

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 19th day of February, 1991 before Sir Charles Frossard, Kt., Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe and Lawrence Oscar Ozanne, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th day of December, 1990, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled "The Trusts (Amendment) (Guernsey) Law, 1990", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 19th day of December 1990

PRESENT.

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the affairs of Guernsey and Jersey dated the 7th day of December 1990 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble petition of the States of the Island of Guernsey setting forth:—

‘1. That, in pursuance of their Resolution of the 25th day of April 1990 the States of Deliberation at a meeting held on the 28th day of June 1990 approved a Bill or “Projet de Loi” entitled “The Trusts (Amendment) (Guernsey) Law, 1990”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Trusts (Amendment) (Guernsey) Law, 1990”, and to order that the same shall have force of law in the Island of Guernsey.’

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney

PROJET DE LOI

ENTITLED

The Trusts (Amendment) (Guernsey) Law, 1990

THE STATES, in pursuance of their Resolution of the 25th day of April, 1990, have approved the following provisions, which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

1. In the Trusts (Guernsey) Law, 1989(a)—

Amendment
to Law of
1989.

(a) after section 4(b)(ii) add—

“ or

(iii) the terms of which provide that the court is to have jurisdiction.”;

(b) in section 11(2)(d)(i) after “misrepresentation” insert “or in breach of fiduciary duty”;

(c) after section 11 insert—

“Validity of
trusts and
dispositions
thereto.

11A. (1) Where a person (the “settlor”) creates a Guernsey trust, or during his lifetime makes any transfer or disposition of property or any interest therein to a Guernsey trust—

(a) neither the trust nor the transfer of disposition is invalidated by any for-

(a) Ordre en Conseil No. II of 1989.

eign rule of forced heirship or by reason of the fact that the concept of trusts is unknown to or not admitted by the law of a jurisdiction other than Guernsey;

(b) the settlor shall be deemed to have had capacity to create the trust or to make the transfer or disposition if he had capacity to do so under—

(i) Guernsey law;

(ii) the law of his domicile or nationality;
or

(iii) the proper law of the transfer or disposition.

(2) In subsection (1) “foreign rule of forced heirship” means any rule of law of a jurisdiction other than Guernsey which, in order to protect or give effect to the rights of any person or class of persons to inherit, succeed to or share in the settlor’s property or any interest therein on his death, purports to remove or restrict the settlor’s right to encumber, alienate or otherwise deal in

his property or any interest therein during his life-time and includes any judicial or administrative order of a jurisdiction other than Guernsey intended to enforce or implement any such rule.

(3) This section applies—

(a) whenever the trust, transfer or disposition in question arose or was made;

(b) notwithstanding any other provision of this Law.”;

(d) after section 29 insert—

“Powers of attorney.

29A. (1) Unless the terms of the trust provide to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding twelve months the performance of any trust or function vested in him (alone or jointly) as trustee.

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

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

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

(a) shall, if the donor is an individual, be signed by him, or by his direction and in his presence, in the presence of a witness, who shall also sign; or

(b) shall, if the donor is a corporate trustee, be sealed by the donor in accordance with its articles of association.

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

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

(b) every co-trustee.

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

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

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

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

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

(e) for section 30(2) substitute—

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

- (f) in section 34(7) after “misconduct” insert “or gross negligence”;
- (g) in section 37(2) after “acting as trustee” insert “and the third party is otherwise unaware of the fact”;
- (h) in section 37(3) after “prejudices” insert “a trustee’s liability for breach of trust or”;
- (i) for section 48(2) substitute—

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

- (j) in section 67(b) after “breach of trust” insert “or a person (other than the trustee) who derived title through such a purchaser”.

2. This Law may be cited as the Trusts (Amendment) Citation.
(Guernsey) Law, 1990.

K. H. TOUGH,
Her Majesty’s Greffier.