
before execution

83. (1) Section 74(4) shall not apply upon any submission to the Registrar of Trusts in accordance with section 82 where the settler (or any person on his behalf) shall, in writing, so request and where under the trusts, powers and provisions of the draft submitted income or capital (other than income or capital applicable for any charitable purpose) is to any extent liable to be or capable of being transferred, paid, applied or appointed to or for the benefit of one or more beneficiaries in consequence of the exercise (whether with or without the consent of any person) of any discretion conferred on any person (not being a discretion conferred on any beneficiary) but if the Registrar of Trusts shall approve the same and the settler shall create a trust in accordance therewith and within the time specified in section 82, subsections (2) to (5) shall apply to such trust.

Exemption from section
74(4)

(2) Where, but for subsection (3), any right or remedy in respect of the trust would be vested in anyone or more of the beneficiaries thereunder, the same shall be vested in and exercisable by the Registrar of Trusts and any sum or sums recovered by the Registrar of Trusts shall be paid to the trustees of the trust and the Registrar of Trusts in relation to the exercise of the said rights and remedies and the payments of sums recovered pursuant thereto shall be answerable to the Governor in Cabinet as *parens patriae* and to no other person.

(3) No beneficiary shall, in relation to the trust fund or any income thereof, at any time have any right or remedy at law or in equity against the Crown, the Governor, the Registrar of Trusts or the trustees or any servant or agent of any of them and in particular-

- (a) no beneficiary shall be entitled to require any money or property subject to the trust or any income or capital of the trust fund to be paid, transferred, appropriated, applied or appointed in any way whatsoever;
- (b) no beneficiary shall be entitled to be taken into consideration by the trustees or the Registrar of Trusts or to require the trustees or Registrar of Trusts to take him into consideration in or about the exercise of any power, discretion or duty conferred upon them or any of them;
- (c) no beneficiary shall have any rights or remedies in connection with or in relation to the administration of the trust fund, and accordingly no beneficiary shall be entitled to inspect any accounts, minutes or documents relating to the trust;
- (d) no action brought by or at the suit of any beneficiary (whether alone or jointly with any other person) against any trustee or the Registrar of Trusts or in respect of the trust fund in any manner whatsoever shall be entertained by the Court; and
- (e) in this subsection -
“the trustees” include any person in whom under or by virtue of the terms of the trust there is vested (whether in a fiduciary capacity or not) any power or duty whatsoever.

(4) The trustees or any of them or the Registrar of Trusts are, at any time and from time to time, at liberty to apply to the Court in and about any matter affecting the trust and the Court shall, subject to subsection (5), give such directions and make such order (including any order as to costs) as may be just and in particular and without prejudice to the generality of the foregoing the trustees or any of them shall be at liberty to proceed against any trustee or person who has been a trustee of the trust in respect of any breach of trust.

(5) Nothing in Part V applies to a trust exempted by this section.

Fees and expenses to be payable out of the trust fund

84. The trustees of any exempted trust shall be entitled, except where the Court may in any case otherwise order, to be reimbursed out of the trust fund any fee payable or other expense incurred by them under this Part.

Termination of trust

85. If the Registrar of Trusts is satisfied that no property remains subject to the trusts powers or provisions thereof he shall so certify whereupon this Part shall cease to apply to such trust or any former trustees thereof and the file relating to such trust and its contents shall be destroyed.

Definitions in this Part

86. (1) In this Part-

“beneficiary” means any person interested under a trust (whether or not he is the principal beneficiary and notwithstanding that his interest is liable to be affected or defeated by any exercise of any power vested in any person) and a person is deemed to be interested under a trust if any capital or income comprised in the trust is liable to be or capable of being transferred, paid, applied or appointed to him or for his benefit either pursuant to the terms of the trust or in consequence of an exercise of any power or discretion conferred on any person by such terms, but does not include any person by reason only that he is remunerated or indemnified as a trustee or as the servant or agent of a trustee;

“person domiciled in the Islands” does not include a company incorporated in the Islands which is an exempted company or a non-resident company, as defined in section 2(1) of the Companies Law (2007 Revision); and

2007 Revision

“trust” means any settlement, declaration of trust or other similar disposition created *inter vivos* or by will (including codicil) and taking effect under the law in force in the Islands.

(2) This Part applies in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

(3) Parts I to V and the rules of law and equity shall (subject to section 83(5)) apply to every exempted trust as they apply to any other trust save as expressly provided in this Part.

PART VII - Trusts-Foreign Element

87. In this Part-

Definitions in this Part

“dispose” and “disposition”, in relation to property, connote every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction by which any legal or equitable interest in property is created, transferred or extinguished;

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

- (a) the fact that the particular disposition is made in trust;
- (b) the terms of the trust;
- (c) the circumstances of the parties to the disposition; or
- (d) any other particular circumstances,

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

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

“personal relationship” includes every form of relationship by blood or marriage, 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;
- (b) one is married to the other (whether or not the marriage is recognised by law);
- (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; and

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

Application of this Part

88. This Part applies to every trust and every disposition of property in trust made before, on or after the 31st May, 1987, whether such property is situate in the Islands or elsewhere.

Governing law

89. (1) In determining the governing law of a trust, regard is first to be had to the terms of the trust and to any evidence therein as to the intention of the parties; and the other circumstances of the trust are to be taken into account only if the terms of the trust fail to provide such evidence.

(2) A term of the trust expressly selecting the laws of the Islands to govern the trust is valid, effective and conclusive regardless of any other circumstances.

(3) A term of the trust that the laws of the Islands are to govern a particular aspect of the trust or that the Islands or the courts of the Islands are the forum for the administration of the trust or any like provision is conclusive

evidence, subject to any contrary term of the trust, that the parties intended the laws of the Islands to be the governing law of the trust and is valid and effective accordingly.

(4) If the terms of a trust so provide, the governing law of the trust may be changed to or from the laws of the Islands provided that-

- (a) in the case of a change to the laws of the Islands, such change is recognised by the governing law of the trust previously in effect; or
- (b) in the case of a change from the laws of the Islands, the new governing law would recognise the validity of the trust and the respective interests of the beneficiaries.

(5) A change in governing law shall not affect the legality or validity of, or render any person liable for, any thing done before the change.

90. 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 questions as to-

Matters determined by governing law

- (a) the capacity of any settlor;
- (b) any aspect of the validity of the trust or disposition or the interpretation or effect thereof;
- (c) 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
- (d) 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 jurisdictions with which the trust or disposition may be connected:

Provided that this section-

- (i) 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;
- (ii) takes effect subject to any express contrary term of the trust or disposition;

- (iii) does not, as regards the capacity of a corporation, affect the recognition of the laws of its place of incorporation;
 - (iv) 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;
 - (v) does not validate any trust or disposition of immovable property situate in a jurisdiction other than the Islands which is invalid according to the laws of such jurisdiction; and
 - (vi) does not validate any testamentary trust or disposition which is invalid according to the laws of the testator's domicile.
- Exclusion of foreign law 91. Subject to the same provisos as are set out in paragraphs (i) to (vi) of section 90, 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, nor is the trustee, any beneficiary or any other person to be subjected to any liability or deprived of any right, by reason that-
- (a) the laws of any foreign jurisdiction prohibit 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.
- Heirship rights 92. An heirship right conferred by foreign law in relation to the property of a living person shall not be recognised as-
- (a) affecting the ownership of immovable property in the Islands or movable property wherever situate for the purposes of paragraph (i) of section 90 or for any other purpose; or
 - (b) constituting an obligation or liability for the purposes of the Fraudulent Dispositions Law (1996 Revision) or for any other purpose.
- 1996 Revision
- Foreign judgments 93. A foreign judgment shall not be recognised, enforced or give rise to any estoppel insofar as it is inconsistent with section 91 or 92.
- Application of this Part 94. (1) This Part does not render any person liable for any thing done before 31st May, 1987.

(2) Sections 91, 92 and 93 apply to every trust and every disposition of property in trust made before, on or after the 7th August, 1995, whether such property is situate in the Islands or elsewhere.

PART VIII - Special Trusts-Alternative Regime

95. (1) In this Part-

Definitions in this Part

“beneficiary” means a person who will or may derive a benefit or advantage, directly or indirectly, from the execution of a special trust;

“enforcer” means a person who has standing to enforce a special trust;

“ordinary”, in reference to a trust or power, signifies that it is a trust or power which is not subject to this Part;

“power” includes an administrative power as well as a dispositive power;

“special”, in reference to a trust or power, signifies that it is a trust or power which is subject to this Part;

“standing to enforce” means the right or duty to bring an action for the enforcement of a special trust; and

“trust” includes a trust of a power, as well as a trust of property, and “trustee” has a correspondingly extended meaning.

(2) In this Part, a power is said to be held in trust if granted or reserved subject to any duty, expressed or implied, qualified or unqualified, to exercise the power or to consider its exercise.

(3) Except as provided in subsections (1) and (2), terms and expressions defined in section 2 have the same meanings in this Part.

96. (1) A trust or power is subject to this Part, and is described as special, if-

Application

- (a) it is created by or on the terms of a written instrument, testamentary or *inter vivos*; and
- (b) the instrument contains a declaration to the effect that this Part is to apply.

(2) If a trust or power is created by written instrument in exercise of a special power, and the instrument contains no declaration as to the application of this Part, this Part shall, subject to evidence of a contrary intention, be deemed to be intended to apply; and for the purpose of subsection (1) the instrument shall be deemed to contain a declaration to that effect.

(3) A trust or power which does not meet the requirements of subsection (1), and is not deemed to do so by virtue of subsection (2), is an ordinary trust or power and is not subject to this Part.

Ordinary trusts and powers

97. Nothing in this Part affects an ordinary trust or power directly or by inference.

Existing law

98. The law relating to special trusts and powers is the same in every respect as the law relating to ordinary trusts and powers, save as provided in this Part.

Objects

99. (1) The objects of a special trust or power may be persons or purposes or both.

(2) The persons may be of any number.

(3) The purposes may be of any number or kind, charitable or non-charitable, provided that they are lawful and not contrary to public policy.

Enforcers

100. (1) A beneficiary of a special trust does not, as such, have standing to enforce the trust, or an enforceable right against a trustee or an enforcer, or an enforceable right to the trust property.

(2) The only persons who have standing to enforce a special trust are such persons, whether or not beneficiaries, as are appointed to be enforcers-

(a) by or pursuant to the terms of the trust; or

(b) by order of the court.

(3) A right or duty to enforce a trust is presumed, subject to evidence of a contrary intention, to extend to every trust which is created by or on the terms of the same instrument, or pursuant to a power so created.

(4) The court may, on the application of a trustee or an enforcer, appoint an enforcer-

(a) if the terms of the trust require the appointment of an enforcer but-

(i) it is impossible to make the appointment without the court's assistance; or

(ii) it is difficult or inexpedient to make the appointment without the court's assistance;

(b) if an enforcer with a duty to enforce is unable, unwilling or unfit to do so; or

(c) if there is no enforcer who is of full capacity and who-

- (i) is a beneficiary; or
- (ii) has a duty to enforce and is fit and willing to do so.

(5) In the circumstances described in paragraph (c) of subsection (4), the trustee shall, within thirty days apply, to the court for the appointment of an enforcer, or for the administration of the special trust under the direction of the court, or for such other order as the court shall think fit and, if a trustee knowingly fails to do so, he is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars.

(6) Subsections (1) to (5) do not affect-

(a) the enforcement, by a trustee, an enforcer or any other person involved in the administration of a trust, of a right to remuneration or indemnity; or

(b) the enforcement of a trustee's duties by a co-trustee or a successor trustee.

(7) Section 83 does not apply to special trusts.

101. (1) Standing to enforce a special trust may be granted or reserved as a right or as a duty. Duties of enforcers

(2) Subject to evidence of a contrary intention, an enforcer is deemed to have a fiduciary duty to act responsibly with a view to the proper execution of the trust.

(3) A trustee or another enforcer, or any person expressly authorised by the terms of the special trust has standing to bring an action for the enforcement of the duty, if any, of an enforcer.

102. Subject to the terms of his appointment- Rights and remedies of enforcers

- (a) an enforcer has the same rights as a beneficiary of an ordinary trust-
 - (i) to bring administrative and other actions, and make applications to the court, concerning the trust; and
 - (ii) to be informed of the terms of the trust, to receive information concerning the trust and its administration from the trustee, and to inspect and take copies of trust documents;
- (b) in the performance of his duties, if any, an enforcer has the rights of a trustee of an ordinary trust to protection and indemnity and to make applications to the court for an opinion, advice or direction or for relief from personal liability; and

- (c) in the event of a breach of trust an enforcer has, on behalf of the trust, the same personal and proprietary remedies against the trustee and against third parties as a beneficiary of an ordinary trust.

Uncertainty

103. (1) Subject to subsection (4), a special trust is not rendered void by uncertainty as to its objects or mode of execution.

(2) The terms of a special trust may give the trustee or any other person power to resolve an uncertainty as to its objects or mode of execution.

(3) If a special trust has multiple objects and there is no allocation of the trust property between them, the trustee, subject to evidence of contrary intention, has discretion to allocate the trust property.

(4) If an uncertainty as to the objects or mode of execution of a special trust cannot be resolved, or has not been resolved pursuant to the terms of the trust, the court-

- (a) may resolve the uncertainty-
 - (i) by reforming the trust;
 - (ii) by settling a plan for its administration; or
 - (iii) in any other way which the court deems appropriate; or
- (b) insofar as the objects of the trust are uncertain and the general intent of the trust cannot be found from the admissible evidence as a matter of probability, may declare the trust void.

(5) This section applies to powers as to trusts.

Cy-près

104. (1) If the execution of a special trust in accordance with its terms is or becomes in whole or in part-

- (a) impossible or impracticable;
- (b) unlawful or contrary to public policy; or
- (c) obsolete in that, by reason of changed circumstances, it fails to achieve the general intent of the special trust,

the trustee shall, unless the trust is reformed pursuant to its own terms, apply to the court to reform the trust cy-près or, if or insofar as the court is of the opinion that it cannot be reformed consistently with the general intent of the trust, the trustees shall dispose of the trust property as though the trust or the relevant part of it has failed.

(2) Section 72 does not apply to special trusts.

Trust corporation

105. (1) Except as authorised by an order of the court, or permitted by or pursuant to this section-

- (a) the trustee of a special trust shall be, or include, a trust corporation; and
- (b) the trustee shall keep in the Islands at the office of the trust corporation a documentary record of-
 - (i) the terms of the special trust;
 - (ii) the identity of the trustee and the enforcers;
 - (iii) all settlements of the property upon the special trust and the identity of the settlors;
 - (iv) the property subject to the special trust at the end of each of its accounting years; and
 - (v) all distributions or applications of the trust property.

(2) In this section-

“trust corporation” means a body corporate licensed to conduct trust business, with or without restriction, under the Banks and Trust Companies Law (2009 Revision) or registered as a private trust company under that Law.

2009 Revision

(3) The court may authorise non-compliance with subsection (1) on such terms as it thinks fit if it is satisfied that the execution of the trust will not be prejudiced.

(4) Whoever, in the Islands or elsewhere, knowingly administers a special trust while there is a breach of paragraph (a) of subsection (1), apart from-

- (a) actions intended to bring the trust into compliance with paragraph (a) of subsection (1) as soon as possible; and
- (b) actions intended to preserve the trust property pending compliance with paragraph (a) of subsection (1)

is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year, and on conviction on indictment, to a fine of one hundred thousand dollars and to imprisonment for five years.

(5) A trustee who knowingly fails to comply with paragraph (b) of subsection (1) is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars.

(6) This section does not apply to the holder of a power which is granted or reserved by the terms of a special trust to a person other than the trustee of the special trust, even though the power is held in trust.

(7) This section does not apply (except as regards any antecedent offence) if the governing law of the trust has been changed from the law of the Islands.

(8) The Governor in Cabinet may make regulations subject to affirmative resolution restricting the application of subsection (1).

Theft
2007 Revision

106. (1) Section 239(1) of the Penal Code (2007 Revision) does not apply in relation to special trusts.

(2) For the purpose of the Penal Code (2007 Revision) property held upon a special trust shall be regarded, as against the trustee of the property or of any power in relation to the trust, and against any enforcer of the trust, as belonging to others (except to the extent of the beneficial interest, if any, of the trustee or enforcer under the terms of the trust), and an intention on the part of any such trustee or enforcer to defeat the trust shall be regarded accordingly as an intention to deprive others of their property.

Unlawful acceptance

107. Whoever, as trustee, accepts a settlement of property upon a special trust without taking steps to ensure that the settlor, or the person making the settlement on his behalf, understands who will have standing to enforce the trust is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year, and on conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for five years.

Foreign element

108. Part VI of this Law applies to special trusts but as though paragraph (b) of section 89(4) were repealed and the following substituted-

“(b) in the case of a change from the law of the Islands, the new governing law would recognise the validity of the trust (without any material effect on its objects) and the standing of the enforcers to enforce the trust.”.

Land in the Islands

109. No land nor any interest in land in the Islands shall be subject, directly or indirectly, to a special trust, but a special trust may hold an interest in a company, partnership or other entity which holds land in the Islands, or an interest in such land for the purposes of its business.

PART IX - General Provisions

Application of Law

110. (1) Subject to subsection (4), this Law, except where otherwise expressly provided, applies to trusts including, so far as this Law applies thereto, executorships and administratorships constituted or created either before or after the commencement date.

(2) The powers conferred by this Law on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) This Law does not affect the legality or validity of any thing done before the commencement date except as otherwise hereinbefore expressly provided.

(4) Sections 13 to 15 and section 71 shall apply only to trusts created on or after the 11th May, 1998 but the entire Law as revised, including the aforesaid sections, applies to any other trusts to which it is expressly extended by deed executed by the trustees thereof.

111. This Law, and every order purporting to be made under it, is a complete indemnity to all persons for any acts done pursuant thereto, and it is not necessary for any person to inquire concerning the propriety of the order, or whether the Court by which the order was made had jurisdiction to make it.

SCHEDULE

Form of Appointment of New Trustees

Appointments to be recorded

Memorandum of the choice and appointment of new trustees of the (*describe the chapel or other property*)-----
situate at----- in the island of-----at
a meeting duly convened and held for that purpose (in the vestry of the said chapel) on the----- day of----- 20---.

A.B. of etc., Chairman.

Names and descriptions of all the trustees on the (original constitution or last appointment) of Trustees made on the-----day of , 20---.

- A. B., of etc.
- C. D., of etc.
- E., F., of etc.
- G. H., of etc.

Names and descriptions of all the trustees in whom the said (chapel) and premises now become legally vested.

First-old continuing trustees

E. F. now of etc.

Second-new trustees now chosen and appointed

- B. A., of etc.
- B. B., of etc.

Dated this-----day of-----, 20----.

W.S. (Seal)

Signed, sealed, and delivered by the said W.S., as chairman of the said meeting, at and in the presence of the said meeting, on the day and year aforesaid, in the presence of

- C.D.
- E.F.

Publication in consolidated and revised form authorised by the Governor in Cabinet this 16th day of June, 2009.

Carmena Watler
Clerk of Cabinet

(Price \$ 12.00)