
CHAPTER 176**TRUSTEE**

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CHAPTER 176
TRUSTEE
**An Act to make better provisions relating to the
Law of Trustees and for connected purposes.**

*22 of 1998
15 of 2004*

*[Assent 22nd July, 1998]
[Commencement 27th July, 1998]*

**PART I
PRELIMINARY**

1. This Act may be cited as the Trustee Act. Short title.
2. In this Act — Interpretation.
 - “authorised investments” means investments authorised by the trust instrument or by law for the investment of money subject to the trust;
 - “contingent right” as applied to land includes a contingent or executory interest, a possibility coupled with an interest whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future and whether vested or contingent;
 - “convey” and “conveyance” as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of land whereof he is seized or possessed or wherein he is entitled to a contingent right either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;
 - “Court” means the Supreme Court or a Judge thereof;
 - “income” includes rents and profits;

“instrument” includes a written law and an instrument made under such law;

“land” includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in, to, over, or issuing out of, or derived from, land and any mines, minerals and mineral-like substances in or under land and rights of working and mining them and any parts or shares of land whether divided vertically or horizontally or in any other way, and includes undivided shares in any of the foregoing;

“mortgage” includes every kind of security for money charged on land and “mortgage” and “mortgaging” have corresponding meanings and “mortgagee” includes every person deriving title under the original mortgagee;

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

“person resident in The Bahamas” means a person who is treated as a resident of The Bahamas for Exchange Control purposes but does not include —

- Ch 309 (a) a company incorporated under the International Business Companies Act;
- Ch 312 (b) an exempted limited partnership registered under the Exempted Limited Partnership Act;

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

“possession” includes receipt of rents and profits or the right to receive the same, if any; and “possessed” applies to receipt of income from land and to any vested estate or interest less than a life estate or interest, legal or equitable, in possession or in expectancy, in any land;

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

“protector” means any person appointed as such pursuant to the terms of the trust instrument, including any persons designated as advisers, surrogates, nominators or as a committee or by any other name having such functions and duties as may be prescribed by the trust instrument or other deed or document effecting their appointment, but excluding persons holding trust property;

“rights” include estates and interests;

“sale” includes an exchange;

“securities” include stock, funds and shares and so far as relates to payments into court has the same meaning as in the written laws relating to funds in the Court; and “securities payable to the bearer” include securities transferable by delivery or by delivery and endorsement;

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

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

“trust” shall not include the duties incident to property subject to a mortgage but with this exception “trust” and “trustee” extend to —

- (i) implied, constructive and resulting trusts,
- (ii) cases where a trustee has a beneficial interest in the trust property, and
- (iii) the duties incident to the office of a personal representative,

and “trustee” where the context admits includes a personal representative, and “new trustee” includes an additional trustee;

“trust instrument” means the instrument, if any, creating the trust, or where the trust was not created by an instrument refers to any oral declaration creating the trust.

Retention,
possession or
acquisition of
powers by settlor

3. (1) The retention, possession or acquisition by the settlor of any one or more of the matters referred to in subsection (2) shall not invalidate a trust or the trust instrument or cause a trust created *inter vivos* to be a testamentary trust or disposition or the trust instrument creating it to be a testamentary document.

- (2) The matters referred to in subsection (1) are —
- (a) any powers to revoke the trust or the trust instrument or any trusts or powers granted thereby, or to withdraw property from the trust;
 - (b) any powers of appointment or disposition over any of the trust property;
 - (c) any powers to amend the trust or the trust instrument;
 - (d) any powers to appoint, add or remove any trustees, protectors or beneficiaries;
 - (e) any powers to give directions to trustees in connection with the exercise of any of their powers or discretions;
 - (f) any provisions requiring the consent of the settlor to any act or abstention of trustees;
 - (g) any such other powers as are referred to in subsection (2)(a) to (h) of section 81;
 - (h) the appointment of the settlor as a protector of the trust;
 - (i) any beneficial interests of the settlor (including absolute beneficial interests) in the capital or income of the trust property or in both such capital and income; and
 - (j) any interests of the settlor in any companies or assets underlying the trust property and any control of the settlor over such companies or assets.

(3) Subject to any contrary intention expressed in the trust instrument and subject to its other terms, a power in a trust instrument to amend, alter or vary a trust shall include (without limitation) a power to add as beneficiaries

any persons whatever (including the settlor and any private or charitable trusts or foundations) and to remove any beneficiaries.

PART II INVESTMENTS

4. (1) Trustees shall have the full powers of investment and of changing investments of individual beneficial owners absolutely entitled including (without prejudice to the foregoing) — Powers of investment

- (a) investing through nominees; and
- (b) investing in or upon the security of property of any kind in any part of the world, whether or not yielding any income or involving any liability.

(2) The powers conferred by this section —

- (a) shall be exercisable in the discretion of the trustees; and
- (b) shall be in addition to those conferred by the trust instrument or by law.

(3) If the trust instrument was made on or after the commencement of this Act or is a written law or an instrument made under such a law whenever commenced or made then the powers conferred by this section shall apply to the trust if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

(4) The powers conferred by this section shall be subject to any consent or direction required by the written law or by the trust instrument (whenever commenced or made) with respect to the investment of trust property.

(5) Save as provided in subsection (4), no provision in any instrument (not being a written law or an instrument made under such a law) made before, on or after the commencement of this Act shall limit the powers conferred by this section, except that those powers shall not be exercisable in such a way as to contravene any express prohibition in such an instrument.

5. (1) Trustees shall make, retain and change investments as a prudent investor would, having regard to the purposes, distribution requirements and other circumstances of the trust and in doing so trustees shall — Exercise of powers of investment

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- (a) exercise reasonable care and caution and the skill of ordinary persons;
 - (b) have regard to the suitability of individual investments, not in isolation, but in the context of the trust property as a whole, with a view to obtaining an overall balance of risk and return reasonably suited to the trust; and
 - (c) have regard to the need for diversification of investment so far as the trustees may consider it to be appropriate to the trust.
- (2) Among circumstances to which trustees shall have regard in choosing investments are such of the following as they may consider to be appropriate to the trust or its beneficiaries —
- (a) the size of the trust property as a whole and the estimated times and amounts of future distributions of income and capital;
 - (b) general economic condition;
 - (c) the possible effect of inflation and deflation;
 - (d) the expected tax consequences of investment decisions and of distributions;
 - (e) the expected total return from income and appreciation of capital;
 - (f) other resources of beneficiaries;
 - (g) needs of liquidity, regularity of income, and preservation or appreciation of capital;
 - (h) any special relationship or special value of an asset to the purposes of the trust or to one or more of the beneficiaries; and
 - (i) intentions or wishes of the settlor or testator, whether or not expressed in the trust instrument.
- (3) Trustees shall make reasonable efforts to verify facts relevant to their investment decisions.
- (4) Notwithstanding the reference in subsection (1)(a) to the skill of an ordinary person, trustees who have special skills or expertise, or are named or appointed as trustees in reliance upon their representation that they have special skills or expertise, have a duty to the beneficiaries to use such special skills or expertise.
- (5) If a trust has two or more beneficiaries, the trustees shall act impartially in investing the trust property, having regard to any differing interests of the beneficiaries.

(6) This section shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

6. (1) Before exercising any powers of investment, trustees may obtain and consider proper advice on the question of suitability to the trust of any proposed investment.

Investment
advice

(2) Trustees retaining any investment may obtain and consider, at such intervals as they consider appropriate having regard to the nature of the investment and other circumstances, proper advice or the suitability of continuing to retain the investment or disposing of it.

(3) For purposes of this section, proper advice is the written advice of any investment adviser named in the trust instrument or duly appointed pursuant to its terms, or of any person who is reasonably believed by the trustees to be qualified to give the advice as a result of that person's ability in and practical experience of financial matters, and notwithstanding that it may be given in the course of that person's employment as an officer or servant of a company or other institution.

(4) Trustees shall not be liable for any loss which may result from their having made, changed, retained or disposed of any investment pursuant to proper advice.

(5) The powers and immunities conferred by this section are in addition to those conferred by the trust instrument and by law.

(6) This section shall apply if and so far only as a contrary intention is not expressed in the trust instrument and has effect subject to the terms of that instrument.

7. Trustees shall not be liable for breach of trust by reason only of their continuing to hold investments which have ceased to be authorised investments.

Power to retain
investments

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

Loans and
investments by
trustees not
chargeable as
breaches of trust

- (a) that in making the loan the trustees were acting upon a written report as to the value of the property made by a person whom they reasonably believed to be an able assessor or valuer instructed and employed independently of any owner of the property, whether such assessor or valuer carried on business in the locality where the property is situated or elsewhere;
- (b) that the amount of the loan does not exceed three quarter parts of the value of the property as stated in the report; and
- (c) that the loan was made on the advice of the assessor or valuer expressed in his report.

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

(3) This section shall apply to transfers of existing securities as well as to new securities and to investments made before, on or after the commencement of this Act.

Liability for loss
by reason of
improper
investment

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

(2) This section shall apply to investments made before, on or after the commencement of this Act.

Powers
supplementary to
powers of
investment

10. (1) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement —

- (a) for the re-organisation or reconstruction of the company;
- (b) for the sale of all or any part of the property and undertaking of the company to another company;

- (c) for the acquisition of the securities of the company, or of control of it, by another company;
- (d) for the merger, amalgamation or consolidation of the company with another company; or
- (e) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them,

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

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

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

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

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

Power to pay
calls on shares

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

Power to deposit
money in bank

(2) Securities payable to bearer which are trust property shall, until sold, be deposited with a bank for safe custody and collection of interest, and any expenses of any such deposit and of collection shall be paid out of capital or income of the trust property, or partly in one way and partly in the other, as the trustees in their discretion think fit.

Application of sections 10 to 12

13. The powers conferred by sections 10, 11 and 12 shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

PART III GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

General Powers

Powers regarding land

14. (1) Trustees shall have the full powers of individual beneficial owners absolutely entitled —

- (a) to effect any transactions regarding land which is trust property including (without prejudice to the generality of the foregoing) any sales, exchanges, leases, surrenders and mortgages and the grant of any easements, servitudes or rights in, to, over, or issuing out of, the land, or derived from the land;
- (b) to contract to effect any such transactions;
- (c) to execute all instruments necessary or desirable in order to effect such transactions; and
- (d) to manage, repair, maintain, build on and otherwise improve such land whether for the occupation of beneficiaries or otherwise.

(2) The power of mortgaging conferred by subsection (1) shall not be exercisable for the purpose of borrowing money in order to invest it unless this is expressly authorised by the trust instrument.

- (3) The powers conferred by subsection (1) —
 - (a) are in addition to those conferred by the trust instrument or by law;

- (b) apply if and so far only as a contrary intention is not expressed in the trust instrument and have effect subject to the terms of that instrument; and
- (c) are subject to any consent or direction required to by the trust instrument with respect to any transaction regarding the trust land, so that a consent or direction required by the trust instrument in respect of a sale or other kind of transaction shall be required in respect of every kind of transaction authorised by subsection (1).

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

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

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

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

Power to sell subject to depreciatory conditions

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

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

(4) This section shall apply to sales made before, on or after the commencement of this Act.

Power to
postpone sale.

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

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

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

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

(2) The net proceeds of sale after payment of costs and expenses shall be applied in like manner as the mortgage debt, if received, would have been applicable and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable; but this subsection shall operate without prejudice to the rule of law relating to the apportionment of such proceeds between income and capital beneficiaries sometimes referred to as the rule in *Re Atkinson*.

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

Power of trustees
to give receipts.

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

(2) This section shall apply notwithstanding anything to the contrary in the trust instrument.

Power to
compound
liabilities.

20. A personal representative or two or more trustees acting together, or a sole acting trustee where by the trust instrument a sole trustee is authorised to execute the trusts and powers, may if and as they think fit —

- (a) accept any property before the time at which it is made transferable or payable;
- (b) sever and apportion any blended trust funds or property;
- (c) pay or allow any debt or claim on any evidence that they think sufficient;
- (d) accept any composition or any security for any debt or for any property claimed;
- (e) allow any time for payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estates or to the trust,

and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seems expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

21. (1) Where trustees are authorised by the trust instrument or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage or charge of all or any part of the trust property for the time being in possession.

Power to raise money by sale, mortgage or otherwise

(2) The power to mortgage or charge conferred by subsection (1) shall not be exercisable for the purpose of borrowing money in order to invest it unless this is expressly authorised by the trust instrument.

(3) This section shall apply notwithstanding anything to the contrary in the trust instrument.

22. No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is needed or that no more than is needed is raised or otherwise as to its application.

Protection of purchasers and mortgagees

23. (1) Where a power or trust is given to or imposed upon two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

Devolution of powers of trustees

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or the other trustees or trustee for the time being of the trust.

(3) In this section “personal representative” shall not include an executor who has renounced or has not proved.

Power to insure

24. (1) Trustees may insure against loss or damage by fire or otherwise any buildings or other insurable property to any amount not exceeding (together with the amount of any insurance already on foot) the value of the building or other property insured or (if greater) the total cost of replacing and reinstating the building or property and may pay the premium for such insurance at the discretion of the trustees out of the income thereof or out of the income or capital of any property subject to the same trusts without obtaining the consent of any beneficiaries.

(2) Subsection (1) shall not apply to any building or property which the trustees are bound forthwith to convey absolutely to any beneficiary upon being requested to do so except that, if the trustees have been insuring the building or property during the subsistence of successive or concurrent interests in it, they may continue to do so after it becomes distributable and until the beneficiary then entitled requests them to cease doing so.

(3) Trustees may insure against personal liabilities which they may incur in the execution of their trusts and may effect fidelity insurance for employees whom they employ in their capacity as trustees and the premiums for any such insurances may be paid out of the capital or income of the trust property at the discretion of the trustees.

(4) Subsection (3) shall not extend to insurance against any personal liabilities which the trustees may incur to any beneficiaries as such for breach of trust or otherwise.

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

25. (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any trust property whether by fire or otherwise shall, where the policy has been kept under any trust in that behalf or under any power statutory or otherwise or in

performance of any covenant or of any obligation statutory or otherwise or by a tenant for life impeachable for waste, be capital money for the purposes of the trust.

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

(3) Any such money —

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

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

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

(6) This section shall apply to policies effected either before, on or after the commencement of this Act, but only to money received on or after such commencement.

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

Deposit of documents and chattels for safe custody

Reversionary
interest,
valuations and
audit

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

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

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

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

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

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

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

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

(4) Trustees may in their absolute discretion from time to time cause the accounts of the trust property to be examined or audited by an independent accountant and shall, for that purpose, produce such vouchers and give such information to such accountant as he may require; and the costs of such examination or audit including the fee of the auditor shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other as the trustees in their absolute discretion think fit, but in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

28. Where an undivided share in land or in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to any trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the person entitled to or having power in that behalf over the other share or shares and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share either in his or their own right or in a fiduciary capacity.

Power to concur with others

29. The powers conferred on trustees by sections 20, 24, 26, 27(1), (3) and (4) and 28 shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

Application of sections 20, 24, 26, 27(1), (3) and (4) and 28

30. (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a counsel and attorney, foreign lawyer, banker,

Power to employ agents

stockbroker, investment adviser, investment manager or other person to give advice, transact any business or do any act required to be transacted or done in the execution of the trust or the administration of the testator's or intestate's estate including the receipt and payment of money.

(2) Trustees or personal representatives may appoint and pay any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in and executing and perfecting assurances of, or managing or cultivating or otherwise administering, any property subject to the trust or forming part of the testator's or intestate's estate in any place inside or outside The Bahamas, or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers and with and subject to such provisions and restrictions as they may think fit including a power to appoint substitutes.

(3) Without prejudice to such general powers of appointing agents as aforesaid —

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

the custody of and to produce the policy of insurance with a receipt signed by him on behalf of the trustee:

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

(4) Subsection (3) shall apply whether the money or valuable consideration was or is received before, on or after the commencement of this Act.

(5) Trustees shall be allowed and paid all charges and expenses incurred under this section out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees in their absolute discretion think fit.

(6) Trustees who make reasonable efforts to satisfy themselves that an agent has appropriate knowledge, experience and integrity shall not be chargeable with breach of trust or be responsible for any loss by reason only of their having appointed the agent or joined or concurred in that appointment.

(7) Trustees who have made reasonable efforts to keep themselves informed concerning the performance of an agent shall not be liable or responsible for any default or wrongful act of the agent which occurs at a time when the agent appeared to the trustees to be performing honestly and competently.

(8) This section shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

(9) Subject as provided in subsection (8), subsections (6) and (7) shall apply to agents appointed under the powers conferred by this section or any power in the trust instrument.

Power to delegate trusts

31. (1) A trustee may, notwithstanding any rule of law or equity to the contrary but only if expressly so permitted by the trust instrument, by power of attorney or any other written instrument delegate to any person outside The Bahamas or to any person in The Bahamas while the trustee is absent therefrom the execution or exercise of all or any trusts, powers and discretions vested in him as such trustee either alone or jointly with any other person.

(2) A delegate so appointed shall be considered an agent of the trustee for the purposes of subsections (6) and (7) of section 30.

(3) In favour of any person dealing with the delegate, any act done or instrument executed by the delegate shall, notwithstanding that the power has been revoked by the act of the trustee or by his death or otherwise, be as valid and effectual as if the trustee were alive and of full capacity and had himself done such act or executed such instrument, unless such person had actual notice of the revocation of the power before such act was done or instrument executed.

(4) For the purpose of executing or exercising the trusts or powers delegated to him, the delegate may exercise any of the powers conferred on the trustee as trustee by law or by the trust instrument, including power for the purpose of the transfer of securities himself to delegate to an attorney a power of transfer but not including the power of delegation conferred by this section.

(5) The fact that it appears from any power given under this section or otherwise that in dealing with any securities the delegate of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the securities are inscribed or registered with any notice of the trust.

Indemnities

Protection against liability in respect of rents and covenants

32. (1) Where a personal representative or trustee liable as such for —

- (a) any rent, covenant or agreement reserved by or contained in any lease;
- (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge; or

-
- (c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs,

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

(2) After the personal representative or trustee conveys the property as aforesaid —

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

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

(4) In this section —

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

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

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

Protection by
means of
advertisement

33. (1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property in The Bahamas, trustees or personal representatives may give notice, by advertisement in the *Gazette* and in a newspaper published daily (or daily apart from Sundays) in The Bahamas on three consecutive occasions not less than seven days apart, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than twenty-eight days, fixed in the notice or where more than one notice is given in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

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

Protection in
regard to notice

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

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

Exoneration of trustees in respect of certain powers of attorney

Provided that —

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

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

Implied indemnity of trustee

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

(3) A trustee may upon resignation, retirement, removal or otherwise ceasing to be trustee of a trust, whether created before, on or after the commencement of this Act —

- (a) require from any continuing or new trustee or continuing and new trustee (in the event of the trustee's resignation, retirement or removal), from the settlor (in the event of the trust's revocation) or from any beneficiary (in the event of a final distribution to such beneficiary) a release and indemnity holding harmless the outgoing trustee, and the servants and agents of the outgoing trustee and (if it is a corporation) its directors and officers from and against any and all claims, demands, actions, proceedings, damages, costs, charges and expenses whatsoever

for, or arising out of, or in relation to, any act or omission of the outgoing trustee or of any such directors; officers, servants or agents in respect of the administration of the trust by the outgoing trustee; and

- (b) withhold such trust property as the outgoing trustee in good faith considers necessary to pay outstanding liabilities, whether present, future, contingent or otherwise or to satisfy the aforesaid indemnity.

(4) The indemnity and right to withhold trust property referred to in subsection (3) shall not extend to any liabilities for breach of trust or in respect of which the outgoing trustee would otherwise not have been entitled to an indemnity out of the trust property had the outgoing trustee remained a trustee; and the indemnity given by any continuing or new trustees shall be limited to the trust property in their possession or under their control from time to time.

Maintenance, Advancement and Protective Trusts

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

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

- (a) during the minority of any such person so long as his interest continues the trustees may, at their sole discretion, pay to his parent or guardian, if any, without being liable to see to the due and proper application of any income so paid, or otherwise apply for or towards his maintenance, education or benefit the whole or such part, if any, of the income of the property as may, in all the circumstances, be reasonable, whether or not there is —
 - (i) any other fund applicable to the same purpose, or
 - (ii) any person bound by law to provide for his maintenance or education; and
- (b) if such person on attaining the age of majority has not a vested interest in such income, the

trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) to him, until he either attains a vested interest therein or dies or until failure of his interest:

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

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

(a) if any person —

(i) attains the age of majority or marries under that age and his interest in such income during minority or until his marriage is a vested interest, or

(ii) on attaining the age of majority or on marriage under that age becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest,

the trustees shall hold the accumulations in trust for such person absolutely, and so that the receipt of such person after marriage and though still a minor shall be a good discharge; and

(b) in any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose and as one fund with such capital for all purposes,

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

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

(4) This section shall apply to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the minority of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

(5) This section shall not apply where the instrument (if any) under which the interest arises came into operation before the commencement of this Act, including a will or codicil executed before such commencement.

(6) This section shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

Power to apply
capital money for
advancement or
benefit

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

Provided that —

(a) the money so paid or applied for the advancement or benefit of any person shall not exceed

altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property;

- (b) if that person is or becomes absolutely or indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and
- (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest whether vested or contingent in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

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

(3) This section shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to that instrument.

(4) This section shall not apply where the trust instrument came into operation before the commencement of this Act, including a will or codicil executed before such commencement.

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

Protective trusts

- (a) upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing or until any event happens other than an advance under any statutory or express power whereby if the said income were payable during the trust period to the principal beneficiary absolutely

during that period he would be deprived of the right to receive the same or any part thereof, in any of which cases as well as on the termination of the trust period whichever first happens the trust of the said income shall fail or determine;

- (b) if the trust aforesaid fails or determines during the subsistence of the trust period, then during the residue of that period the said income shall be held upon trust for the application thereof for the maintenance or support or otherwise for the benefit of all or any one or more exclusively of the other or others of the following persons (that is to say) —
 - (i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any, or
 - (ii) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would if he were actually dead be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be,

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) This section shall not apply to trusts coming into operation before the commencement of this Act and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

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

Restriction
against
alienation

40. (1) Notwithstanding any rule of law or equity to the contrary, it shall be lawful for an instrument or disposition to provide that any estate or interest in any property given or to be given to any individual as a beneficiary shall not during the life of the beneficiary, or such lesser period as may be specified in the instrument or disposition, be alienated or pass by bankruptcy, insolvency or liquidation or be liable to be seized, sold, attached, or taken in execution by process of law and where so provided such provision shall take effect accordingly.

(2) Where property is given subject to any of the restrictions contained in subsection (1), the right to derive income from such property by a beneficiary and any income derived therefrom shall not pass by bankruptcy, insolvency or liquidation or be liable to be seized, attached or taken in execution by process of law.

(3) Where property is given subject to a restriction against alienation then the right to derive income from that property shall not be alienable for as long as that restriction remains in force.

(4) A restriction imposed pursuant to this section may at any time be removed in accordance with any provisions for such removal in the instrument or disposition and in the manner specified therein.

(5) Neither the settlor nor any other person donating property to a trust may benefit from the provisions of this section.

PART IV APPOINTMENT AND DISCHARGE OF TRUSTEES

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

Limitation of the number of trustees.

(2) In the case of trusts of land in The Bahamas made or coming into operation on or after the commencement of this Act —

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

(3) This section shall apply only to trusts of land (whether or not on trust for sale) and the restrictions imposed on the number of trustees shall not apply —

15 cf 2004

Ch. 176A.

Appointing new trustees.

- (a) in the case of land vested in trustees for charitable, ecclesiastical or public purposes or a purpose of an authorized purpose trust within the meaning of the Purpose Trusts Act; or
- (b) where the net proceeds of the sale of the land are held for like purposes.

42. (1) Where a trustee either original or substituted and whether appointed by the Court or otherwise is dead or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him or refuses or is unfit to act therein or is incapable of acting therein or is a minor, then subject to the restrictions imposed by this Act on the number of trustees —

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

may, by deed, appoint one or more other persons (whether or not residing in The Bahamas and whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, desiring to be discharged, refusing, or being unfit or being incapable, or being a minor, as aforesaid.

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

(3) Where a corporation being a trustee is in liquidation or has been dissolved or has been removed from the register of companies either before, on or after the commencement of this Act or has otherwise ceased to have a corporate existence, then for the purposes of this section and of any similar previous written law the corporation shall be deemed to be and to have been from the date of the liquidation, dissolution, removal or ceasing to have a corporate existence incapable of acting in the trusts or powers reposed in or conferred on the corporation.

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

(5) A last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have, and shall be deemed always to have had, power, at any time before renouncing probate, to exercise the power of appointment given by this section; or by any similar previous written law, if willing to act for that purpose and without thereby accepting office as an executor.

(6) Where a sole trustee is or has been originally appointed to act in a trust or where in the case of any trust there are not more than three trustees either original or substituted and whether appointed by the Court or otherwise, then and in such case —

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

may, by deed, appoint another person or other persons (whether or not residing in The Bahamas and whether or not being the persons exercising the power) to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee unless the trust instrument provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(7) Every new trustee appointed under this section as well before as after all the trust property becomes by law or by assurance or otherwise vested in him shall have the same powers (including discretionary powers), authorities and discretions, and may in all respects act, as if he had been originally appointed a trustee by the trust instrument.

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

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

Power to appoint trustees of property belonging to minors or to persons out of The Bahamas

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

(2) On such appointment the personal representatives as such shall be discharged from all further liability in respect of such devise, legacy, residue or share, and the property representing the same may be retained in its existing condition or state of investment or may be converted into money, and such money may be invested in authorised investments and such property or investments shall be held until such person is capable of giving a receipt and calls for the distribution of the property.

(3) Where a personal representative has before the commencement of this Act retained or sold any property which is the subject matter of any such devise, legacy, residue or share and invested the same or the proceeds

thereof in any investment in which he was authorised to invest money subject to the trust, then subject to any order of the Court made before such commencement he shall not be deemed to have incurred any liability on that account by reason of not having paid or transferred the money or property into Court.

44. On the appointment of a trustee for the whole or any part of the trust property —

Supplemental provisions as to appointment of trustees

- (a) the number of trustees may, subject to the restrictions imposed by this Act on the number of trustees, be increased;
- (b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustee or trustees is or are to be appointed for other parts of the trust property and any existing trustee may be appointed or remain one of such separate set of trustees or, if only one trustee was originally appointed, then save as hereinafter provided one separate trustee may be so appointed;
- (c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed; and
- (d) any assurance or thing requisite for vesting the trust property or any part thereof in a sole trustee or jointly in the persons who are the trustees shall be executed or done.

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

Evidence of a matter stated

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

Retirement of trustee without a new appointment

46. (1) Where a trustee is desirous of being discharged from the trust then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust and if his co-trustees and such other person, if any, as is empowered to appoint trustees by deed consent to the discharge of the trustee and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust and shall by the deed be discharged therefrom under this Act without any new trustee being appointed in his place.

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

Vesting of trust property in new or continuing trustees

47. (1) Where by a deed a new trustee is appointed to perform any trust, then —

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

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

- (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, the deed shall, without any

conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants and for the purposes of the trust, the estate, interest or right to which the declaration relates; and

- (b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.

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

(4) Where a corporate trustee is merged or amalgamated with another corporate trustee, then on the date when such merger or amalgamation takes effect all trust property held by the non-surviving trustee shall automatically and without any action on the part of either trustee vest in the surviving trustee unless the trust instrument specifically prohibits the removal of a trustee and the appointment of a new trustee or requires the consent or approval of a person and such consent or approval shall not have been obtained or such vesting would result in the abrogation of any other rights, conditions, terms or provisions contained in such instrument or any instrument effectively amending such instrument.

- (5) Subsections (1) to (3) shall not extend —
 - (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;

- (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposal of the land without licence or consent, unless prior to the execution of the deed containing expressly or impliedly the vesting declaration the requisite licence or consent has been obtained or unless by virtue of any law the vesting declaration expressed or implied would not operate as a breach of covenant or give rise to a forfeiture;
- (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body or in manner directed by or under any written law,

and subsection (4) shall not extend to land held under a lease which contains any covenant or agreement against assignment or disposal of the land without licence or consent unless prior to such merger or amalgamation the requisite licence or consent has been obtained or unless by virtue of any law the merger or amalgamation would not operate as a breach of covenant or give rise to a forfeiture.

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

(7) This section shall apply only to trust instruments executed after the thirty-first day of December one thousand eight hundred and eighty-one.

PART V POWERS OF THE COURT

Appointment of New Trustees

Power of Court
to appoint new
trustees

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

(2) In particular and without prejudice to the generality of subsection (1) the Court may make an order appointing a new trustee in substitution for a trustee who

is convicted of a felony or is a person of unsound mind or is a bankrupt or is a corporation which is in liquidation or has been dissolved or has been removed from the register of companies or has otherwise ceased to have corporate existence or where a trustee appears to the Court for any other reason whatever to be undesirable as a trustee.

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

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

49. Every trustee appointed by the Court shall, as well before as after the trust property becomes by law or by assurance or otherwise vested in him, have the same powers (including discretionary powers), authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the trust instrument.

Powers of new trustees appointed by the Court

Remuneration of Trustees

50. If satisfied that the circumstances justify the order the Court may authorise a trustee (whether or not appointed by the Court) to charge such remuneration for the services of the trustee as the Court may think fit.

Power to authorise remuneration

Vesting Orders

51. (1) In any of the following cases namely —

- (a) where the Court appoints or has appointed a trustee or where a trustee has been appointed out of Court under any statutory or express power;
- (b) where a trustee entitled to or possessed of any land or interest therein whether by way of mortgage or otherwise or entitled to a contingent right therein either solely or jointly with any other person —
 - (i) is under a disability,
 - (ii) is out of the jurisdiction of the Court, or

Vesting orders of land

-
- (iii) cannot be found or being a corporation has been dissolved or has been removed from the register of companies or has otherwise ceased to have a corporate existence;
 - (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land or interest in land;
 - (d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any land or interest in land is living or dead;
 - (e) where there is no personal representative of a deceased trustee who was entitled to or possessed of any land or interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any land or interest in land;
 - (f) where a trustee jointly or solely entitled to or possessed of any interest in land or entitled to a contingent right therein has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest, or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement;
 - (g) where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient,

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

- (2) Where —
 - (a) the order is consequential on the appointment of a trustee, the land or interest therein shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and
 - (b) the order relates to a trustee entitled or formerly entitled jointly with another person and such trustee is under a disability or out of the

jurisdiction of the Court or cannot be found or being a corporation has been dissolved or has been removed from the register of companies or has otherwise ceased to have a corporate existence, the land, interest or right shall be vested in such other person who remains entitled either alone or with any other person the Court may appoint.

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

Orders as to contingent rights of unborn persons.

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

Vesting order in place of conveyance by minor mortgagee.

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

Vesting order consequential on order for sale or mortgage of land.

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

Vesting order consequential on judgment for specific performance etc.

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

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

Effect of vesting order

56. A vesting order made under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee have the same effect —

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

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

Power to appoint person to convey

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

- 58.** (1) In any of the following cases, namely —
- (a) where the Court appoints or has appointed a trustee or where a trustee has been appointed out of court under any statutory or express power;
- (b) where a trustee who is entitled whether by way of mortgage or otherwise alone or jointly with another person to stock or to a thing in action —
- (i) is under a disability,
 - (ii) is out of the jurisdiction of the Court,
 - (iii) cannot be found or being a corporation has been dissolved or has been removed from the register of companies or has otherwise ceased to have a corporate existence,
 - (iv) neglects or refuses to transfer the stock or receive the dividends or income thereof or to sue for or recover a thing in action according to the direction of the person absolutely entitled thereto for twenty-eight days following the service of a request in writing on him, or
 - (v) neglects or refuses to transfer the stock or receive the dividends or income thereof or to sue for or recover a thing in action for twenty-eight days following the service of an order of the Court for that purpose on him;
- (c) where it is uncertain whether a trustee who is entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (d) where stock is standing in the name of a deceased person whose personal representative is under a disability;
- (e) where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient,

Vesting orders as to stock and things in action

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

- (2) Where —
- (a) the order is consequential on the appointment of a trustee, the right shall be vested in the persons who on the appointment are the trustees; and

(b) the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in the last-mentioned person either alone or jointly with any other person whom the Court may appoint.

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

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

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

(6) The Court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Act is to be exercised.

(7) The provisions of this Act as to vesting orders shall apply to shares in ships registered under any written law relating to merchant shipping as if they were stock.

Vesting orders of
charity property

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

Vesting orders in
relation to
minor's
beneficial
interest

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

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

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

61. Where a vesting order is made as to any land under this Act founded on an allegation of any of the following matters, namely —

Orders made upon certain allegations to be conclusive evidence

- (a) the personal incapacity of a trustee or mortgagee;
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the Court or cannot be found or being a corporation has been dissolved or has been removed from the register of companies or has otherwise ceased to have a corporate existence;
- (c) that it is uncertain which of two or more trustees or which of two or more persons interested in a mortgage was the survivor;
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee or the last surviving person interested in a mortgage is living or dead; or
- (e) that any trustee or mortgagee has died intestacy without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested,

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

62. In all cases where the Court shall, under the provisions of this Act, make a vesting order or any order having the effect of a conveyance or assignment of any land or any interest therein or having the effect of a release

Orders of Court to be registered

or disposition of the contingent right of any unborn person or class of unborn persons in any land, an office copy of such order shall be registered in the office of the Registrar General and such order shall take effect upon and from the time of the registration of such office copy.

Persons entitled to apply for orders.

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

(2) An order under this Act concerning any land or interest in land, stock or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under a disability or not, or of any person interested in the money secured by the mortgage.

Power to apply to the Court.

64. Any person entitled under section 63 to apply for an order may apply to the Court by summons for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such summons, and may serve such summons on such persons as he may consider appropriate.

Hearing of application.

65. Upon the hearing of any such application the Court may, if it thinks necessary, direct a reference to the Registrar of the Court, to enquire into any facts which require such investigation, or the Court may direct such application to stand over to enable the plaintiffs to adduce evidence or further evidence before the Court, or to enable the summons to be served on any person.

Powers concerning costs.

66. The Court may order the costs and expenses of and incidental to any application for an order under this Act or for any order or declaration in respect of any property subject to a trust, or of and incidental to any such order or declaration, or any document executed or act performed in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made and performed, or out of the income thereof, or to be borne and paid in such manner by such persons as to the Court may seem just.

67. Where in any cause or matter, either by evidence adduced therein or by the admission of the parties or by a report of the Registrar of the Court, the facts necessary for an order under this Act appear to the Court to be sufficiently proved the Court may, either upon the hearing of the cause or of any proceedings in the cause or matter, make such order under this Act.

Power to make an order in a cause.

68. Upon any application being made under this Act to the Court concerning a person of unsound mind the Court may, if it thinks fit, direct that medical evidence be presented to it concerning such person and postpone the making of an order upon such application until such evidence has been presented.

Medical evidence concerning person's state of mind.

69. Upon any summons under this Act being made to the Court, it may postpone making any order upon the summons until the right of the applicant is declared in an action commenced for the purpose.

Action may be directed.

70. (1) Where property whether real or personal is held on trusts arising before, on or after the commencement of this Act under any will, settlement or other disposition, the Court may if it thinks fit by order approve on behalf of—

Jurisdiction of Court to vary trusts.

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

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

Provided that the Court shall not approve an arrangement on behalf of any person if carrying it out would be detrimental to that person.

(2) In the foregoing subsection “protective trusts” means an interest specified in paragraphs (a) and (b) of subsection (1) of section 39 or any like trusts, “the principal beneficiary” has the same meaning as in the said subsection (1), and “discretionary interest” means an interest arising under the trust specified in paragraph (a) of the said subsection.

15 cf 2004.

(3) Where capital or income of trust property is or may be applicable for a charitable purpose or an authorised purpose the Court may if it thinks fit by order sanction in respect of that purpose the carrying out of any arrangement (by whomever proposed and whether or not there is any person beneficially interested capable of assenting thereto) varying or revoking all or any of the trusts or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts:

Provided that the Court shall not sanction the carrying out of any arrangement if it would be detrimental to the purpose in respect of which such sanction is sought.

15 cf 2004.

(4) In subsection (3) “charitable purpose” means an exclusive charitable purpose but does not include an independent charitable company, association or other separate entity or organisation, and “authorised purpose” means a purpose of an authorised purpose trust within the meaning of the Purpose Trusts Act.

Ch. 176A.

(5) Nothing in the foregoing provisions of this section shall apply to trusts affecting property settled by any written law.

Power of Court to authorise dealings with trust property.

71. (1) Where in the management or administration of any property vested in trustees any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the Court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust

instrument or by law, the Court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for that purpose on such terms and subject to such provisions and conditions, if any, as the Court may think fit and may direct in what manner any money authorised to be expended and the costs of any transaction are to be paid or borne as between capital and income.

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

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

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

Power to give judgment in absence of a trustee

73. If it appears to the Court that a trustee (including a director, officer, employee, servant or agent of a corporate trustee) whether appointed by the Court or otherwise is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before, on or after the commencement of this Act, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same, whether or not he has acted with the requisite degree of prudence, diligence and skill.

Power to relieve trustee from personal liability

74. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married

Power to make beneficiary indemnify for breach of trust

woman restrained from anticipation, make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust property by way of indemnity to the trustee or persons claiming through him.

(2) This section shall apply to breaches of trust committed before, on or after the commencement of this Act.

Payment into
Court by
trustees

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

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

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

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

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

On summons the
Court may order
the application of
trust moneys

76. (1) Such orders as shall seem fit shall from time to time be made by the Court in respect of the trust moneys, securities or other instruments so paid in or deposited as aforesaid or for the investment and payment of any such moneys, or of any dividends or interest on any such moneys, securities or other instruments and for the transfer and delivery out of such moneys, securities and other instruments and for the administration of any such trusts generally upon a summons to be presented in a summary way to the Court by such party or parties as to the Court appear to be competent and necessary in that behalf.

(2) Service of a summons referred to in subsection (1) shall be made upon such person or persons as the Court shall determine and direct.

(3) Every order made upon any such summons shall have the same authority and effect and shall be enforced and subject to rehearing and appeal in the same manner as if the same had been made in an action regularly commenced in the Court.

(4) Where it appears that any such trust moneys cannot be safely distributed without the commencement of an action, the judge may direct such action to be commenced.

77. (1) A trustee or personal representative may without commencing an action apply upon a written statement for the opinion, advice or direction of the Court of Judge in Chambers on any question respecting the management or administration of the trust property or the assets of any testator or intestate.

Trustee may apply to Court for advice or direction

(2) Such application shall be served upon and the hearing attended by all persons interested in such application or such of them as the Judge thinks expedient.

(3) A trustee or personal representative acting upon the opinion, advice or direction given by the Judge shall be deemed so far as regards his own responsibility to have discharged his duty as such trustee or personal representative in the subject matter of the said application.

(4) Subsection (3) shall not extend to indemnify any trustee or personal representative in respect of any act done in accordance with such opinion, advice or direction if he is guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

(5) The costs of such application shall be in the discretion of the Judge.

78. Where any trustee or personal representative applies for the opinion, advice or direction of a Judge under section 77, the written statement shall be signed by a counsel and attorney and the Judge may require the applicant to attend him by his counsel and attorney either in Chambers or in Court where he deems it necessary to have the assistance of a counsel and attorney.

Application for advice or direction to be signed by counsel and attorney

Court may make orders

79. The Court may make such orders as from time to time shall seem necessary to give effect to the provisions of sections 75, 76, 77 and 78.

PART VI SPECIAL PROVISIONS

Trustees to act by majority

80. (1) Subject to any provision contained in the trust instrument —

- (a) every decision made, resolution passed or power or discretion exercised by trustees is valid if made, passed or exercised by a majority of the trustees if there are more than two of them; and
- (b) any deed or other instrument executed by a majority of the trustees pursuant to such a decision, resolution or exercise of power or discretion is likewise valid as if it had been executed by all the trustees.

(2) This section shall not apply to trusts in existence at the time this Act comes into operation.

Protector of trusts

81. (1) A trust instrument may contain provisions by virtue of which the exercise by the trustees of any of their powers and discretions shall be subject to the previous consent of the settlor or of some other person as protector, and if so provided in the trust instrument the trustees shall not be liable for any loss caused by their actions if the previous consent was given and they acted in good faith.

(2) The trust instrument may confer on the settlor or on any protectors any powers including (without limitation) power to do any one or more of the following —

- (a) determine the law of which jurisdiction shall be the proper law of the trust;
- (b) change the forum of administration of the trust;
- (c) remove trustees;
- (d) appoint new or additional trustees;
- (e) exclude any beneficiary as a beneficiary of the trust;
- (f) add any person (including the settlor and any private or charitable trust or foundation) as a beneficiary of the trust in addition to any existing beneficiary of the trust;

- (g) give or withhold consent to specified actions of the trustee either conditionally or unconditionally; and
- (h) release any of the protectors' powers.

(3) A person exercising any one or more of the powers set forth in paragraphs (a) to (h) of subsection (2) shall not by virtue only of such exercise be deemed to be a trustee and, unless otherwise provided in the trust instrument, is not liable to the beneficiaries for the *bona fide* exercise of the power.

(4) A person shall not charge any remuneration for his services as protector unless otherwise provided in the trust instrument.

82. A trust instrument may contain provisions by virtue of which the exercise of any of the trustee's powers may be reserved to a managing trustee and no other trustee shall be liable for any of the decisions, acts or transactions of the managing trustee in so far as they amount to exercise of powers reserved by the trust instrument to the managing trustee.

Managing
Trustee

- 83.** (1) Subject to the provisions of subsection (2) —
- (a) trustees of trusts declared *inter vivos* or otherwise shall be under a legal obligation to take reasonable steps to inform each beneficiary who has, but may not be aware of having, a vested interest under the trusts (whether or not in possession and whether or not subject to defeasance) of the existence of the trusts and of the general nature of that interest; and
 - (b) at any time when there are no beneficiaries with such vested interests, trustees of trusts declared *inter vivos* or otherwise shall be under a legal obligation to take reasonable steps to ensure that at least one person who is capable of enforcing the trusts (whether as a beneficiary with a contingent interest, or as the object of a discretionary power or otherwise howsoever) is aware of the existence of the trusts and of the general nature of the interest entitling him to enforce them:

Reception and
re-transmission
of broadcast in
cable system

Provided that no information shall be given if the trustees in their absolute discretion consider that it would not be in the best interest of the beneficiary to give the information.

(2) Where a beneficiary entitled to information under subsection (1)(a) is a minor or is determined by the trustees acting in good faith to be mentally incapacitated, the trustees shall give information under subsection (1) not to the beneficiary but to the parents or duly appointed legal guardians of the minor beneficiary, or (as the case may be) the duly appointed receivers, conservators, curators or other legal representatives of the beneficiary determined by the trustees to be mentally incapacitated:

Provided that no information shall be given if the trustees in their absolute discretion consider that it would not be in the best interest of the beneficiary to give the information.

(3) Save as provided by subsections (1)(b) and (2), and unless a person vested by the trust instrument with power to request or approve disclosure requests or approves such disclosure, trustees shall be under no legal obligation to disclose the existence of their trusts to —

- (a) any beneficiaries who are interested only contingently on their surviving other beneficiaries or the settlor, or on the occurrence of other events;
- (b) any persons who are only objects of discretionary powers; or
- (c) any other persons who are not entitled to vested interests (whether or not in possession and whether or not subject to defeasance) under the trusts.

(4) Subject to the provisions of subsection (9), trustees may nonetheless in their absolute discretion without any such request or approval disclose the existence of their trusts to such persons as are mentioned in subsection (3)(a), (b) or (c) if such disclosure is necessary or convenient in connection with distributions to such persons, or if the trustees in their absolute discretion consider such disclosure to be in the interest of the trust as a whole.

(5) The following provisions shall have effect with respect to the disclosure of documents —

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- (a) unless a person vested by the trust instrument with power to request or approve disclosure requests or approves such disclosure, trustees shall be under no legal obligation to disclose to any such persons as are described in subsection (3)(a), (b) or (c) the documents described in subsection (6) or any other documents or information;
 - (b) subject to the provisions of subsection (9), trustees may nonetheless in their absolute discretion, without any such request or approval, disclose the documents described in subsection (6) and any other information about their trusts to such persons as are described in subsection (3)(a), (b) and (c) at the expense of those persons;
 - (c) subject to the provisions of subsection (5)(d), trustees shall be under a legal obligation at the request and expense of any beneficiaries having vested interests (whether or not in possession and whether or not subject to defeasance) under the trusts to disclose to such beneficiaries the documents described in subsection (6);
 - (d) in the case of minor and mentally incapacitated beneficiaries the provisions of subsection (2) shall have effect in relation to the disclosure of documents under subsection (5)(c) as they do in relation to the giving of information under subsection (2);
 - (e) subject to the provisions of subsection (9), trustees may in their absolute discretion disclose to any beneficiaries having such vested interests any other information about the trust property and its administration.
- (6) The documents referred to in subsection (5) are —
- (a) the trust instrument and all other documents in which the terms of the trust or any exercise of any trust, power or discretion are to be found;
 - (b) all financial statements of the trust; and
 - (c) all financial statements of companies wholly owned by the trustees as trustees of the trust.
- (7) When disclosing any documents or information to any beneficiary or other person the trustees shall, if other beneficiaries have requested confidentiality or if the

trustees in their absolute discretion determine confidentiality to be in the best interest of such other beneficiaries, take all reasonable steps to secure the right to confidentiality of the other beneficiaries by providing such beneficiary or other person only with such documents or information as shall enable that beneficiary's own true entitlement and actual interest or benefits under the trust to be determined; such documents and information may include copies or certified extracts of the trust instrument or other documents and copies of advices or statements from which the names and interests of other beneficiaries have been edited or deleted in order to preserve the confidentiality to which such other beneficiaries are entitled.

(8) Notwithstanding anything to the contrary in this section, trustees shall not be bound or compelled by any process of discovery or inspection or under any equitable rule or principle to disclose or produce to any beneficiary or other person any of the following documents, that is to say —

- (a) any memorandum or letter of wishes issued by the settlor or any other person to the trustees, or any other document recording any wishes of the settlor;
- (b) any document disclosing any deliberations of the trustees as to the manner in which the trustees should exercise any discretion of theirs or disclosing the reasons for any particular exercise of any such discretion or the material upon which such reasons were or might have been based; or
- (c) any other document relating to the exercise or proposed exercise of any discretion of the trustees (including legal advice obtained by them in connection with the exercise by them of any discretion).

(9) Without prejudice to the provisions of subsection (10), no disclosure of the kind otherwise required or permitted by subsections (4), (5)(b) or (5)(e) shall be made by the trustees in breach of any prohibition or restriction of such disclosure contained in the trust instrument.

(10) No such prohibition or restriction, and nothing in this section, shall prejudice the validity of any trusts or

the entitlement of any beneficiaries who have in any manner become aware of any trusts to obtain orders of the Court for administration or accounts, or for the execution of the trusts, or any other order of the Court not being an order for the discovery, inspection, disclosure or production of such documents as are described in subsection (8), or for any information or disclosure which by subsection (2), (3), (5)(a) or (7) trustees are under no legal obligation to make.

84. (1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that —

Validation of appointments where objects are excluded or take illusory shares.

- (a) an unsubstantial, illusory or nominal share only is appointed to or left unappointed to devolve upon any one or more of the objects of the power; or
- (b) any object of the power is thereby altogether excluded,

but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

(2) This section shall not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

(3) This section shall apply to appointments made before, on or after the commencement of this Act.

85. (1) Neither powers for trustees, settlors, protectors or others to add to the beneficiaries of a trust, or to appoint trust property among a class of persons, nor any discretionary trusts, shall be invalid on the ground that it is not possible to ascertain with certainty all the potential beneficiaries of the power or trust, or on the ground that the class of potential beneficiaries is unlimited, or limited only by the exclusion of specified persons.

Validity or powers and discretionary trusts.

(2) The validity of a trust shall not be prejudiced by the inclusion of any power of discretion whose validity is preserved by subsection (1).

86. (1) When a trust instrument expressly directs the accumulation of income for a period which does not contravene the Perpetuities Act, 1995 —

Power to continue to accumulate income.
Ch. 114

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- (a) the trustees may in their absolute discretion give effect to that direction notwithstanding any demand for the distribution of income or accumulations of income by any beneficiary or beneficiaries entitled to give a valid receipt for them and entitled (apart from this section) to put an end to the accumulation of income; and
- (b) notwithstanding anything contained in any written law to the contrary or any rule of law or equity, the beneficiaries shall not be entitled to vary the trusts so as to modify or remove the discretion conferred on the trustees by this section.

(2) This section shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

Termination and
modification by
beneficiaries

87. (1) Notwithstanding any rule of equity or practice of the Court to the contrary, neither a beneficiary who is solely interested in the trust property, nor all the beneficiaries who together are all the persons interested in it, shall be entitled, though in existence and ascertained and of full capacity, to terminate or modify the trusts affecting the property, if this would defeat a material purpose of the settlor or testator in creating the trust, unless the settlor is living and also consents.

(2) The material purposes of the settlor or testator for the purpose of subsection (1) may be ascertained from the trust instrument (directly or by inference) or by collateral evidence.

Distribution of
shares

88. (1) Beneficiaries entitled to a share of trust property, whether real or personal and whether or not readily divisible, shall not be entitled to demand the distribution of that share if its distribution would prejudice the value of any other share of the trust property which is not yet distributable.

(2) This section shall not apply to trusts in existence at the time this Act comes into operation.

Apportionment
between capital
and income

89. (1) The rules of equitable apportionment known as the Rule in *Howe v. Earl of Dartmouth*, the Rule in *Re Earl of Chesterfield's Trust* and the Rule in *Allhusen v. Whittel* are abolished in all their branches.

(2) Whenever trustees in their discretion determine that property held by them for successive interests is not (when considered as a whole) so invested as to maintain a fair balance between beneficiaries interested in current income and other beneficiaries or that a particular receipt disturbs that balance, the trustees shall apportion income receipts to capital of the trust property or estate or apportion capital receipts to income of the trust property or estate so far (if at all) as they in their discretion consider necessary in order to restore such balance.

(3) On the application of a beneficiary (whether or not under a disability) aggrieved by any act or failure to act by trustees under subsection (2) the Court may give such directions as the Court may think fit for the purpose of redressing such grievance.

(4) A trustee who has acted in good faith shall not be personally liable for the costs of any other party to any such application and the costs of such a trustee of such an application shall be provided for out of the trust property or its income.

(5) Subsections (2), (3) and (4) shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to that instrument.

90. A trust instrument may incorporate by reference any of the provisions set out in the Schedule, in which case the following expressions appearing in the provisions have, unless a contrary intention appears in the trust instrument, the meanings respectively assigned to them —

Incorporation by
reference
Schedule

“the Trust” means the trust created by the trust instrument;

“the Trustee” means the trustee for the time being of the Trust;

“the Trust Fund” means —

- (a) the property in respect of which trusts are declared;
- (b) all property paid or transferred to or otherwise vested in and accepted by the Trustee;
- (c) all income which, in accordance with the provision of the trust instrument, is accumulated by the Trustee and added to the capital thereof; and

- (d) all money, investments and other property from time to time representing all property and income, mentioned in paragraphs (a), (b) and (c) and any part of the said property or income,

and section 2 shall apply to the Schedule.

Memorandum of
trust property

91. A memorandum signed by the trustees as to property paid or transferred to or otherwise vested in or accepted by the trustees is in the absence of fraud conclusive evidence of the payment, transfer or other vesting.

PART VII FISCAL AND REGULATORY PROVISIONS

Trust Duty

92. (1) Every trust instrument of which the proper law is the law of The Bahamas and which does not create a bare trust shall be liable, instead of stamp duty, to a duty called “the trust duty” in the sum of fifty dollars.

(2) The payment of the trust duty shall be denoted or expressed by the affixing of a Bahamas revenue stamp to the trust instrument.

(3) A trust instrument shall be deemed to be duly stamped only when one of the persons executing the trust instrument cancels the revenue stamp by writing on or across the same the name or initials of the trustee or the person acting on behalf of a corporate trustee as well as the date on which the name or initials of the person is affixed.

(4) A trust instrument not stamped and cancelled in accordance with the provisions of subsection (3) shall not be admissible in civil proceedings, provided that a trust instrument may in the discretion of the Court be admissible in such proceedings on proof of the payment of the trust duty together with a penalty in the sum of one hundred dollars for each calendar year from the execution of the trust instrument:

(5) Any trust instrument that is liable to trust duty need not be produced to the Treasury, Post Office or any other public body for purposes of payment of trust duty.

(6) No trust instrument of which the proper law is the law of The Bahamas shall, except in criminal proceedings, be pleaded or given in evidence or admitted to be good,

useful or available in law or in equity, unless it is duly stamped with trust duty in accordance with the law in force at the time when it was first executed.

(7) The penalty referred to in subsection (4) shall be paid in the same manner as the trust duty under subsections (2) and (3) or in such other manner as the Minister may by order direct.

(8) This section applies only to trust instruments executed after this Act comes into operation.

93. (1) Notwithstanding any law to the contrary, no income tax, capital gains tax, estate tax, inheritance tax, succession tax, gift tax, rate, duty, levy or other charge is payable by any beneficiary who is treated as non-resident for Exchange Control purposes in respect of any distribution to him by the trustee of any trust.

Exemptions from tax

(2) Notwithstanding any provision of the Stamp Act, where all the beneficiaries of a trust are persons who are treated as non-resident for Exchange Control purpose, the trust shall be exempt from the payment of stamp duty with respect to —

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- (a) all deeds and other written instruments of appointment made pursuant to the trust;
- (b) all deeds and other written instruments by which assets are transferred to or from the trustee of the trust; and
- (c) all instruments relating to the transfer of beneficial interests in the trust.

(3) The exemptions in this section shall not apply to any trust which —

- (a) has as an underlying asset land in The Bahamas; or
- (b) carries on a business or trade in The Bahamas.

94. (1) Notwithstanding any provisions of the Registration of Records Act —

Exemption from registration
Ch 187

- (a) any deed creating a trust;
- (b) all deeds of appointment made pursuant to the terms of a trust; and
- (c) all other deeds (but not including conveyances of Bahamian real property or personality) executed by the trustees, settlors, beneficiaries or protectors of a trust pursuant to the powers and discretions specified in the trust instrument,

Ch 187 are exempt from registration under the provisions of the Registration of Records Act.

(2) The exemption granted by subsection (1) shall apply to all deeds referred to therein executed before, on or after the date when this Act comes into operation.

Exemption from
Exchange
Control
Regulations
Ch 360

95. (1) The Exchange Control Regulations Act shall not apply to any settlor, grantor, donor or beneficiary who is treated under this Act as non-resident for Exchange Control purposes.

(2) The provisions of this section shall apply to all trusts in existence at the time of the coming into operation of this Act as well as to those trusts coming into existence on or after the coming into operation of this Act.

Application of
Act

96. This Act, except where otherwise expressly provided, applies to trusts including, so far as this Act applies thereto, executorships and administratorships, constituted or created either before, on or after the commencement of this Act.

Savings

97. This Act shall not affect the legality or validity of anything done before the commencement of this Act except as otherwise hereinbefore expressly provided.

Indemnity

98. This Act and every order purporting to be made under this Act shall be a complete indemnity to all persons for any acts done pursuant thereto and it shall not be necessary for any person to inquire concerning the propriety of the order or whether the Court by which the order was made has jurisdiction to make it.

SCHEDULE (Section 90)

TRUST PROVISIONS

Trust for sale

1. (1) The Trustees shall stand possessed of any real property from time to time comprised in the Trust Fund upon trust to sell the same with power to postpone the sale thereof or of any part thereof for such period as they shall in their absolute discretion think fit and: shall stand possessed of all other investments comprised in the Trust Fund Upon Trust at such discretion either to retain the same in the existing state thereof for such period as they shall think fit or at any time or times to sell the same or any part thereof.

(2) The Trustees shall hold the net proceeds of any sale of investments comprised in the Trust Fund and all other moneys held or received by them as capital moneys Upon Trust to invest the same at their discretion in or upon authorised investments with power to vary or transpose such investments for or into any others of a like nature.

2. In the management and administration of the Trust Fund for the benefit of the beneficiaries the Trustees shall have the widest powers of investing disposing of and dealing with the Trust Fund and of carrying out any transaction whatever in connection with the Trust Fund which is lawfully capable of being performed by beneficial owners to the same effect as if such powers were expressly conferred by this instrument and specified *in extenso* and such powers shall include but are not limited to investment in the purchase of, or upon the security of, such common or preferred stocks shares mutual fund shares unit trust units or other securities or commodities (including precious metals) bonds notes debentures certificates of deposit or time deposits derivative securities land or other investment or property of whatever nature (and whether or not income-producing or paying dividends or interest) and whether involving liabilities or not or upon such personal credit with or without security as the Trustees in their absolute discretion think fit and the Trustees may exercise or omit to exercise all or any of such powers in their absolute and uncontrolled discretion as if they were the absolute beneficial owners of the Trust Fund.

Powers of investment

3. Any power by this instrument or by law conferred on the Trustees to pay transfer appropriate or apply the Trust Fund or any income thereof for the benefit of any beneficiary may at the discretion of the Trustees be validly exercised (without prejudice to the generality of such power or to any other mode of application) —

Power with regard to mode of application of capital and income

- (a) by paying or transferring the same to the trustees of any settlement (whether or not such trustees are resident in The Bahamas and whether or not the proper law of such settlement is the law of The Bahamas) the provisions of which are in the opinion of the Trustees for the benefit of such beneficiary notwithstanding that such settlement may also contain trusts, powers or provisions (discretionary or otherwise) in favour of other persons or objects provided however that no such payment or transfer shall be made so as to infringe any applicable rule against perpetuities; or
- (b) (in the case of any such person who is a minor) by paying or transferring the same to such minor's parent or guardian or some other person for the time being having the care or custody of such minor upon the recipient undertaking to apply the same for the benefit of the minor,

and the Trustees shall not thereafter be under any obligation to see to the further application of the capital or income so paid or transferred and the receipt of such trustees parent guardian or other person shall be a full sufficient and complete discharge to the Trustees.

Additional powers.

4. The Trustees shall have the following powers in addition and without prejudice to those conferred by law —

- (a) power to receive any property from any person as an addition to the Trust Fund either by gift *inter vivos* or by will or under the provisions of any other settlement or trust or otherwise;
- (b) power to borrow on the security of the Trust Fund and for such purpose to make any outlay out of the Trust Fund or the income thereof and to enter into such contracts mortgages charges or undertakings relating thereto as the Trustees may in their absolute discretion think fit;
- (c) power to lend any part of the Trust Fund to any person (whether or not a beneficiary) upon such terms (if any) as to security repayment rate of interest and otherwise as the Trustees in their absolute discretion may determine;
- (d) with respect to any property compromised in the Trust Fund power to exercise all powers relating thereto as if beneficially entitled thereto and without being restricted in any way by the office of trustee including (without prejudice to the generality of the foregoing power) —
 - (i) power to vote upon or in respect of any shares securities bonds notes or other evidence of interest in or obligations of any corporation trust association or concern whether or not the exercise of such power affects the security or the apparent security of the Trust Fund or any transaction affecting any assets of any such corporation trust association or concern,
 - (ii) power to deposit any such shares securities or property in any voting trust or with any depository designated thereby, and
 - (iii) power to give proxies or powers of attorney with or without power of substitution for voting or acting on behalf of the Trustees as the owners of any such property;
- (e) power (at the expense of the Trust Fund) to incorporate or register or to procure the incorporation or registration of any company (with limited or unlimited liability) in any part of the world for any purpose including the acquisition of the Trust Fund or any part thereof and so that (if thought fit) the consideration for the sale of the Trust Fund to any such company may consist wholly or partly of fully paid shares debentures debenture stock or other securities of the company credited as fully paid which shall be allotted to or otherwise vested in the Trustees and be capital moneys in the Trustees' hands;

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- (f) power at any time to apply any part of the Trust Fund or the income thereof in effecting or joining in effecting or otherwise acquiring any policy of assurance on the life of any beneficiary or of any other person or any endowment or other policy and to maintain surrender exchange or exercise any option thereunder or otherwise deal with such policies as if the Trustees were absolutely entitled thereto;
 - (g) power to pay out at any time any part of the Trust Fund in purchasing or acquiring or making improvements in or repairs to or on any land (whether freehold, leasehold or of any other tenure or interest and of whatsoever description and situate in any part of the world) in the occupation of or intended for occupation by any beneficiary and power to permit any beneficiary to occupy until sale any land purchased or acquired as aforesaid or otherwise comprised in the Trust Fund upon such terms (as to payment or non-payment of rent outgoings repairs or otherwise) as the Trustees may think fit;
 - (h) power at any time or times to lay out any part of the Trust Fund in the purchase or other acquisition of any yachts boats motor vehicles works of art household furniture plate linen china cutlery other articles of household use ornament or equipment and other chattels for the use of any beneficiary whether occupying land purchased or acquired as aforesaid or otherwise and power to hand over to any such beneficiary for his use any property so purchased or acquired by the Trustees as aforesaid or otherwise forming part of the Trust Fund upon and subject to such terms and conditions (if any) as to insurance preservation maintaining inventories and otherwise as the Trustees think fit;
 - (i) power to grant options for such consideration and exercisable at such time or times or within such period as the Trustees think fit for the purchase of any property subject to the trusts of this instrument or the acquisition of any interest therein;
 - (j) power to keep the Trust Fund either in or out of The Bahamas and if the Trustees think fit to hold in any part of the world all or any securities or other property in bearer form or registered in the names of the Trustees or of nominees without disclosing the fiduciary relationship;
 - (k) in the event of any duties fees or taxes whatsoever becoming payable in any part of the world in respect of the Trust Fund or any part thereof in any circumstances whatsoever power to pay all such duties fees or taxes out of the Trust Fund or the income thereof with discretion as to the time and manner in which the said duties fees or taxes shall be paid and the Trustees may pay such duties fees or taxes notwithstanding that the same shall not be recoverable from the Trustees or from any persons interested under the trusts of this instrument or that the payment shall not be to the advantage of such persons;

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- (l) power to make execute and deliver deeds assignments transfers leases mortgages instruments of pledge creating liens contracts and other instruments sealed and unsealed;
 - (m) power to institute prosecute and defend any suits or actions or other proceedings affecting the Trustees or the Trust Fund and to compromise any matter of difference or to submit such matter to arbitration and to compromise or compound any debt owing to the Trustees or any other claims and to adjust any disputes in relation to debts or claims against them as the Trustees think fit upon evidence that the Trustees consider sufficient and to make partition upon such terms (including if thought fit the payment or receipt of equality money) as the Trustees consider desirable with co-owners or joint tenants having any interest in any property in which the Trustees are interested and to make partition either by sale or by set-off or by agreement or otherwise;
 - (n) power to make any distribution of the Trust Fund pursuant to the trusts of this instrument in cash or in kind or partly in cash and partly in kind and in the case of a distribution to more than one person not strictly rateably but on the basis of equal or other proportionate value (as the case may require) according to the judgment of the Trustees which shall be binding on all persons interested under this instrument;
 - (o) power to take at the expense of the Trust Fund or the income thereof the opinion of a counsel and attorney or foreign lawyer concerning any question arising under this instrument or on any matter in any way relating to the Trust Fund or the duties of the Trustees in connection with this instrument and the trustees shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the opinion or advice of such counsel and attorney;
 - (p) power —
 - (i) to engage the services of such investment counsel adviser of manager (“the Investment Adviser”) as the Trustees may from time to time think fit (including the settlor or any of the Trustees or any parent subsidiary or affiliate or any of the Trustees) in order to obtain advice on the investment and reinvestment of the Trust Fund AND to delegate to the Investment Adviser without being liable for any consequential loss, discretion to manage the portfolio or any part thereof within the limits and for the period stipulated by the Trustees AND the Trustees —
 - (A) shall settle the terms and conditions for the remuneration of the Investment Adviser and the reimbursement of the Investment Adviser’s expenses as in their uncontrolled discretion they consider proper and such remuneration and expenses may be paid by the trustees from and out of the Trust fund, and

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- (B) shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the advice of the Investment Adviser,
- (ii) to employ and pay at the expense of the capital or income of the Trust Fund any agent or agents in any part of the world whether counsel and attorneys or foreign lawyers bankers accountants stockbrokers managers or other persons (including the settlor or any of the Trustees or any parent subsidiary or affiliate of any of them) to transact any business or to do any act requiring to be transacted or done in execution of the trusts of this instrument including the receipt and payment of money and the execution of documents AND in any such event the Trusts or parent subsidiary or affiliate of a Trustee shall be entitled to charge and be paid and to retain for his or its own account all usual professional and other fees and commissions normally paid for such services including fees and commissions shared with other agents;
- (q) power for all or any of the Trustees —
- (i) to exercise or join or concur in exercising all or any of the powers and discretions by this instrument or by law given to the Trustees notwithstanding that any such Trustee may have a personal interest in the mode or result of exercising any such power or discretion or may be interested therein in some other fiduciary capacity but any Trustee may abstain from acting except as a merely formal party in any matter in which he may be so interested as aforesaid and may allow his co-trustees to act alone in the exercise of such powers and discretions in relation to such matter, and
- (ii) to purchase or sell any property notwithstanding that the vendor or purchaser is the same as or includes the Trustees or any of them provided that the price payable on any such purchase or sale is certified as fair and reasonable by an assessor employed for the purpose by the Trustees;
- (r) power to effect any transaction concerning or affecting the Trust Fund or any other property whatsoever and to do all other acts and things which the Trustees may in their absolute discretion think expedient and in the interests of the Trust Fund or any beneficiary and for the purpose of this subparagraph “transaction” includes any sale exchange assurance conveyance grant lease surrender reconveyance release reservation or other disposition and any purchase or other acquisition and any covenant contract licence option right or pre-emption and any compromise or partition and any company reconstruction or merger or consolidation and any other dealing or arrangement and “effect” has the meaning appropriate to the particular transaction and references to property include references to restrictions and burdens affecting the property;

- (s) all the powers for sale (by public auction or private contract) exchange mortgaging leasing or other disposition management repair building and improvement and all other powers of an absolute beneficial owner in respect of any property for the time being comprised in the Trust Fund;
- (t) power at any time in the Trustees' discretion and on such terms as they consider fit to appropriate or to apply the capital or income of the Trust Fund or any part thereof in order to secure the payment of money owed by any beneficiary or by any company wholly or partially owed by any beneficiary for the performance of any obligations of any beneficiary or his company and to give any guarantee or to become surety for any beneficiary or his company and for such purposes to mortgage or charge any investments or property for the time being forming part of the Trust Fund or to deposit or transfer any such investments or property with or to any person by way of security;
- (u) power from time to time by deed revocable or irrevocable wholly or partially to release extinguish or restrict any power by this instrument or by law conferred on the Trustees notwithstanding the fiduciary nature of any such power (but not so as to invalidate any prior exercise thereof; and
- (v) power to omit to register bonds or securities.

Dividends and
other income

5. Unless the Trustees in their absolute discretion otherwise determine all dividends and other income received shall be treated for all purposes as income accruing at the due date of payment whether or not such dividends or income may have been earned and accrued wholly or partially in respect of a period prior to such date.

Protection or
third parties in
dealings with
trustees

6. (1) No person dealing with the Trustees and no purchaser on any sale made by the Trustees shall be concerned to enquire into the propriety or validity of any act of the Trustees or to see to the application of any money paid or property transferred to or upon the order of the Trustees.

(2) No firm association or corporation any of whose securities are comprised in the Trust Fund and no purchaser or person dealing with any trustee purporting to act upon any delegation of authority from any other trustee shall be required to ascertain or enquire whether a case exists in which such delegation is permitted or whether such delegated authority is still subsisting.

(3) When anything is dependent upon the value of any property or the existence of any fact a certificate of the Trustees as to such value or fact shall be conclusive in favour of anyone acting thereon in good faith.

7. Any trustee of this instrument and director officer or employee of a corporate trustee or of a parent subsidiary or affiliate of such corporate trustee may act as a director officer manager or employee of any company whose shares or debentures may be comprised directly or indirectly in the Trust Fund or as a director officer manager or employee of any subsidiary or holding company of any such company and may retain for himself or itself any remuneration which he or it may receive as such director officer manager or employee notwithstanding that any votes or other rights attaching to such shares or debentures may have been instrumental in procuring or continuing for him or it his or its position as such director officer manager or employee or that his or its qualifications for any such position may be constituted in part or in whole by any such shares or debentures.

Power in relation to underlying company

8. (1) Trustees —

- (a) shall be under no duty to keep themselves informed concerning the business or affairs of any special entity the shares of which or some of the shares of which form a part of the Trust Fund or concerning the management or administration thereof by its directors officers agents employees or any of them or to interfere in the management administration operations or activities of any special entity;
- (b) are hereby authorised to permit the shares of any special entities to be held and registered in the names of their own corporate nominees and shall cause the voting and other rights attached to shares of special entities to be exercised only pursuant to written instructions received by the Settlor or the Protector (if appointed), or a management or other committee (if appointed) who shall be solely responsible for ascertaining when any such rights shall become exercisable and for providing the Trustees with appropriate instructions in a timely manner;
- (c) in no circumstance whatsoever shall be liable to the Settlor the Trust or any of its Beneficiaries or any other person or persons having an interest in the Trust, for any special entity or its management administration operations or activities or the investment of its funds or the exercising of any voting or other rights pursuant to instructions received from the Settlor or the Protector or the failure to exercise any such rights in the absence of timely instruction.

Trustee not bound to interfere with entity's management

(2) For the purpose of this clause “special entity” means any company partnership or other entity so designated in this instrument or subsequently in writing by the Settlor or the Protector if appointed.

9. Without prejudice to any jurisdiction of the Court the Trustees shall have power —

Determination of rights to capital and income

- (a) to treat as income or as capital or to apportion between income and capital any dividends bonus shares rights interest rents issues capital gains and profits derived from any property at any time comprise in the Trust Fund and generally to determine as the Trustees consider just and reasonable according to the respective rights and interests of the persons interested what part of the receipts of the Trust is income and what is capital and whether or not such property is wasting or unproductive or was purchased at a premium or discount and notwithstanding the time when such dividends stock dividends bonus shares rights interest rents issues capital gains or profits were earned accrued declared or paid;
- (b) to make such reserves out of income or capital as the Trustees consider proper for expenses taxes and other liabilities of the Trust;
- (c) to pay from income or from capital or to apportion between income and capital any expenses of making or changing investments and of selling exchanging or leasing including brokers' commissions and charges and generally to determine what part of the expenses of the Trust shall be charged to capital and what part to income; and
- (d) to determine as between separate funds and separate parts of shares, the allocation of income gains profits and losses and distributions.

Incapacitation of
Settlor or
Beneficiary

10. (1) If the Settlor becomes incapacitated then the rights or powers (if any) reserved to him shall during his incapacitation be exercisable by the Protector (if appointed) or by any person appointed for that purpose by the Court declaring him to be incapacitated.

(2) If a Beneficiary shall become incapacitated then the Trustees may during his incapacitation apply income or capital of the Trust Fund for his benefit by paying the same to a court appointed guardian receiver or other such person and without being liable to see to the due and proper application thereof by such person.

(3) For the purpose of this clause a person shall be deemed to be incapacitated if declared to be of unsound mind by a court of competent jurisdiction or if declared by two qualified examining physicians to be of unsound mind or physically impaired so as to be unable to act responsibly prudently or effectively and shall be deemed to remain incapacitated until declared otherwise by such court or such physicians.

(4) The Trustees may also declare a person to be incapacitated during any period in which the Trustees are of the opinion that such person is for any reason whatsoever, unable freely to exercise his rights or powers or to fulfil his duties or obligations hereunder

because of political events or circumstances in any country or because of pressure brought to bear on such person by any other person or persons or because of any other form of duress or improper influence upon such person:

11. THE Trustees shall not be accountable for any remuneration or other benefit received by them from any company in which stocks debentures or other securities are for the time being held by the Trustees as trustees hereof except to the extent (if any) to which such remuneration or other benefit is received by the Trustees by reason of such shares stocks debentures or other securities being in the names of the Trustees as trustees hereof.

Accountability of Trustees.

12. NO Trustee shall be liable for any loss to the Trust Fund arising by reason of any improper investment made in good faith or in consequence of the failure depreciation or loss of any investment or investments made in good faith or for the negligence or fraud of any agent employed by such Trustee or by any other Trustee hereof although the employment of such agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by any Trustee hereof or by reason of any other matter or thing except wilful and individual fraud or wrongdoing on the part of the Trustee who is sought to be made liable.

Liability of for loss.

13. THE Trustees shall be entitled to exoneration and indemnification out of the Trust Fund for any liability, loss or expense incurred hereunder and for any judgment recovered against and paid by the Trustees as such other than liability loss expense or judgment arising out of the wilful misconduct or gross negligence of the Trustees in bad faith.

Liability of Trustees to third party.

14. THE Trustees shall have power to secure from the Settlor or any Beneficiary a full and complete release from and indemnity against any and all liabilities whatever attributable to any act or omission to act in any manner whatsoever with respect to the investment of the assets of the Trust Fund retention of any or all trust assets and the sale or disposition of any or all trust assets and any release or indemnity given hereunder shall be conclusively binding on all Beneficiaries and other persons having an interest in the Trust Fund (including minors and unborn issue heirs or appointees who may then have or thereafter acquire any interest in the Trust Fund).

Trustees right to Indemnity.

15. EVERY power and discretion conferred upon the Trustees by law or by the Settlor shall be an absolute and uncontrolled power or discretion and the Trustees shall not be liable for loss or damage occurring as a result of the Trustees in good faith exercising or refusing or failing to exercise any of such powers or discretions.

Powers and discretions.

16. THE Trustees shall not nor shall any Trustee hereof be required to give a bond or security for the due and faithful administration of the Trust Fund or for the discharge of the trusts hereby created.

No bond required.