

# ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

## The Trusts (Guernsey) Law, 1989

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(Registered on the Records of the Island of Guernsey  
on the 21st day of March, 1989.)

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1989.

**II**  
**1989**

## ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 21st day of March, 1989 before Sir Charles Frossard, Kt., Bailiff, present: Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 7th February, 1989 approving and ratifying a *Projet de Loi* of the States of Guernsey entitled "The Trusts (Guernsey) Law, 1989", 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 7th day of February 1989

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 13th day of January 1989 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 17th day of March 1988, the States of Deliberation at a meeting held on the 28th day of July 1988 approved a Bill or “Projet de Loi” entitled “The Trusts (Guernsey) Law, 1989”, 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 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 (Guernsey) Law 1989”, 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 (Guernsey) Law, 1989**

THE STATES, in pursuance of their Resolution of the 17th day of March, 1988, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Guernsey.

### PART I

#### PRELIMINARY

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

Existence of  
a trust.

  - (a) for the benefit of another person (a "beneficiary"), whether or not yet ascertained or in existence;
  - (b) for any purpose which is not for the benefit only of the trustee.
2. Subject to the provisions of this Law, a trust is valid and enforceable in Guernsey.
 

Validity of  
trusts.
3. Subject to sections 46 and 52, the proper law of a trust is—
 

Proper law  
of trust.

  - (a) the law chosen by the settlor to be the proper law, the choice being expressed or implied in the terms of the trust; or
  - (b) if no law is so chosen, the law with which the trust has its closest connection at the time of its creation.

Jurisdiction  
of court.

4. The court has jurisdiction in respect of—
- (a) a Guernsey trust;
  - (b) a foreign trust—
    - (i) a trustee of which is resident in Guernsey; or
    - (ii) any property of which is situated or administered in Guernsey.

## PART II

### PROVISIONS APPLICABLE ONLY TO A GUERNSEY TRUST

Application  
of Part II.

5. This Part of this Law applies only to a Guernsey trust.

#### *Creation, validity and duration of Guernsey trusts*

Creation of  
a trust.

6. (1) A trust other than a unit trust may be created by oral declaration, by an instrument in writing (including a will or codicil), by conduct, or in any other manner whatsoever.

(2) A unit trust may be created only by an instrument in writing.

(3) No technical expressions are needed for the creation of a trust.

Property  
which may  
be held on  
trust.

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

Beneficiaries  
of a trust.

8. (1) A beneficiary shall be—
- (a) identifiable by name; or
  - (b) ascertainable by reference to—

- (i) a class; or
- (ii) a relationship to another person, whether or not living at the time of the creation of the trust or at the time by reference to which, under the terms of the trust, members of a class are to be determined.

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

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

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

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

Disclaimer  
of beneficial  
interest.

(2) A disclaimer shall be in writing and, subject to the terms of the trust—

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

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

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

Nature of  
beneficial  
interest.

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

Enforce-  
ability of  
trust.



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

- (a) it purports to do anything contrary to the law of Guernsey;
- (b) it confers or imposes any right or function the exercise or discharge of which would be contrary to the law of Guernsey;
- (c) it has no beneficiary identifiable or ascertainable under section 8(1), unless it is created for a charitable purpose; or
- (d) the court declares that—
  - (i) it was established by duress, fraud, mistake, undue influence or misrepresentation;
  - (ii) it is immoral or contrary to public policy;
  - (iii) its terms are so uncertain that its performance is rendered impossible; or
  - (iv) the settlor was, at the time of its creation, incapable of creating such a trust.

(3) Where some of the terms of a trust are invalid but others are not—

- (a) if the terms cannot be separated, the trust is invalid;
- (b) if the terms can be separated, the court may declare that the trust is valid as to the terms which are valid.

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

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

(6) An application to the court under this section may be made by any person mentioned in section 63(2).

12. A trust shall terminate on the expiration of 100 years from the date of its creation, unless— Duration of trust.

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

*Appointment, retirement and discharge of trustees*

13. (1) The number of trustees of a trust shall not be less than two, unless— Number of trustees.

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

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

14. (1) Where the terms of a trust contain no provision for the appointment of a new or additional trustee, such a trustee may be appointed by— Appointment of new or additional trustees.

- (a) the existing trustee;
- (b) the last remaining trustee;
- (c) the personal representative or liquidator of the last remaining trustee; or
- (d) the court.

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

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

(4) On the appointment of a new or additional trustee, anything necessary to vest the trust property in him jointly with his co-trustees (if any) shall be done.

No  
renunciation  
after  
acceptance.

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

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

- (a) disclaim the appointment by notice in writing to the settlor or to the other trustees;  
or
- (b) if the settlor is dead or cannot be found, and there are no other trustees, apply to the court for relief from the appointment, whereupon the court may make such order as it thinks fit;

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

Resignation  
or removal  
of trustees

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

(2) Subject to subsection (3), a resignation takes effect upon delivery of the notice.

(3) A resignation—

- (a) given to facilitate a breach of trust; or
- (b) which would result in there being no trustee or less than the number required by section 13(1),

has no effect.

(4) A trustee ceases to be a trustee immediately upon—

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

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

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

17. Subject to the terms of the trust, where the number of trustees falls below the number required by section 13(1)—

Position of continuing trustees on reduction in number of trustees.

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

*Duties of trustees*

General  
fiduciary  
duties.

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

(2) A trustee shall execute and administer the trust, and shall exercise his functions thereunder, in accordance with the provisions of this Law and, subject thereto—

- (a) in accordance with the terms of the trust;
- (b) only in the interests of the beneficiaries or charitable purpose, as the case may be.

Duty to get  
in and  
preserve  
trust  
property.

19. A trustee shall, subject to the terms of the trust and to the provisions of this Law—

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

Duty not to  
profit from  
trustee-  
ship.

20. A trustee shall not—

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

except—

- (i) with the approval of the court;
- (ii) as permitted by the provisions of this Law; or

(iii) as expressly provided by the terms of the trust.

21. A trustee shall keep accurate accounts and records of his trusteeship. Duty to keep accounts.

22. (1) Subject to the terms of the trust, a trustee shall, at all reasonable times, at the written request of any beneficiary (including any charity named in the trust) or of the settlor, provide full and accurate information as to the state and amount of the trust property. Duty to give information.

(2) In its application to a trust arising from a document or disposition executed or taking effect before the commencement of this Law, subsection (1) shall only operate for the benefit of a beneficiary whose interest in the trust property becomes vested before the commencement of this Law, but this subsection shall not prejudice any rights that the beneficiary may have under the terms of the trust.

23. A trustee shall keep trust property separate from his own property and separately identifiable from any other property of which he is trustee. Duty to keep trust property separate.

24. (1) All the trustees of a trust shall, subject to the terms of the trust, join in the execution of the trust. Duty of co-trustees to act together.

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

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

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

25. (1) Where a trust has—

Impartiality of trustees.

(a) more than one beneficiary or charitable purpose; or

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

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

### *General powers of trustees*

#### **Powers of trustees in relation to property.**

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

#### **Power to sue.**

27. A trustee may sue and be sued as trustee.

#### **Consultation by trustees.**

28. (1) A trustee may consult professional persons in relation to the affairs of the trust.

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

(3) A person shall not, by virtue of being so consulted or giving or refusing such consent, be deemed to be a trustee.

#### **Delegation by trustees.**

29. (1) A trustee shall not delegate his functions unless permitted to do so by the provisions of this Law or by the terms of the trust.

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

(a) delegate the management of trust property to, and appoint, investment managers whom

the trustee reasonably considers to be competent and qualified to manage the investment of the trust property;

- (b) appoint professional persons to act in relation to the affairs of the trust, or to hold any trust property; and
- (c) authorise any such manager or person to retain any commission or other payment usually payable for services of the description rendered.

(3) A trustee who, without any breach on his part of section 18(1), makes or permits the continuation of a delegation or appointment under subsection (2), is not liable for any loss to the trust arising from the delegation or appointment.

30. (1) Unless authorised by—

- (a) the terms of the trust;
- (b) the consent in writing of every beneficiary;  
or
- (c) an order of the court,

a trustee is not entitled to remuneration for his services.

Remuneration and expenses of trustees.

(2) A trustee may pay or reimburse himself from the trust property for all expenses properly incurred by him in connection with the trust.

31. Subject to the terms of the trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such manner and in accordance with such valuation as he thinks fit.

Power to appropriate.



Corporate trustee may act by resolution.

32. A corporate trustee may—

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

Non-disclosure of deliberations.

33. A trustee is not (subject to the terms of the trust and to any order of the court) obliged to disclose documents which reveal—

- (a) his deliberations as to how he should exercise his functions as trustee;
- (b) the reasons for any decision made in the exercise of those functions;
- (c) any material upon which such a decision was or might have been based.

### *Liability for breach of trust*

Liability for breach of trust.

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

- (a) any loss or depreciation in value of the trust property resulting from the breach; and
- (b) any profit which would have accrued to the trust had there been no breach.

(2) A trustee may not set off a profit accruing from one breach of trust against a loss or depreciation in value resulting from another.

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

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

- (a) he becomes or ought to have become aware of the breach, or of the intention of his co-trustee to commit the breach; and
- (b) he actively conceals the breach or intention, or fails within a reasonable time to take proper steps to protect or restore the trust property or to prevent the breach.

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

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

(7) Nothing in the terms of a trust shall relieve a trustee of liability for a breach of trust arising from his own fraud or wilful misconduct.

(8) This section is in addition to section 70.

35. (1) A beneficiary may—

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

Beneficiary  
may relieve  
or indemnify  
trustee.

(2) Subsection (1) does not apply if the beneficiary—

- (a) is a minor or a person under legal disability;
- (b) does not have full knowledge of all material facts; or
- (c) is improperly induced by the trustee to act under subsection (1).

Trustees of  
more than  
one trust.

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

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

Dealings by  
trustees  
with third  
parties.

37. (1) Where, in a transaction or matter affecting a trust, a trustee informs a third party that he is acting as trustee, a claim by the third party in respect of the transaction or matter shall (subject to subsection (3)) extend only to the trust property.

(2) If the trustee fails to inform the third party that he is acting as trustee—

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

(3) Nothing in this section prejudices any claim for breach of warranty of authority.

(4) In this section “third party” means a person other than a settlor, trustee or beneficiary of the trust.

Constructive  
trusts.

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

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

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

39. (1) When a trustee resigns or is removed—

Position of  
outgoing  
trustees.

- (a) he shall, subject to paragraph (b), duly surrender all trust property held by or vested in him or otherwise under his control;
- (b) he may require that he be provided with reasonable security for liabilities (existing, future, contingent or otherwise) before surrendering the trust property.

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

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

*Protective trusts, class interests and certain powers*

40. The terms of a trust may make the interest of a beneficiary—

Protective  
trusts.

Class  
interests.

- (a) liable to termination;
- (b) subject to a restriction on alienation or dealing; or
- (c) subject to diminution or termination in the event of the beneficiary becoming bankrupt or any of his property becoming liable to arrest, saisie, or similar process of law.

41. Where a trust is in favour of a class of persons then, subject to the terms of the trust—

- (a) the class closes when it is no longer possible for any other person to become a member of the class;
- (b) a woman over the age of 60 years shall be deemed to be no longer capable of bearing a child; and
- (c) where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and, subject to section 12, retained until a member of the class exists or the class closes.

Power of  
variation.

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

(2) This section is in addition to sections 52 to 56.

Power of  
accumula-  
tion and  
advance-  
ment.

43. (1) Subject to section 12, the terms of a trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

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

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

- (a) where a beneficiary is a minor (whether or not his interest is vested)—
  - (i) accumulate the income attributable to the beneficiary's interest pending attainment of full age;
  - (ii) apply the income or part of it to or for the maintenance, education or other benefit of the beneficiary;
- (b) advance or apply for the benefit of a beneficiary part of the trust property prior to the happening of the event upon which the beneficiary is to become absolutely entitled thereto.

(4) Subject to the terms of the trust—

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

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

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

Power of  
revocation.

45. (1) A trust and any exercise of a power under a trust may be expressed to be capable of—

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

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

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

Change of  
proper law.

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

(2) Subsection (1) is without prejudice to the powers of the court under section 52.

### *Failure, lapse and termination of trusts*

Failure or  
lapse of  
interest.

47. Subject to the terms of the trust and to any order of the court, where—

- (a) an interest lapses;
- (b) a trust terminates;
- (c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust; or
- (d) property is vested in a person otherwise than for his sole benefit, but the trusts upon which he is to hold the property are not declared or communicated to him,

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

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

(2) The trustees may retain sufficient assets to make reasonable provision for liabilities (existing, future, contingent or otherwise).

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

(4) The court, on the application of any person mentioned in section 63(2), may—

- (a) direct the trustees to distribute, or not to distribute, the trust property; or
- (b) make such other order in respect of the termination of the trust and the distribution of the property as it thinks fit.

#### *Powers of the court*

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



(2) The court—

- (a) if satisfied that notice of the application has been served on the existing trustees;
- (b) having heard any representations of the existing trustees, of the settlor or his personal representatives, of the other beneficiaries, and of any person described in section 28(2); and
- (c) having ascertained that the person nominated is willing to act,

may appoint that person as an additional trustee.

Power to  
relieve  
trustees  
from  
personal  
liability.

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

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

Power to  
make  
beneficiaries  
indemnify.

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

#### *Variation. etc. of trusts*

Variation of  
trusts on  
behalf of  
minors, etc.

52. (1) The court, on the application of any person mentioned in section 63(2), on behalf of—

- (a) a minor or a person under legal disability having, directly or indirectly, an interest, vested or contingent, under a trust;
- (b) any person unborn;
- (c) any person, ascertained or not, who may become entitled, directly or indirectly, to an interest under a trust, as being (at a future date or on the happening of a future event) a person of any specified description or a member of any specified class; or
- (d) any person, in respect of an interest that may accrue to him by virtue of the exercise of a discretionary power on the failure or determination of an existing interest,

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

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

53. Where, in the management or administration of a trust, a transaction is, in the opinion of the court, expedient, but cannot be effected because the necessary power is not vested in the trustees by the terms of the trust or by law, the court, on the application of any person mentioned in section 63(2)—

Approval of particular transactions.

- (a) may confer upon the trustees, generally or in any particular circumstances, the necessary power, on such terms and subject to such conditions as the court thinks fit; and

- (b) may direct the manner in which, and the property from which, any monies authorised to be expended, and the costs of any transaction, are to be paid or borne.

Charitable  
trusts—  
“cy-pres”.

54. Where trust property is held for a charitable purpose and—

- (a) the purpose has been, as far as may be, fulfilled;
- (b) the purpose cannot be carried out, or not according to the directions given and to the spirit of the gift;
- (c) the purpose provides a use for part only of the property;
- (d) the property, and other property applicable for a similar purpose, can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be applied to a common purpose;
- (e) the purpose was laid down by reference to an area which was then, but has since ceased to be, a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practicable in administering the gift;
- (f) the purpose has been adequately provided for by other means;
- (g) the purpose has ceased to be charitable (by being useless or harmful to the community or otherwise); or
- (h) the purpose has ceased in any other way to provide a suitable and effective method of

using the property, regard being had to the spirit of the gift,

the property, or the remainder of the property, as the case may be, shall be held for such other charitable purpose as the court, on the application of Her Majesty's Procureur or the trustees, may declare to be consistent with the original intention of the settlor.

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

General power to vary.

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

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

56. Sections 52 to 55 do not apply to trusts created by an Order in Council of Her Majesty.

Trusts created by Order in Council.

### *Permitted investments*

57. (1) The Committee may by order provide that trustees may only invest trust property on the securities and investments prescribed by the order.

Power to prescribe permitted investments.

- (2) The terms of a trust may—
  - (a) exclude the provisions of an order under subsection (1);

- (b) authorise the trustees to invest trust property on securities and investments other than those prescribed by any such order;
- (c) restrict the powers of investment which trustees would otherwise enjoy under any such order.

(3) The powers of investment conferred by an order under subsection (1) or by the terms of a trust do not derogate from the duties imposed on trustees by sections 18 to 23.

- (4) An order under subsection (1)—
  - (a) may prescribe securities and investments specifically or by general description;
  - (b) may provide that an investment shall not be made unless a person described in or specified by the order is consulted and recommends the investment;
  - (c) may be amended or revoked by a subsequent order thereunder;
  - (d) may make different provision for different trustees, trusts and trust property or different classes thereof;
  - (e) may contain such incidental and supplemental provision as (in the opinion of the Committee) is necessary or expedient for the purposes of the order;
  - (f) shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve to annul the order, it shall cease to have effect, but without prejudice to anything done under it or to the making of a new order.

(5) An order under subsection (1) shall not apply to a trust created before the order comes into operation.

### PART III

#### PROVISIONS APPLICABLE ONLY TO A FOREIGN TRUST

58. This Part of this Law applies only to a foreign trust. Application of Part III.

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

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

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

### PART IV

#### PROVISIONS OF GENERAL APPLICATION

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

Rules of  
Royal Court. 61. The Royal Court may by order make rules dealing with all procedural and incidental matters arising under this Law, and generally for carrying this Law into effect.

Applications  
for  
directions. 62. A trustee may apply to the court for directions as to how he should or might act in any of the affairs of the trust, and the court may make such order as it thinks fit.

General  
powers of  
court. 63. (1) On the application of any person mentioned in subsection (2), the court may—

- (a) make an order in respect of—
  - (i) the execution, administration or enforcement of a trust;
  - (ii) a trustee, including an order as to the exercise by a trustee of his functions, the removal of a trustee (if, for example, he refuses or is unfit to act, or is incapable of acting, or is bankrupt or if his property becomes liable to arrest, saisie, or similar process of law), the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments, whether into court or otherwise;
  - (iii) a beneficiary, or any person connected with a trust;
  - (iv) any trust property, including an order as to the vesting, preservation, application, surrender or recovery thereof;
- (b) make a declaration as to the validity or enforceability of a trust;
- (c) rescind or vary an order or declaration under this Law, or make a new or further order or declaration.

(2) An application under subsection (1) may be made by Her Majesty's Procureur, a trustee, a settlor, a beneficiary, a person described in section 28(2), or, with leave of the court, any other person.

(3) Where the court appoints or removes a trustee under this section—

- (a) it may impose such requirements and conditions as it thinks fit, including requirements and conditions as to the vesting of trust property;
- (b) subject to the court's order, a trustee appointed by the court has the same functions, and may act in all respects, as if he had been originally appointed a trustee.

64. If a person does not comply with an order of the court under this Law requiring him to do any thing, the court may, on such terms and conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the court, at the expense of the person in default (or otherwise, as the court directs); and a thing so done has effect in all respects as if done by the person in default.

Powers of court in event of default.

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

Payment of costs.

66. (1) Subject to subsection (2)—

- (a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust; and
- (b) the trust property does not form part of the trustee's estate.

Nature of trustee's interest.



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

Following  
trust  
property.

67. Without prejudice to the personal liability of a trustee, trust property which has been charged or dealt with in breach of trust, or the property into which it has been converted, may be followed and recovered unless—

- (a) it is no longer identifiable; or
- (b) it is in the hands of a bona fide purchaser for value without notice of the breach of trust.

Bankruptcy  
of trustees.

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

Protection  
for persons  
dealing with  
trustees.

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

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

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

- (a) that the money is wanted;
- (b) that no more than is wanted is raised; or
- (c) that the transaction or the application of the money is proper.

70. (1) Where a breach of trust is committed by a corporate trustee which—

Liability of  
directors of  
corporate  
trustee.

- (a) is a trustee of a Guernsey trust;
- (b) is resident in Guernsey; or
- (c) is carrying on business in Guernsey or from an address in Guernsey,

every person who, at the time of the breach, was a director of the trustee shall, subject to subsection (2), be deemed to be a guarantor of the trustee in respect of any damages and costs awarded by the court against the trustee in respect of the breach.

(2) The court may relieve a director of all or part of his personal liability as a guarantor if he satisfies the court that he ought fairly to be so relieved because—

- (a) he was not aware of the breach of trust or of the intention to commit it and, in being not so aware, was neither reckless nor negligent; or
- (b) he expressly objected, and exercised such rights as he had by way of voting power or otherwise as a shareholder or director or other officer of the company, so as to try to prevent the breach of trust.

(3) For the purposes of subsection (1)—

- (a) “director” includes a person occupying the position of director by whatever name called, a person in accordance with whose directions or instructions the directors of the corporation or of a corporation of which it is a subsidiary (or any of them) are accustomed to act, and a person who alone or with or through an associate is entitled

to exercise or control the exercise of one third or more of the voting power at a general meeting of the corporation or of a corporation of which it is a subsidiary;

- (b) "subsidiary" means a corporation in respect of which another corporation is entitled to exercise or can control the exercise of one third or more of the voting power;
- (c) in paragraph (a) "associate", in relation to a person, means any relative, partner or other person who is, has been or may be influenced by that person.

Limitation  
and  
prescription.

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

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

(2) Subject to subsection (1), the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is—

- (a) three years from delivery of the final accounts of the trust to the beneficiary; or
- (b) three years from the date on which the beneficiary first has knowledge of the breach of trust,

whichever period first begins to run.

(3) Where the beneficiary is a minor or a person under legal disability, the period referred to in sub-section (2) does not begin to run until his minority or disability, as the case may be, ceases.

## PART V

### SUPPLEMENTAL

72. (1) Subject to section 74, and except where provision to the contrary is made, this Law applies to trusts created before or after the commencement of this Law. Application of Law.

(2) This Law, apart from sections 52 to 56, does not apply to a trust in so far as there is vested in the trustees any interest in real property in the Bailiwick of Guernsey.

73. (1) In this Law, unless the context otherwise requires— Interpretation.

“bankrupt”, in relation to—

- (a) an individual, includes an individual whose affairs have been declared in a state of “desastre” by his arresting creditors at a meeting he'd before a Jurat as Commissioner of the Royal Court, and an individual in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929(a);
- (b) a corporation, includes a corporation which is insolvent,

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(a) Ordres en Conseil Vol. VIII, p. 310.

and "bankruptcy" shall be construed accordingly;  
 "beneficiary" means a person entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised;

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

"Committee" means the States Advisory and Finance Committee or such other authority, board, committee or council of the States as the States may by resolution appoint for the purposes of this Law;

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

"corporation" means a body corporate wherever incorporated;

"court" means the Royal Court sitting as an Ordinary Court;

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

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

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

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

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

"insurance" includes assurance;

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

"minor" means a person who has not attained full age;

“personal representative” means the executor or administrator of the estate of a deceased person;

“profit” includes gain or advantage;

“property”—

(a) means property of any description, wherever situated, including any share therein, but does not (except in sections 52 to 56 and 74) include real property in the Bailiwick of Guernsey;

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

“provisions of this Law” includes the provisions of any order hereunder;

“settlor” means a person who provides trust property or makes a testamentary disposition on trust or to a trust;

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

“trust” includes—

(a) the trust property; and

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

“trustee” has the meaning given by section 1, and includes a corporate trustee;

“trust property” means property held on trust;

“unit trust” means a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them

as beneficiaries under the trust in any profits or income arising from the acquisition holding, management or disposal of property.

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

(3) Any reference in this Law to an enactment is, unless the context otherwise requires, a reference to that enactment as amended, extended, re-enacted, or applied by or under any other enactment, including this Law.

Savings.

74. (1) Nothing in this Law—

- (a) affects the functions under any provision of law of Her Majesty's Sheriff or of any guardian or attorney;
- (b) validates an otherwise invalid transfer or disposition of property to a trust;
- (c) affects the validity of anything done in relation to a trust before the commencement of this Law;
- (d) affects the validity of a trust arising from a document or disposition executed or taking effect before the commencement of this Law;
- (e) derogates from any right of a minor to repudiate a transaction on attaining full age.

(2) Nothing in this Law derogates from the powers of the court which exist independently of this Law—

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

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

- (a) article 29 of the Law entitled “Loi sur les Successions, 1840”(b);
- (b) the Law entitled “Loi supplémentaire à la Loi des Successions, 1890”(c);
- (c) section 12 of the Married Women’s Property Law, 1928(d).

(4) Nothing in this Law affects a personal representative acting as such.

(5) No transfer or disposition of property to a trust is invalidated by application of the principle of “donner et retenir ne vaut”.

75. This Law may be cited as the Trusts (Guernsey) Law, 1989. Citation.

76. This Law shall come into operation on the twenty eighth day after the date of its registration on the records of the Island of Guernsey. Commence-  
ment.

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(b) Ordres en Conseil Vol. I, p. 51; Vol. II, p. 59.

(c) Ordres en Conseil Vol. II, p. 323.

(d) Ordres en Conseil Vol. VIII, p. 213.

K. H. TOUGH,  
Her Majesty’s Greffier.