



**TURKS AND CAICOS ISLANDS**

**CHAPTER 16.12**  
**TRUSTS ORDINANCE**

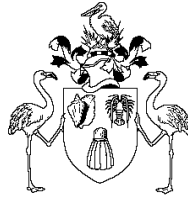
**Revised Edition**  
showing the law as at 31 March 2018

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

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Ordinance 2 of 2016 .. in force 23 September 2016 (L. N. 52/2016)	
Amended by Ordinance 2 of 2017 .. in force 13 April 2017 (L. N. 20/2017)	
No Subsidiary Legislation has been made under this Ordinance	





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## CHAPTER 16.12

### TRUSTS ORDINANCE

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## **CHAPTER 16.12**

### **TRUSTS ORDINANCE**

(Ordinances 2 of 2016 and 2 of 2017)

AN ORDINANCE TO REPEAL AND REPLACE THE TRUSTS ORDINANCE AND TO MAKE PROVISION FOR TRUSTS, TRUSTEES AND PERSONS INTERESTED UNDER TRUSTS; AND FOR CONNECTED PURPOSES.

#### **Commencement**

*[23 September 2016]*

#### PART I

#### PRELIMINARY

#### **Short title**

1. This Ordinance may be cited as the Trusts Ordinance.

#### **Interpretation**

2. (1) In this Ordinance—

“beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute trust property may be exercised;

“breach of trust” means a breach of any duty imposed on a trustee by the terms of the trust, this Ordinance or the general law;

“charitable purpose” means a purpose recognised as charitable by the proper law of the trust for which the purpose was created;

“charitable purpose trust” means a trust which is created exclusively for a charitable purpose or one or more charitable purposes;

“commencement date” means the date that this Ordinance comes into force;

“Commission” means the Turks and Caicos Islands Financial Services Commission established under the Financial Services Commission Ordinance, 2001 and preserved and continued under the Financial Services Commission Ordinance; (*Inserted by Ord. 2 of 2017*)

“corporate trustee” means a trustee which is a corporation;

“corporation” means a body corporate, wherever incorporated, registered or formed;

“Court” means the Supreme Court;

“disposition” includes any means by which property or any interest in property is created, transferred, dealt with, extinguished or charged;

“foreign judgment” means—

(a) a judgment or order of a court of a jurisdiction outside the Islands;  
or

(b) a decision of any tribunal outside the Islands, whether in arbitration or otherwise;

“foreign trust” means a trust which is not a Turks and Caicos Trust;

“general law” includes any rule of law or equity;

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

“insolvent” has the meaning specified in section 3;

“insurance” includes assurance;

“interest”, in relation to a beneficiary, means the beneficiary’s interest under a trust;

“minor”, subject to the terms of the trust, means a person who has not attained the age of eighteen years;

“personal relationship” has the meaning specified in section 4;

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

“person without legal capacity” means a person other than a minor who, under the law of the Islands or of their domicile, does not have legal capacity;

“professional trustee” means a trustee that that is licensed as a trust company under the Trust Companies (Licensing and Supervision) Ordinance;

“proper law”, in relation to a trust, has the meaning specified in section 6;

“property” means property of every kind, whether situated in the Islands or elsewhere and—

(a) includes—

(i) money;

(ii) all forms of real or personal and heritable or moveable property; and

(iii) things in action and other intangible or incorporeal property;  
and

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

“purpose trust” means a trust created in accordance with section 45;

“settlor” means a person who directly or indirectly provides trust property or  
who 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  
made applicable by the proper law of the trust;

“trust” includes—

(a) the trust property; and

(b) the rights, powers, discretions, duties, interests, relationships,  
obligations and liabilities under a trust;

“trust property” means the property for the time being held in a trust;

“Turks and Caicos Trust” means a trust, the proper law of which, is the law of  
the Islands and includes a trust created before the commencement date;  
and

“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) This Ordinance shall not be construed as a codification of laws  
regarding trusts, trustees and persons interested under trusts.

### Meaning of “insolvent”

3. A person is insolvent if—

(a) the person is unable to pay his debts as they fall due; or

(b) the value of the person’s liabilities exceeds his assets.

### Meaning of “personal relationship”

4. (1) “Personal relationship” includes every form of relationship by blood,  
adoption, marriage or cohabitation, regardless of whether the law of any  
jurisdiction recognizes the validity, legitimacy or existence of the relationship,  
and includes a former personal relationship which has terminated, whether in law  
or fact.

(2) A personal relationship exists between two persons if a personal  
relationship exists between each of them and a third person.

### Existence of a trust

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

- (a) for the benefit of any person (known as a beneficiary) whether or not yet ascertained or in existence;
- (b) for any purpose which is not for the benefit only of the trustee;
- (c) for such benefit as is mentioned in paragraph (a) and also for any such purpose as is mentioned in paragraph (b).

### Proper law of a trust

6. (1) Subject to subsection (3) and to section 44, the proper law of a trust is—

- (a) the law of the jurisdiction expressly designated by the terms of the trust as being the law that is to govern the trust;
- (b) where the terms of the trust do not expressly designate a governing law, the law of the jurisdiction that may reasonably be implied from the terms of the trust as the law that is to govern the trust;
- (c) where a governing law is not expressly designated and cannot be reasonably be implied, the law of the jurisdiction with which the trust had the closest connection at the time it was created.

(2) In ascertaining the law with which a trust had the closest connection at the time it was created, reference shall be made in particular to—

- (a) the place of administration of the trust designated by the settlor;
- (b) the situs of the assets of the trust;
- (c) the place of residence or business of the trustee; and
- (d) the objects of the trust and the places where they are to be fulfilled.

(3) A severable aspect of a trust may be governed by the law of a jurisdiction that is different from that applicable to another aspect.

(4) The law governing the validity of a trust shall determine whether that law or the law governing a severable aspect of the trust may be replaced by another law.

### Jurisdiction of the Court

7. (1) The Court has jurisdiction where—

- (a) the trust is a Turks and Caicos Trust;
- (b) the trust is a foreign trust and—

- (i) any trustee of the trust is resident in the Islands;
- (ii) any trust property of the trust is situated in the Islands;
- (iii) administration of the trust or its property is carried on in the Islands;
- (iv) the parties submit to the jurisdiction of the Court; or
- (v) the terms of the trust provide that the Court is to have jurisdiction.

(2) For the purposes of this section, a corporate trustee that is incorporated or registered to carry on business in the Islands is deemed to be resident in the Islands.

## PART II

### PROVISIONS APPLICABLE TO A TURKS AND CAICOS TRUST

#### Application of Part II

8. (1) This Part applies only to, or in relation to, a Turks and Caicos Trust.

(2) Unless otherwise specified, or the context otherwise requires, in this Part “trust” means a Turks and Caicos Trust.

#### *Creation, validity and duration of a trust*

#### Creation of a trust

9. (1) Subject to subsection (3), a trust may come into existence in any manner, including—

- (a) by oral declaration;
- (b) by an instrument in writing, including a will or codicil; or
- (c) by conduct.

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

#### Property which may be placed in a trust

10. Subject to section 15(2)—

- (a) any property may be held by or vested in a trustee upon trust; and
- (b) a trustee may accept property to be held on trust from any person.

#### Reservation of powers by settlor

11. (1) The reservation or grant by a settlor of a trust of a power or interest specified in subsection (2) does not affect the validity of the trust nor delay the trust taking effect.

- (2) The powers and interests referred to in subsection (1) are as follows—
- (a) a power to revoke, vary or amend the terms of the trust or any trusts or powers arising under it, in whole or in part;
  - (b) a power to advance, appoint, pay or apply income or capital of the trust property or to give directions for the making of such advancement, appointment, payment or application;
  - (c) a power to act as a director or officer of any corporation wholly or partly owned by the trust;
  - (d) to give binding directions to the trustee in connection with the purchase, holding, sale, lending or charging of the trust property;
  - (e) to appoint or remove any trustee, enforcer, protector or beneficiary, or any other person who holds a power, discretion or right in connection with the trust or in relation to trust property;
  - (f) to appoint or remove an investment manager or investment adviser;
  - (g) to change the proper law of the trust or the forum for the administration of the trust;
  - (h) to restrict the exercise of any powers or discretions of a trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust;
  - (i) a limited beneficial interest in the trust property.

(3) A trustee who acts in compliance with the valid exercise of any powers referred to in subsection (2) does not, by reason only of such compliance, act in breach of trust.

### **Beneficiaries of a trust**

**12.** (1) A beneficiary shall be—

- (a) identifiable by name; or
- (b) ascertainable by reference to—
  - (i) a class; or
  - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.

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

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

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

### Disclaimer of beneficial interest

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

(2) A disclaimer shall be in writing and, subject to the terms of the trust, may be temporary and may, if the disclaimer so provides, be revoked in the manner and circumstances specified in the disclaimer.

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

### Nature of beneficial interest

**14.** The interest of a beneficiary is movable property and, subject to the terms of the trust, may be sold, pledged, charged, transferred or otherwise dealt with in any manner applicable to the property.

### Validity of a trust

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

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

- (a) it purports to do anything, the doing of which is contrary to the law of the Islands;
- (b) it purports to confer any right or power or impose any obligation, the exercise or carrying out of which is contrary to the law of the Islands;
- (c) it has no beneficiary, ascertainable in accordance with section 12(1), unless—
  - (i) the trust is a charitable purpose trust; or
  - (ii) the trust is a purpose trust within the meaning of section 45;
- (d) the Court declares that—
  - (i) the trust was established by duress, fraud, mistake, undue influence, misrepresentation or in breach of fiduciary duty;
  - (ii) the terms of the trust or its subject are so uncertain that its performance is rendered impossible;
  - (iii) the trust is immoral or contrary to public policy; or
  - (iv) the settlor, at the time of creation of the trust, did not have the capacity to create the trust.

(3) Where a trust is created for two or more purposes of which some are lawful and others are unlawful—

- (a) if those purposes cannot be separated the trust is invalid;
- (b) where those purposes can be separated, the Court may declare that the trust is valid exclusively for the purposes which are lawful

unless a distinct share of income or capital of the trust is allocated for an unlawful purpose in which case the trust is invalid as to that share.

(4) Property in respect of which a trust is wholly or partially invalid is, subject to any order of the Court, held by the trustee in trust for the settlor absolutely or if he is dead for his personal representative.

(5) In subsection (4), “settlor” means the person who provided the property in respect of which the trust is wholly or partially invalid.

### **Application of the law of the Islands to trusts**

**16.** (1) Subject to subsection (2), all questions arising in regard to a trust or in regard to any disposition of property to or upon such a trust including (without limitation) questions as to—

- (a) the capacity of any settlor;
- (b) any aspect of the validity, interpretation or effect of the trust or any variation or termination of the trust;
- (c) the validity or effect of any disposition of property to the trust or distribution of trust property;
- (d) the administration of the trust, whether the administration is conducted in the Islands or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and enforcers and their appointment and removal;
- (e) 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 of such powers;
- (f) the exercise or purported exercise by a foreign court of any statutory or non-statutory power to vary the terms of the trust; or
- (g) the nature and extent of any beneficial rights or interests in the trust property,

are to be determined according to the laws of the Islands, without reference to the laws of any other jurisdictions.

(2) Subject to subsection (3), subsection (1)—

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



- (d) does not, in determining the capacity of a corporation, affect the recognition of the law of its place of incorporation;
- (e) does not affect the recognition of the law of any other jurisdiction prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property;
- (f) does not validate any trust or disposition of real property situate in a jurisdiction other than the Islands which is invalid under the laws of that jurisdiction; and
- (g) does not validate any testamentary trust or disposition which is invalid according to the laws of the testator's domicile at the time of death.

(3) Without limiting the generality of subsection (1), any question referred to in that subsection shall be determined without consideration of whether or not—

- (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 any foreign law upon any person by reason of a personal relationship 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.

### **Recognition and enforceability of foreign judgments**

**17.** To the extent that it is inconsistent with section 16(3), a foreign judgment shall not be recognised or enforced or give rise to any estoppel, and both its recognition and its enforcement shall be regarded as contrary to the public policy of the Islands.

### **Duration of a trust**

**18.** (1) An instrument creating or varying a trust may provide for the duration and date of termination of the trust.

(2) The rule of law known as the rule against perpetuities shall not apply to a trust.

(3) For the avoidance of doubt it is declared that the rule referred to in subsection (2) includes—

- (a) the application or effect of that rule in respect of accumulations; and
- (b) the rule of law prohibiting trusts of perpetual duration.

*Appointment, retirement and discharge of trustees***Number of trustees**

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

- (a) only one trustee was originally appointed;
- (b) the sole trustee is a professional trustee; or
- (c) the terms of the trust provide otherwise.

(2) A trust does not fail on the grounds that there is no trustee or that the number of trustees is less than the number required under subsection (1).

(3) If the number of trustees falls below the minimum number required under subsection (1), the required number of new trustees shall be appointed as soon as practicable.

(4) While there are fewer trustees than are required by the terms of the trust, the existing trustees may only act for the purpose of preserving the trust property.

(5) This section does not apply in the case of a constructive trust.

**Appointment of new or additional trustees**

**20.** (1) Subsection (2) applies if—

- (a) the terms of a trust do not provide for the appointment of a new or additional trustee or any such terms have lapsed or failed; or
- (b) the person who has the power to appoint a new or additional trustee is not capable of exercising the power.

(2) In the circumstances specified in subsection (1), a new or additional trustee may be appointed by—

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

(3) Subject to the terms of the trust, a trustee appointed under this section has the same powers, discretions and duties and may act as if he had been originally appointed a trustee.

(4) A trustee having power to appoint a new trustee who fails to exercise the power may be removed from office by the Court.

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

### Prohibition of renunciation after acceptance

**21.** (1) No person is obliged to accept appointment as a trustee, but a person who knowingly does any act or thing in relation to the trust property consistent with the status of a trustee of the property is deemed to have accepted appointment as a trustee.

(2) A person who has not accepted and is not deemed to have accepted appointment as a trustee may, by written notice to the settlor or to the trustees, disclaim the appointment within a reasonable period of time after becoming aware of it.

(3) If the settlor is dead or cannot be found and there are no other trustees a person to whom subsection (2) applies may apply to the Court for relief from his appointment and the Court may make such order as it thinks fit.

### Resignation or removal of a trustee

**22.** (1) Subject to subsection (3), a trustee other than a sole trustee may resign his office by written notice delivered to his co-trustees.

(2) The resignation of a trustee takes effect on the delivery of the resignation notice to his co-trustees.

(3) A resignation—

(a) given in order to facilitate a breach of trust; or

(b) which would result in there being no trustee or fewer than the number of trustees required under section 19(1),

has no effect.

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

(a) his removal from office by the Court;

(b) his resignation taking effect; or

(c) the operation of a provision in, or the exercise of a power under, the terms of the trust under or by which he is removed from office 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.

### *Duties of trustees*

#### Duties of trustees

**23.** (1) A trustee shall, in the execution of his duties and in the exercise of his powers and discretions—

(a) act—

(i) with due diligence;

- (ii) as would a prudent person;
  - (iii) to the best of his ability and skill; and
- (b) observe the utmost good faith.

(2) Subject to this Ordinance and the general law, a trustee shall carry out and administer the trust in accordance with its terms.

(3) Subject to the terms of the trust, a trustee shall, so far as is reasonable, preserve and enhance the value of the trust property.

(4) Except—

- (a) with the approval of the Court; or
- (b) as permitted by this Ordinance or the general law or as expressly provided by the terms of the trust,

a trustee shall not—

- (i) directly or indirectly profit from his trusteeship;
- (ii) cause or permit any other person to profit directly or indirectly from his trusteeship; or
- (iii) on his own account, enter into any transaction with the trustees, or relating to the trust property, which may result in such profit.

(5) A trustee shall keep, or cause to be kept, accurate accounts and records, including underlying documentation, of his trusteeship.

(6) The accounts and records required to be kept under subsection (5) shall be—

- (a) sufficient to show and explain transactions in relation to the trust and the administration of the trust; and
- (b) retained for a minimum period of five years from the date on which they are prepared.

(7) A trustee shall keep trust property separate from his own property and separately identifiable from any other property of which he is trustee.

(8) A trustee who, without reasonable excuse, contravenes subsection (5) or (6) commits an offence and is liable on summary conviction to a fine of \$5,000.

### **Duty of co-trustees to act together**

**24.** (1) Subject to the terms of the trust, where there is more than one trustee all the trustees shall join in the execution of the trust.

(2) Subject to subsection (3), where there is more than one trustee no power or discretion given to the trustees shall be exercised unless all the trustees agree on its exercise.

(3) The terms of a trust may empower trustees to act by a majority but a trustee who dissents from a decision of the majority may require his dissent to be recorded in writing.

### **Impartiality of trustees**

**25.** (1) Subject to the terms of the trust, where there is more than one beneficiary, or more than one purpose (charitable or non-charitable), or at least one beneficiary and at least one purpose, a trustee shall not execute the trust for the advantage of one at the expense of the other.

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

### *Powers of trustees*

### **Powers of trustee**

**26.** (1) Subject to the terms of the trust and to this Ordinance and the general law, a trustee has, in relation to the trust property, all the powers of a natural person acting as the beneficial owner of such property.

(2) A trustee shall exercise his powers only in the interests of the beneficiaries and in accordance with the terms of the trust.

(3) The terms of a trust may require a trustee to consult or obtain the consent of some other person before exercising a power or discretion.

(4) A person who is required to be consulted or whose consent is required as provided in subsection (3)—

- (a) is not deemed to be a trustee by reason only of such requirement or by reason of being consulted or giving or withholding of consent or of any act incidental thereto; or
- (b) subject to the terms of the trust, is not entitled to remuneration and reimbursement of expenses in respect of services rendered in connection with the giving or withholding of consent or of any act incidental thereto.

### **Delegation by trustee**

**27.** (1) A trustee shall not delegate his powers unless permitted to do so by this Ordinance, the general law or by the terms of the trust.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee, whether or not there is any necessity, may—

- (a) delegate management of trust property to, and employ investment managers whom the trustee reasonably considers to be competent and qualified to manage the investment of trust property; and
- (b) employ professional or skilled persons to act in relation to any of the affairs of the trust or to hold any of the trust property.

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

(4) A trustee may authorise a person referred to in subsection (2) to retain any commission or other payment usually payable in relation to any transaction.

(5) Where a trustee enters into an agreement for the employment of an investment manager under subsection (2)(a) he may agree on the same terms as are customarily found in an agreement between the investment manager and beneficial (as opposed to fiduciary) owners of property and he shall not be liable for breach of trust by virtue of agreeing to such terms.

(6) Notwithstanding subsection (5), a trustee shall not agree to any term excluding or limiting the liability of the investment manager for negligent performance of duties unless he considers that in all the circumstances a prudent man of business would accept such a term.

### **Remuneration and expenses of trustee**

**28.** (1) Except as provided in subsection (2), a trustee shall not be entitled to remuneration for his services unless authorised by—

- (a) the terms of the trust;
- (b) the consent in writing of all of the beneficiaries; or
- (c) an order of the Court.

(2) If the terms of a trust are silent as to his remuneration, a professional trustee is entitled to reasonable remuneration for services that the professional trustee provides after the commencement date.

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

### **Power to appropriate**

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

### **Corporate trustees**

**30.** A corporate trustee may—

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

**Trustee may refuse to make a disclosure**

**31.** Subject to the terms of the trust, any other Ordinance requiring disclosure or any order of the Court, a trustee is not obliged to disclose to any person, any document which—

- (a) discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred or imposed upon him;
- (b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reasons shall or might have been based;
- (c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty; or
- (d) relates to or forms part of the accounts of the trust,

unless, in a case to which paragraph (d) applies, that person is a beneficiary under the trust not being a charity, or a charity which is referred to by name in the terms of the trust as a beneficiary under the trust or the enforcer in relation to any purpose trust.

*Breach of trust***Liability for breach of trust**

**32.** (1) A trustee who commits or concurs in a breach of trust is liable for—

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

(2) Where two or more trustees are liable in respect of a breach of trust, they are liable jointly and severally.

(3) A trustee who resigns in order to facilitate a breach of trust is liable for that breach as if he had not resigned.

(4) Where there are two or more breaches of trust, a trustee is not entitled to set off a gain from one breach of trust against a loss resulting from another breach of trust.

(5) A term of a trust is invalid to the extent that it purports to—

- (a) relieve a trustee from liability arising from his own fraud, wilful misconduct or gross negligence; or
- (b) grant a trustee an indemnity against the trust property in respect of any such liability.

### **Circumstances in which trustee not liable for breach of trust**

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

(2) A trustee who becomes aware of a breach of trust to which subsection (1) applies, shall take all reasonable steps to have the breach remedied.

(3) A trustee shall not be liable for a breach of trust committed by a co-trustee unless—

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

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

### **Beneficiary may relieve or indemnify trustee**

**34.** (1) A beneficiary may—

(a) relieve a trustee of liability to him for a breach of trust; and

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

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

(a) has legal capacity;

(b) has full knowledge of all material facts; and

(c) is not improperly induced by the trustee to take action under subsection (1).

### **Trustee acting in respect of more than one trust**

**35.** (1) A trustee acting for the purposes of more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust if he has 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-trustee 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 trustee of such other trust.

### **Dealing by trustee with third party**

**36.** (1) Where a trustee is a party to any transaction or matter affecting the trust—

(a) if the other party knows that the trustee is acting as trustee, any claim by the other party shall be against the trustee as trustee and shall extend only to the trust property; or



(b) if the other party does not know that the trustee is acting as trustee, any claim by the other party may be made against the trustee personally.

(2) Where a claim is made against a trustee under subsection (1)(b), without prejudice to the trustee's personal liability, the trustee has a right of recourse to the trust property by way of indemnity.

(3) Subsection (1) does not affect any liability the trustee may have for breach of trust.

(4) This section does not apply where the other party is a settlor, trustee or beneficiary of the trust.

### **Position of outgoing trustee**

**37.** (1) Subject to subsection (4), when a trustee resigns, retires or is removed, he shall surrender all trust property in his possession or under his control.

(2) A trustee who resigns, retires or is removed and has complied with subsection (1) is released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or his duty as a trustee except liability—

(a) arising from any 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 to which he was privy; or

(b) in respect of actions to recover from the trustee (or, in the case of a corporate trustee, any of its officers or employees) trust property or the proceeds of trust property in the possession of the trustee, officer or employees.

(3) Any provision in the terms of a trust purporting to indemnify a trustee to an extent greater than is provided by this section shall be invalid.

(4) A trustee who resigns, retires or is removed may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before surrendering trust property.

(5) If the provision for security to which subsection (4) refers is extended or renewed by a contract, or other arrangement, to which the trustee who resigns, retires or is removed is not party, and—

(a) the contract or other arrangement expressly provides that the trustee may in his own right enforce a term of the contract or other arrangement; or

(b) a term of the contract or other arrangement purports to confer a benefit on the trustee,

and in either case the contract or other arrangement expressly identifies the trustee, the trustee may enforce that term in his own right.

*Protective trusts, class interests and powers***Protective trusts**

**38.** (1) The terms of a trust may make the interest of a beneficiary liable to termination.

(2) Without prejudice to the generality of subsection (1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to—

- (a) a restriction on alienation or dealing; or
- (b) diminution or termination in the event of the beneficiary becoming insolvent or any of his property becoming liable to sequestration for the benefit of his creditors, or any similar legal process.

(3) A trust under which the interest of a beneficiary is subject to restriction, diminution or termination under subsection (2) may be referred to as a protective trust.

**Class interests**

**39.** (1) Where a trust or an interest under a trust is in favour of a class of persons, subject to the terms of a 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 who is over the age of fifty-five years is deemed to be no longer capable of bearing a child;
- (c) where any class interest relates to income and for any period there is no member of the class in existence, the income shall be accumulated and, subject to section 18, shall be retained until there is a member of the class in existence or the class closes.

(2) In this section “class interest” means a trust or an interest under a trust which is in favour of a class of persons.

**Power of variation**

**40.** (1) The terms of a trust may be varied in any manner provided by its terms.

(2) This section is in addition to section 56, which provides for the variation of the terms of a trust by the Court.

**Power of accumulation and advancement**

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

(2) Subject to subsection (3), income of the trust which is not accumulated under subsection (1), shall be distributed.

(3) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, where a beneficiary is a minor and whether or not his interest is vested or contingent the trustee may—

- (a) accumulate the income attributable to the interest of the beneficiary;
- (b) apply the income or part of it to or for the maintenance, education or other benefit of the beneficiary;
- (c) advance or appropriate to or for the benefit of any such beneficiary all or part of the capital to which his share of income is attributable.

(4) The receipt of a parent or the lawful guardian of a beneficiary who is a minor is a sufficient discharge to the trustee for a payment made under subsection (3).

(5) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, the trustee may advance or apply for the benefit of a beneficiary part of the trust property prior to the date of the happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.

(6) Any part of the trust property advanced or applied under subsection (5) shall be brought into account in determining from time to time the share of the beneficiary in the trust property.

(7) No part of the trust property advanced or applied under subsection (5) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

### **Power of appointment**

**42.** The terms of a trust may confer on the trustee or any other person power to appoint or assign all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person, whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

### **Power of revocation**

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

- (a) revocable whether wholly or partly; or
- (b) capable of 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, the trustee shall hold the trust property in trust for the settlor, or if the settlor is dead for his personal representative, absolutely.

(4) Where a trust is partly revoked, subsection (3) applies to the property which is the subject of the revocation.

(5) In subsection (3) “settlor” means the particular person who provided the property which is the subject of revocation.

### **Change of proper law**

**44.** (1) The terms of a trust may provide for the proper law of the trust or the proper law governing a severable aspect of the trust to be changed from the law of the Islands to the law of another jurisdiction.

(2) A change in the proper law of a trust is not valid unless the terms also provide that—

- (a) the change cannot invalidate any other terms of the trust, any purpose of the trust, and any interest of a beneficiary; and
- (b) the change is consistent with the intention of the settlor.

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

### *Purpose trusts*

### **Creation of purpose trust**

**45.** (1) A person may create a trust for, or including, non-charitable purposes and provided that the conditions set out in subsection (2) are complied with, the trust is valid and enforceable.

(2) The conditions referred to in subsection (1) are that—

- (a) the trust is created by an instrument in writing;
- (b) the purpose or purposes are specific, reasonable and possible;
- (c) the purpose or purposes are not immoral, contrary to public policy or unlawful;
- (d) the terms of the trust provide for—
  - (i) the appointment of an enforcer in relation to the trust’s purposes; and
  - (ii) the appointment of another enforcer on any occasion on which there is no enforcer, or no enforcer able and willing to act;
- (e) at least one of the trustees of the trust is a professional trustee.

- (3) The terms of the trust for a purpose trust may, but are not required to—
- (a) specify an event or date upon the happening or occurrence of which the trust ceases to be a purpose trust;
  - (b) provide for the disposition of assets of the trust when the trust ceases to be a purpose trust;
  - (c) provide that, for so long as the trust is a purpose trust, the trustees owe no duty—
    - (i) to any persons entitled to such assets when the trust ceases to be a purpose trust; or
    - (ii) in relation to any purposes for which such assets are then to be applied; or
  - (d) provide for the addition, variation or removal of a purpose of the trust or for the exclusion of a purpose from the objects of the trust.

(4) The purpose of a purpose trust may be, or the purposes may include, acquiring, holding, owning, managing or disposing of shares in a company or any other property and the exercise of functions.

### **Restrictions on appointments of enforcer**

**46.** (1) The appointment of a person as an enforcer of a purpose trust has no effect—

- (a) unless the person—
  - (i) is a party to the trust instrument, as enforcer; or
  - (ii) consents by written notice addressed to the professional trustee; or
- (b) if the person is a trustee of the trust.

(2) For the avoidance of doubt, the settlor or a beneficiary may be an enforcer of a purpose trust.

### **Duties of and in relation to enforcer**

**47.** (1) The enforcer of a purpose trust has the power and the duty to enforce the trust.

- (2) An enforcer shall not—
- (a) derive, directly or indirectly, any profit from his appointment;
  - (b) cause or permit any other person to so derive any such profit; or
  - (c) on his own account enter into any transaction with the trustees, or relating to the trust property, which may result in any such profit, except—

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

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

(4) The trustee of a purpose trust shall provide the enforcer of the trust with—

- (a) the accounts of the trust;
- (b) copies of the trust instrument and of deeds and other written instruments executed pursuant to the trust instrument;
- (c) legal and other professional advice received by the trustees; and
- (d) such, if any, other documents and information as the terms of the trust require to be provided to the enforcer.

### **Resignation and removal of enforcer**

**48.** (1) An enforcer may resign his office by delivering a written notice of resignation addressed to the professional trustee.

(2) Subject to subsection (3), the resignation of an enforcer takes effect on delivery of the notice of resignation to the professional trustee.

(3) The resignation of an enforcer to facilitate a breach of trust or a breach of the enforcer's duty has no effect.

(4) A person ceases to be the enforcer of a trust immediately on—

- (a) his removal from office by Court;
- (b) his resignation becoming effective;
- (c) the coming into effect of a provision in the terms of the trust under or by which he is removed from office or otherwise ceases to hold office; or
- (d) his appointment as a trustee of the trust.

### **No enforcer in office or enforcer unwilling or unable to act**

**49.** (1) The professional trustee of a purpose trust shall, at any time when there is no enforcer of the trust, take such steps as are necessary to secure the appointment of an enforcer.

(2) If the professional trustee of a purpose trust has reason to believe that that the enforcer of the trust—

- (a) is not willing or is refusing to act; or
- (b) is incapable of acting,

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

- (3) On an application under subsection (2), the Court may, by order—
- (a) remove an enforcer from office;
  - (b) appoint a substitute or additional enforcer;
  - (c) provide for the professional trustee's costs of the application to be payable out of the trust property.

### **No professional trustee in office**

**50.** (1) If a trustee or enforcer of a purpose trust has reason to believe that there is no professional trustee of the purpose trust and that no professional trustee is likely to be appointed in the immediate future, the trustee or enforcer shall take such steps as are necessary to secure the appointment of a professional trustee of the trust and, if unable to secure such appointment, apply to Court under subsection (2).

(2) If, at any time, a purpose trust does not have at least one professional trustee, application may be made to the Court by—

- (a) the settlor, unless the terms of the trust provide otherwise;
- (b) any existing trustee of the trust;
- (c) the enforcer of the trust; or
- (d) the Attorney General.

(3) On an application under subsection (2), the Court may, by order—

- (a) appoint a professional trustee of the trust;
- (b) provide for the costs of the application to be payable out of the trust property.

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

### **Failure or lapse of interest**

**51.** (1) Subject to the terms of a trust and subject to any order of the Court, subsection (2) applies 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 and the trusts upon which he is to hold the property are not declared or communicated to him.

(2) Where this subsection applies, the interest or property affected by the lapse, termination, lack of beneficiary or lack of declaration or communication of trusts shall be held by the trustee or the person referred to in subsection (1)(d), as the case may be, in trust for the settlor absolutely or if he is dead for his personal representative.

(3) In subsection (1) “settlor” means the particular person who provided the interest or property affected as mentioned in subsection (1).

### **Termination of a trust**

**52.** (1) On the termination of a trust, the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled to it.

(2) Notwithstanding subsection (1), the trustee may require that he be provided with reasonable security for liabilities, whether existing, future, contingent or otherwise, before distributing the trust property.

(3) Without prejudice to the powers of the Court and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are minors or persons without legal capacity, they may require the trustee to terminate the trust and distribute the trust property among them.

(4) On an application under subsection (5), the Court may—

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

(5) An application to the Court under subsection (4) may be made by the Attorney General, the trustee, the enforcer or a beneficiary or, with leave of the Court, by any other person.

### *Powers of the Court*

### **Appointment of resident trustee**

**53.** (1) Where there is no trustee resident in the Islands, a beneficiary may apply to the Court for the appointment of a person resident in the Islands, who is nominated in the application, as an additional trustee.

(2) The Court—

- (a) upon being satisfied that the notice of the application by the beneficiary has been served upon the trustees;
- (b) having heard any representations made by the trustees or any other beneficiary; and



- (c) having ascertained that the person nominated for the purpose in the application is willing to act,

may make an order appointing such person as an additional trustee.

### **Power to relieve trustee from personal liability**

**54.** (1) The Court may relieve a trustee either wholly or partly from personal liability for a breach of trust where it appears to the Court that—

- (a) he is or may be personally liable for the breach of trust;
- (b) he has acted honestly and reasonably; and
- (c) he ought fairly to be excused—
- (i) for the breach of trust; or
- (ii) for omitting to obtain the directions of the Court in the matter in which such breach arose.

(2) Subsection (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance.

### **Power to make beneficiary indemnify for breach of trust**

**55.** (1) Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the Court may by order impound all or part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through him.

(2) Subsection (1) applies whether or not such beneficiary is a minor or a person without legal capacity.

### **Variation of trust by Court and approval of particular transactions**

**56.** (1) Subject to subsection (2), the Court may, if it thinks fit, by order approve on behalf of—

- (a) a minor or a person without legal capacity having, directly or indirectly, an interest, whether vested or contingent, under the trust;
- (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the 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 of persons;
- (c) any person unborn; or
- (d) any person in respect of any interest of his that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is or may be any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of the trust or enlarging the powers of the trustee of managing or administering any of the trust property.

(2) The Court shall not approve an arrangement on behalf of any person coming within subsection (1)(a), (b) or (c) unless the carrying out thereof appears to be for the benefit of that person.

(3) Where in the management or administration of a trust, any sale, lease, pledge, charge, 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 trustee by the terms of the trust or by law, the Court may confer upon the trustee either generally or in any particular circumstances a power for that purpose on such terms and subject to such provisions and conditions, if any, as the Court thinks fit and may direct in what manner and from what property any money authorised to be expended and the costs of any transaction are to be paid or borne.

### **Application of property *cy-près***

**57.** (1) Subject to subsection (2), the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied *cy-près* shall be as follows—

- (a) where the original purposes, in whole or in part—
  - (i) have been as far as may be fulfilled; or
  - (ii) cannot be carried out, or cannot be carried out according to the directions given and to the spirit of the gift;
- (b) where the original purposes provide for part only of the property available by virtue of the gift;
- (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes;
- (d) where the original purposes were laid down by reference to an area which then was 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; or
- (e) where the original purposes, in whole or in part, have, since they were laid down—
  - (i) been adequately provided for by other means;

- (ii) ceased, in law, to be charitable on the grounds that they are, or have become, useless or harmful to the community or for other reasons; or
- (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.

(2) Subsection (1) shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied *cy-près* except insofar as those conditions required a failure of the original purposes.

(3) References in subsections (1) and (2) to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.

(4) It is hereby declared that a charitable purposes trust places a trustee under a duty, where the case requires the property or some part of it to be applied *cy-près*, to secure its effective use for charity by taking steps to enable it to be so applied.

### PART III

#### PROVISIONS APPLICABLE TO A FOREIGN TRUST

#### Application of Part III

58. This Part applies only to a foreign trust.

#### Enforceability of a foreign trust

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

(2) A foreign trust shall be enforceable in the Islands except to the extent that—

- (a) it purports—
  - (i) to do anything the doing of which is contrary to the law of the Islands; or
  - (ii) to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of the Islands; or
- (b) to the extent that the Court declares that the trust is immoral or contrary to public policy.

## PART IV

## PROVISIONS OF GENERAL APPLICATION

**Application of Part IV**

**60.** This Part applies to a Turks and Caicos Trust and, to the extent that the context admits, to a foreign trust.

**Vesting of trust property in new or continuing trustees**

**61.** (1) Where a new trustee is appointed by instrument in writing, then—

- (a) if the instrument contains a declaration by the appointor to the effect that any property subject to the trust shall vest in the persons who, by virtue of the instrument, are to be the trustees, the instrument shall operate without conveyance, transfer or assignment, to vest in those persons, as joint tenants, and for the purposes of the trust, the property to which the declaration relates; and
- (b) if the instrument does not contain such a declaration, it shall subject to any express provision to the contrary contained in it, operate as if it contained such a declaration by the appointor extending to all the property with respect to which a declaration could have been made.

(2) Where by a written instrument an outgoing trustee is discharged without a new trustee being appointed, then subsection (1) shall apply, with such modifications as the circumstances require, to the vesting of the property concerned in the continuing trustees as joint tenants for the purposes of the trust.

(3) This section does not apply to the transfer or purported transfer of title to land held under a lease or subject to a charge if such lease or charge contains a provision to the effect that assignment or transfer is prohibited, or is subject to a consent which has not been obtained at the date of execution of the written instrument referred to in subsections (1) and (2).

(4) This section does not affect any requirement imposed by law or by a legally binding obligation on the appointor, or on the person in whom property is vested by reason of this section or on any other person, to perform any act additional to the transfer of title represented by the vesting created by this section, including, but not limited to, acts of registration and the giving of notice.

(5) In this section, “lease” includes an underlease and an agreement for lease or underlease.

**Application to, and certain powers of, the Court**

**62.** (1) A trustee may apply to the Court for directions concerning the manner in which he may or should act in connection with any matter concerning the trust and the Court may make such order, if any, as it thinks fit.

(2) The Court may, if it thinks fit—

- (a) make an order concerning—
- (i) the execution or the administration of any trust;
  - (ii) the trustee of any trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and payments, whether payments into Court or otherwise;
  - (iii) a beneficiary or any person having a connection with the trust; or
  - (iv) any trust property, including an order as to the vesting, preservation, application, distribution, surrender or recovery of the property; or
  - (v) an enforcer of a trust, including an order as to the exercise by an enforcer of his functions, the appointment, removal, remuneration or conduct of an enforcer;
- (b) make a declaration as to the validity or the enforceability of a trust or any aspect of a trust;
- (c) rescind or vary any order or declaration made under this Ordinance, or make any new or further order or declaration.

(3) An application to the Court for an order or declaration under subsection (2) may be made by the Attorney General or by the trustee, the enforcer or a beneficiary or, with leave of the Court, by any other person.

(4) Where the Court makes an order for the appointment or removal of a trustee, it may impose such conditions as it thinks fit, including conditions as to the vesting of trust property.

(5) Subject to any order of the Court, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if he had been originally appointed as a trustee.

### **Powers of Court in event of default**

**63.** (1) If a person does not comply with an order of the Court directing him to execute or make any conveyance, assignment or other document or instrument or endorsement, for giving effect to any order of the Court under this Ordinance, the Court may, on such terms and conditions, if any, as it considers just, order that the conveyance, assignment, or other document or instrument or endorsement, shall be executed, made or done by another person nominated for the purpose by the Court, at the cost of the person in default, or otherwise, as the Court directs, and a conveyance, assignment, document, instrument or endorsement so executed, made or done shall operate and be for all purposes valid as if it had been executed, made or done by the person originally directed to execute, make or do it.

(2) If a person does not comply with an order of the Court requiring him to do any other thing, not referred to in subsection (1), the Court may on such

terms and conditions, if any, as it considers just, order the thing to be done by another person nominated for the purpose by the Court, at the cost of the person in default, or otherwise, as the Court directs, and a thing so done has effect in all respects as if done by the person in default.

### Payment of costs

**64.** The Court may order the costs and expenses of and incidental to an application to the Court under this Ordinance to be raised and paid out of the trust property or to be borne and paid in such manner and by such persons as it thinks fit.

### Nature of trustee's interest

**65.** (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 assets.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1) shall not apply to his interest in the trust property as a beneficiary.

### Following trust property

**66.** Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered unless—

- (a) it is not identifiable; or
- (b) it is in the possession of—
  - (i) a *bona fide* purchaser for value without notice of the breach of trust; or
  - (ii) a person, other than the trustee, who derived title through such a purchaser.

### Insolvency of trustee

**67.** Where a trustee becomes insolvent or upon distraint, execution or any similar process of law being made, taken or used against any of his property, his creditors shall have no right or claim against the trust property except to the extent that the trustee himself has a claim against the trust or has a beneficial interest in the trust.

### Protection from personal liability of persons dealing with trustees

**68.** (1) Subject to subsection (3), a *bona fide* purchaser for value without actual knowledge of a breach of trust—

- (a) may deal with a trustee in relation to trust property as if the trustee were the beneficial owner of the trust property; and

(b) is not affected by the trusts on which such property is held.

(2) Subject to subsection (3), no person paying or advancing money to a trustee shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the propriety of the transaction or the application of the money.

(3) A person who deals with a trustee shall not be personally liable in respect of any breach of trust on the part of the trustee unless, in respect of that dealing, that person—

- (a) has actual knowledge of the breach of trust;
- (b) wilfully disregards circumstances which would cause an honest and reasonable person to conclude, on a balance of probabilities, that a breach of trust exists; or
- (c) would have actual knowledge of the breach of trust if he made the enquiries which would be made in the circumstances by an honest and reasonable man.

(4) For the purposes of subsection (3), it shall be presumed that an honest and reasonable man would, if the circumstances reasonably so required, seek professional advice including where appropriate legal advice.

### **Limitation of actions or prescription**

**69.** (1) No period of limitation or prescription shall apply to an action brought against a trustee—

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

(2) Where subsection (1) does not apply, 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 the 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 occurrence of a breach of trust,

whichever period shall begin to run first.

(3) Where the beneficiary is a minor or a person without legal capacity, the period referred to in subsection (2) shall not begin to run before the day on which the beneficiary ceases to be a minor or ceases to be a person without legal capacity or, in either case, dies.

(4) Where subsection (1) does not apply, the period within which an action founded on breach of trust may be brought—

- (a) against a trustee by an enforcer is three years from—
  - (i) the date of delivery of the final accounts to the enforcer; or
  - (ii) the date on which the enforcer first has knowledge of the breach of trust,whichever is earlier; or
- (b) against a former trustee by a trustee is three years from the date on which the former trustee ceased to be a trustee.

(5) Where subsection (1) does not apply, no action founded on breach of trust may in any event be brought against a trustee by any person after the expiry of the period of eighteen years following the occurrence of the breach.

### Constructive trusts

**70.** (1) Subject to subsection (2), where a person (in this section referred to as a constructive trustee) makes or receives any profit, gain or advantage from a breach of trust he shall be deemed to be a trustee of that profit, gain, or advantage and of any property which represents it or is obtained by application of it.

(2) Subsection (1) shall not apply to a *bona fide* purchaser of property for value and without notice of a breach of trust or to a person who derives title from such a purchaser unless that person has, at the time of deriving title, notice of a breach of trust.

(3) A person who is or becomes a constructive trustee shall deliver up the property of which he is a constructive trustee to the person properly entitled to it.

(4) This section shall not be construed as excluding any other circumstance under which a person may be or become a constructive trustee.

## PART V

### SPECIAL TRUSTS OF COMPANY SHARES

#### Interpretation for this Part

**71.** (1) In this Part—

“business” in relation to a company includes the holding of shares or other assets and non-commercial activities;

“business risk” in relation to a company includes—

- (a) any risk attached to any business of the company, or any connected company, when conducted in the manner in which it has in fact been conducted; or



(b) any risk which can be expected to be attached to any projected business of the company;

“company”, in relation to designated shares, means the company that has issued the designated shares;

“designated shares” means qualifying shares—

(a) that are comprised in trust property; and

(b) in respect of which a valid direction under section 73 has been made and is in effect;

“disposal”, in relation to designated shares, includes—

(a) the exercise of voting powers leading, or capable of leading, to the winding up of the company or the cancellation of the shares or of any rights attached to the shares;

(b) the creation of any legal or equitable interest in the shares, and “dispose” shall be construed accordingly;

“interested person” in relation to a trust means—

(a) a beneficiary of the trust;

(b) an object of a discretionary power over any of the capital or income of the trust;

(c) a parent or lawful guardian of a minor falling within paragraph (a) or (b);

(d) if the trust is a charitable purpose trust, the Attorney General;

(e) if the trust is a purpose trust, the enforcer;

(f) a protector appointed under the trust;

(g) a person appointed under a trust instrument to make intervention calls in accordance with section 80;

(h) any other person designated as an interested person by the terms of the trust;

“intervention call” means a call by an interested person under section 78 for a trustee to intervene in the affairs of a company;

“protector”, in relation to a trust, means any person whose consent is required for the exercise of any powers;

“qualified trustee” means a company—

(a) that holds an unrestricted trust licence granted under the Trust Companies (Licensing and Supervision) Ordinance; or

(b) that is a private trust company within the meaning of that Ordinance;

“qualifying shares” means shares in a Turks and Caicos company that is not a regulated company;

- “regulated company” means a company that holds a licence or an authorisation, by whatever name called, issued or granted under a regulatory Ordinance, within the meaning of the Financial Services Commission Ordinance;
- “Rules” means the Rules referred to in section 76(1), including any amendments to those Rules;
- “trust”, in relation to designated shares, means the trust on which the designated shares are held;
- “Turks and Caicos company” means a company that is formed and registered under the Companies Ordinance or an existing company within the meaning of that Ordinance, but excludes—
- (a) a foreign company registered under Part XI of that Ordinance; and
  - (b) a company that has been struck off the register of companies maintained under that Ordinance.
- (2) In this Ordinance—
- (a) references to voting powers in respect of shares shall be taken to include references to powers to direct the voting of shares held by a nominee;
  - (b) a company shall be taken to be connected with another company if—
    - (i) that other company holds, directly or through a nominee, shares in it;
    - (ii) it is controlled directly or indirectly by that other company; or
    - (iii) it is connected with a company which is itself connected with that other company;
  - (c) a ground for complaint concerning the conduct of a company’s affairs is permitted if it is specified as such in the terms of the trust, and the expression “permitted ground for complaint” shall be construed accordingly.

### Special trusts of company shares

**72.** A trust of company shares may be established under which—

- (a) the shares may be retained indefinitely; and
- (b) the management of the company may be carried out by its directors without any power of intervention being exercised by the trustee.

### Designated shares

**73.** (1) Where a trust fulfils the conditions specified in subsection (4), the terms of the trust may, subject to subsection (3), include a direction that this Part shall apply—

- (a) to all qualifying shares comprised in the trust property; or
- (b) to such qualifying shares comprised in the trust property as may be specified in the direction.

(2) For the purposes of subsection (1), qualifying shares comprised in the trust property shall be taken to include qualifying shares becoming so comprised at any time after the creation of the trust, whether added to the trust fund by way of additional settlement by the original settlor or any other person, acquired on a new issue by the company or in the course of the management or administration of the trust fund, or acquired in any other manner.

(3) A direction under subsection (1) shall not be made in respect of shares added to the trust fund by a trustee of another trust in the exercise of a power in that other trust, unless that other trust is a Turks and Caicos Trust and one of the trustees of that other trust is a qualified trustee.

(4) The conditions referred to in subsection (1) are—

- (a) the trust is created by a written instrument;
- (b) at least one trustee of the trust is a qualified trustee at the time when the direction under subsection (1) takes effect;
- (c) the terms of the trust require that, for so long as the direction under subsection (1) has effect, at least one trustee is a qualified trustee;
- (d) the trust is not created in the exercise of a power conferred by another trust, unless that other trust is a Turks and Caicos Trust and at least one trustee of that other trust is a qualified trustee.

(5) A direction under subsection (1) may—

- (a) identify the shares to which the direction relates either specifically or by any general description;
- (b) specify a date or event upon the occurrence of, or circumstances in, which the direction will take or will cease to have effect.

(6) The event referred to in subsection (5)(b) may include the service on the trustee of the trust, or on any of the trustees if more than one, of a written direction made by such person or persons as is specified by the terms of the trust to the effect that the direction under subsection (1) is immediately to take effect or is immediately to cease to have effect, as the case may be.

(7) The person or persons referred to in subsection (6) may not be or include the trustee of the trust, or any trustee of the trust if more than one.

(8) The terms of the trust shall determine whether or not the decision to make or refrain from making a direction under subsection (6) is fiduciary and, in a case where the terms of the trust do not expressly state otherwise, there is a presumption that the decision is fiduciary.

(9) Subject to subsection (10), where a person (“the first person”) is a settlor in relation to a trust of designated shares and additional property is settled

on the terms of the trust by another person, the first person shall be considered for the purposes of this Ordinance as the settlor in relation to the trust of the additional property.

(10) If the trust instrument provides that subsection (9) shall not apply, in the case of a trust comprising property, which has been provided by more than one person, this Part shall apply as if each person had created a separate trust in relation to the property which he has provided.

### **Trustee's duty, designated shares**

**74.** (1) Subject to section 81, designated shares shall be held by the trustee on trust to retain them.

(2) The trustee's duty to retain designated shares shall have precedence over any duty to preserve or enhance the value of the trust property.

(3) Without prejudice to subsection (2), the trustee shall not be accountable for losses arising directly or indirectly from holding, rather than disposing of, designated shares, including, in particular, losses arising from any of the factors specified in subsection (4).

(4) The factors referred to in subsection (3) are—

- (a) the absence, or inadequacy, of financial return from any designated shares;
- (b) a decrease in value of any designated shares;
- (c) speculative or imprudent activities of the company or depletion of the company's assets by disposition;
- (d) any act or omission of the directors of the company, regardless of whether it is made or carried out in good faith;
- (e) the winding up or receivership of the company;
- (f) share market fluctuations;
- (g) the loss of opportunity to make gains from reinvestment of the proceeds of designated shares;
- (h) the liabilities and expenses of the company, including directors' remuneration and expenses.

(5) Every reference in subsection (4) to the company shall include a reference to any company connected to it.

### **Restrictions on trustee's powers**

**75.** (1) Subject to the terms of the trust and to sections 76 and 78 to 80, a trustee of designated shares has the obligations specified in subsections (2) and (3).

(2) Voting or other powers in respect of designated shares shall not be exercised by the trustee so as to interfere in the management or conduct of any business of the company, and in particular, the trustee—

- (a) shall leave the conduct of every such business, and all decisions as to the payment or non-payment of dividends, to the directors of the company;
- (b) shall not require the declaration or payment of any dividend by the company or exercise any power the trustee may have of compelling any such declaration or payment.

(3) A trustee of designated shares—

- (a) shall take no steps to instigate or support any action by the company against any of its directors for breach of duty to the company;
- (b) shall take no steps to procure the appointment or removal of any of the directors;
- (c) subject to section 81, shall take no steps to wind up the company; and
- (d) subject to this Part, shall not apply to the Court for any form of relief or remedy in relation to the company.

(4) This section shall not apply so as to limit or restrict the exercise by a trustee of its rights, powers or entitlements under—

- (a) sections 49, 59(3) and 60(3)(b) of the Companies Ordinance; or
- (b) any provision of the articles of association of a company which enables members to inspect, make copies or take extracts from accounts and records of the company or any connected company.

### Rules concerning directors

**76.** (1) The terms of the trust may contain Rules for determining the manner in which voting and other powers attributable to designated shares should be exercised by the trustee in relation to—

- (a) the appointment of directors of the company;
- (b) the removal of directors;
- (c) the remuneration of directors; or
- (d) any of the matters referred to in subsection (2).

(2) Rules referred to in subsection (1) may, in particular—

- (a) require the trustee to ensure that a particular person holds or retains office as director;
- (b) require any person to be appointed to the office of director at some future date or upon some future event;

- (c) require the removal of a director in specified circumstances;
  - (d) prescribe, subject to the requirements of the memorandum and articles of the company and the law of the Islands, the minimum and maximum number of directors (whether one or more) to hold office at any time or times;
  - (e) require the trustee, in relation to the appointment and removal of directors, to act, generally or in any specified circumstances, on the decision of a third person or third persons;
  - (f) provide for the conferral of fiduciary duties on a person or persons referred to in paragraph (e);
  - (g) provide for the remuneration of the persons referred to in paragraph (e) to be paid from the trust property;
  - (h) provide for the amendment of the Rules.
- (3) Persons for whose appointment as director the Rules may provide include—
- (a) any settlor or protector of the trust;
  - (b) both ascertained and ascertainable persons.

### Exercise of voting and other powers

**77.** (1) Subject to subsection (6) and to sections 78 to 80, the trustee shall at all times use its voting and other powers, so far as those powers allow, to ensure—

- (a) that the company has at least the minimum number of directors to meet the requirements of its memorandum and articles and the law of the Islands; and
- (b) that, except in an exempted case, the identity of the directors of the company conforms with the Rules, if any, for the time being applicable.

(2) No person becoming or remaining a director of the company, whether in consequence of the Rules or otherwise, shall, in the capacity of director, owe fiduciary or other obligations under the trust, or have any fiduciary or other obligations to the trustee, but nothing in this subsection shall affect any duty which that person owes, as director, to the company.

(3) A trustee shall not incur any liability for securing, sanctioning or not opposing the appointment of a director where that appointment is in conformity with the Rules.

(4) Where there are no Rules, and in an exempted case, a trustee shall incur no liability for securing, sanctioning, or not opposing, the appointment of a director of the trustee's own selection, if—

- (a) the trustee concludes in good faith that the appointment in question is consistent with the wishes of the settlor; and

(b) the selection is not motivated by a desire on the part of the trustee to reduce business risk, except to the extent, if at all, that the trustee in good faith concludes that a reduction would be consistent with the wishes of the settlor.

(5) For the purposes of this section, an exempted case is any case in which either—

(a) the Rules make no provision in that case; or

(b) the Rules make provision but the trustee concludes in good faith that it would be impossible, unlawful or impracticable to ensure compliance with the Rules in that case.

(6) Subject to any express provision to the contrary in the terms of the trust, a trustee shall have no duty—

(a) to act pursuant to subsection (1) unless and until it receives actual notice that circumstances requiring such action have arisen; or

(b) to enquire as to whether circumstances requiring action pursuant to subsection (1) exist.

(7) Where, on any question concerning the appointment or removal of a director, a trustee makes application to the Court under this Ordinance, the Court, in giving its opinion, advice, or direction, shall not seek to reduce business risk, except to the extent, if at all, that the Court concludes that a reduction would be consistent with the wishes of the settlor.

### **Intervention call**

**78.** (1) Where, in relation to a trust of designated shares, an interested person has a complaint concerning the conduct of the company's affairs, and the ground for that complaint is permitted by the terms of the trust, he may, in writing, call upon the trustee to intervene in the affairs of the company to deal with the complaint.

(2) The terms of the trust may specify one or more permitted grounds for complaint, but need not specify any.

### **Powers and duties of trustee in relation to intervention**

**79.** (1) Upon receiving an intervention call under section 78, the trustee shall, if satisfied that the complaint is substantiated, take such, if any, action as the trustee considers appropriate to deal with the complaint in the interests of the trust.

(2) Action taken under subsection (1) may include—

(a) making or procuring changes in the directorship of the company in accordance with the provisions of its memorandum and articles of the company and the law of the Islands, but otherwise on such terms as the trustee thinks fit;

- (b) procuring action by the company to recover any losses caused by the conduct giving rise to the complaint; or
  - (c) seeking such advice on the complaint and the manner of addressing it as the trustee considers appropriate.
- (3) In making, procuring or maintaining a change specified in subsection (2)(a), the trustee may disregard section 77(1)(b) if and for so long as, in the opinion of the trustee, it is expedient to do so for the purposes of dealing with the complaint.
- (4) In considering and taking action under subsection (1), the trustee shall—
- (a) have regard to—
    - (i) any wishes of the settlor; and
    - (ii) the efficient functioning of the company; and
  - (b) disregard business risk, except to the extent that—
    - (i) the ground for complaint consists of or arises from any disagreement among the directors as to business risk; or
    - (ii) any wishes of the settlor require business risk to be considered.
- (5) After acting pursuant to subsection (1), or deciding not to act, the trustee's obligation to intervene shall be at an end unless and until another intervention call is made.
- (6) The trustee may decline to act on an intervention call if, apart from any other reason for declining, the call is made on substantially the same ground as one previously made, and there appears to the trustee to be no reason to alter, or act further on, the decision previously taken by it.

### Requests for information and enquiries

**80.** (1) The terms of the trust may appoint, or provide for the appointment of, a person to make intervention calls.

(2) Where the terms of the trust specify one or more permitted grounds for complaint—

- (a) an interested person may request the trustee to provide such information concerning the affairs of the company and any connected company as is reasonably required for that person to judge whether an intervention call is necessary, and the trustee shall use all reasonable endeavours to provide that information and may, if considered necessary for this purpose, procure the replacement of any of the directors with the trustee's own representative;
- (b) where a person is appointed to make intervention calls, that person has the following duties—



- (i) a duty to make reasonable enquiries as to whether there is a permitted ground for complaint as often as appears appropriate in the circumstances, and not less than once in any period of twelve months;
  - (ii) a duty to make an intervention call under this section, and provide the trustee with evidence of the relevant ground for complaint, whenever it appears to him to be appropriate;
- (c) where no person is appointed to make intervention calls, the trustee shall use all reasonable endeavours to ensure that at all times at least one interested person of full capacity is given the following documents and information concerning the trust, but without prejudice to any right of that person to documents and information apart from this paragraph—
- (i) a copy of the trust instrument and other trust documents;
  - (ii) the name and address of the trustee;
  - (iii) the name, registered office, and principal place of business, of the company;
  - (iv) the names and addresses of all directors of the company;
  - (v) the nature of the current activities of the company.

(3) As far as practicable, any person to whom information is given under subsection (2)(c) shall be a person who, in the reasonable opinion of the trustee, has acquired, or is likely to acquire, by appointment or otherwise, a substantial equitable interest in some or all of the designated shares or their proceeds or is the parent or lawful guardian of such a person or who, in the case of a purpose trust, is the enforcer.

(4) Where a person is appointed to make intervention calls, the trustee shall use all reasonable endeavours to ensure that at all times he is given the documents and information concerning the trust which are referred to in subsection (2)(c)(i) to (v).

(5) All expenses incurred in dealing with an intervention call or considering the complaint on which it is based, including trustee remuneration where applicable, and the cost of any advice, shall be paid out of the trust property and its income in such proportions as the trustee decides, and if there is any deficiency in liquid funds the trustee may take such steps as are available to the trustee under the memorandum and articles of the company and the law of the Islands to make up the shortfall out of dividends from the company and may, if considered necessary for this purpose, procure the replacement of any of the directors with the trustee's own representative.

(6) The trustee shall, where practicable, procure the removal from office of a director appointed for the purpose specified in subsection (2)(a) or (5) when the purpose for which the director was appointed is achieved, if removal is appropriate for the purpose of any action decided upon by the trustee pursuant to

section 79(1) or, subject to such action, for the purpose of compliance with Rules made under section 76(1), if any.

(7) The terms of the trust may provide for the remuneration of a person appointed to make intervention calls to be paid from the trust property.

### Disposals

**81.** (1) Subject to subsection (2) and to the terms of the trust, the trustee of a trust of designated shares has the power, in the management or administration of the trust property, to sell or otherwise dispose of designated shares, but the existence of this power—

(a) does not carry an implied duty to exercise it for the purpose of preserving or enhancing the value of the assets of the trust or to consider its exercise for that purpose; and

(b) does not render the trustee liable, in consequence of not exercising it, for losses of the kind referred to in section 74(3).

(2) Subject to section 84, the trustee shall not, unless the terms of the trust otherwise provide, sell or dispose of designated shares in the management or administration of the trust fund without—

(a) the consent of the directors of the company or of a majority of them if more than one; and

(b) such, if any, consents as are made requisite by the terms of the trust.

(4) A sale or other disposal in exercise of the power conferred by subsection (2) shall be made in such manner, and upon such terms and conditions, as the trustee, acting in its fiduciary capacity, thinks fit.

### Modification of rule in *Saunders v. Vautier*

**82.** (1) Notwithstanding any rule of equity or practice of the Court to the contrary, but subject to subsection (2), neither a beneficiary who is solely interested in any designated shares, nor all the beneficiaries who together are the persons interested in any designated shares, shall be entitled, although in existence and ascertained and of full capacity, to call for or direct a transfer of those shares or to terminate or modify the trust relating to them if and so far as that entitlement is excluded by the trust instrument.

(2) No such exclusion of entitlement shall have effect, or continue to have effect, after the expiration of twenty years from the creation of the trust, or such shorter period as may be specified in the trust instrument.

(3) Where a person who receives designated shares, or an interest in them, is a person who, by virtue of such an exclusion of entitlement, has no present right to receive the shares or that interest, he shall, without prejudice to the generality of subsection (1), hold those shares or that interest on trust to transfer the same to the trustee, and the court shall order him so to do on the application by the trustee or any person specified in section 83(4).

(4) During any such exclusion of entitlement, section 56 does not apply to the trust.

### Enforcement

**83.** (1) Where in the case of a trust of designated shares there is a breach of a duty or obligation imposed by this Part on its trustee, any of the persons specified in subsection (4) may, subject to the terms of the trust, apply to the Court for relief.

(2) Subject to subsection (3), the Court shall, if satisfied that the grounds for an application under subsection (1) are established, grant relief by—

(a) making such order as it considers appropriate to attain, as nearly as may be, the outcome that the Court considers would have been, or would most likely have been, attained in respect of the trust, the company, its directors and generally if the breach had not occurred;

(b) making such, if any, supplementary or incidental order as the Court deems, in the circumstance of the case, reasonably required having regard to the purpose of a trust of company shares as specified in section 72.

(3) No order shall be made under subsection (2) to prejudice any interest in property which was acquired from the trustee in good faith, for value and without actual or constructive notice of the trust, or from the company in good faith and for full consideration, or to prejudice any interest deriving from such an interest.

(4) The persons referred to in subsection (1) are—

(a) any interested person;

(b) any director of the company;

(c) any person who, under the Rules, if any, would be a director if the trustee had complied with its obligations under section 79 or 80.

(5) Without prejudice to subsections (1) to (4), but subject to subsection (6), where in the case of a trust there is a breach of a duty or obligation imposed by this Part on its trustee, the breach shall be, and shall be actionable in civil proceedings as, a breach of the trust.

(6) Where civil proceedings are instituted in relation to a breach of a duty or obligation, the Court shall, in granting any remedy, take account of any relief granted or available in respect of the breach on an application under subsection (1).

(7) References in subsection (5) to a breach shall be taken to include references to a prospective breach.

(8) Subject to the terms of the trust and to sections 76 to 80, where designated shares are held on trust, no act or omission of a director of the

company shall be a ground for any person to seek intervention by the Court in the affairs of the trust.

### **Power of Court to order disposal**

**84.** (1) Where it is shown to the Court that the retention of the shares is no longer compatible with the wishes of the settlor, the Court has power, on the application of any interested person, to order or authorise a sale or other disposal of any designated shares, and a sale or other disposal so ordered or authorised shall not require any consent referred to in section 81(2).

(2) In making an order, or giving authority, under this section the Court may impose such, if any, terms and conditions in relation to the sale or other disposal as it thinks fit.

### **Disqualification of trustee as director**

**85.** A trustee of designated shares shall not be, or become, a director of the company.

### **Ascertaining wishes of settlor**

**86.** (1) This section applies where it is necessary under this Part for the Court or a trustee to ascertain the wishes of the settlor.

(2) Where the settlor is alive or in existence, the settlor shall, where possible and practicable, be consulted as to his wishes.

(3) Where the settlor is dead or no longer in existence, or it is not possible or practicable to consult him, his wishes shall be taken to be—

- (a) such wishes as he has most recently communicated to the trustee;  
or
- (b) where no wishes or relevant wishes have been communicated, such as the Court, or the trustee in good faith, believes most likely to have been his wishes from the evidence available to it.

### **Limitation of trustee's duties**

**87.** 1) A trustee of designated shares shall have no fiduciary responsibility or duty of care in respect of the assets of, or the conduct of the affairs of, the company, except when acting, or required to act, on an intervention call.

(2) Without prejudice to the generality of subsection (1), a trustee of designated shares—

- (a) shall not be required to make any enquiry as to whether any facts exist which would, or may, whether with or without any other information, form the basis of an intervention call;
- (b) shall not be obliged to inform any interested person of any fact of which it becomes aware, or which it suspects, concerning the assets of the company or the conduct of its affairs;

(c) shall not incur liability as accessory to a director's breach of duty by reason of any omission on the part of the trustee to take action where the trustee is aware, or suspects, that there has been or will be such a breach, or by reason of any act or omission in compliance with section 77, 79 or 80.

(3) A trust of designated shares may, by the terms of the trust, exclude or modify any of the provisions of subsections (1) and (2) in relation to those shares.

(4) An exclusion or a modification made under subsection (3) shall have effect only if it expressly indicates that it is made pursuant to this section.

## PART VI

### FINAL PROVISIONS

#### Application of Ordinance

**88.** Subject to section 92, this Ordinance applies to trusts constituted or created either before or after the commencement date.

#### Regulations

**89.** (1) The Governor may, after consultation with the Commission, make Regulations generally for giving effect to the provisions of this Ordinance and specifically for prescribing anything required or permitted to be prescribed by this Ordinance.

(2) Regulations made under this section may make different provision in relation to persons, cases or circumstances of different descriptions.

#### Rules of Court

**90.** The Court may make Rules of Court for the purposes of this Ordinance and proceedings under this Ordinance.

#### Assets protection trusts

**91.** (1) If by virtue of a disposition made by or on behalf of a settlor his property becomes trust property which is the subject of a Turks and Caicos Trust, and—

(a) the settlor is an individual;

(b) the settlor is not insolvent when the disposition is made; and

(c) the settlor does not become insolvent by reason of the disposition,

that disposition shall not be voidable at the instance of any creditor of the settlor.

(2) In any proceedings in which the provisions of this section are to be applied, the burden of proof of the fact that a settlor was insolvent at the time a

disposition was made, or became insolvent by reason of making a disposition, shall be upon the person asserting that fact.

(3) Any action to prove that a settlor was insolvent at the time a disposition was made, or that he became insolvent by reason of a disposition, must be commenced no later than four years after the date of the disposition.

### **Savings**

**92.** (1) Nothing in this Ordinance shall—

- (a) abridge or affect the powers, responsibilities or duties under any provision of law of the Governor or of any special or general attorney;
- (b) affect the legality or validity of anything done before the commencement date in relation to a trust existing before the commencement date; or
- (c) affect the legality of a trust arising from a document or disposition executed or taking effect before the commencement date.

(2) Nothing in this Ordinance shall derogate from the powers of the Court which exist independently of this Ordinance—

- (a) to set aside or reduce any transfer or other disposition of property;
- (b) to vary any trust;
- (c) to reduce or vary any testamentary or other disposition; or
- (d) to make an order relating to matrimonial proceedings.

(3) Nothing in this Ordinance shall affect a personal representative where he is acting as such.

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