



Isle of Man

Ellan Vannin

AT 18 of 1995

TRUSTS ACT 1995



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TRUSTS ACT 1995

Received Royal Assent: 12 December 1995
Passed: 16 January 1996
Commenced: 17 January 1996

AN ACT to make further provision relating to the governing law of trusts; for the exclusion of foreign law in relation to trusts governed by Manx law; and for connected purposes.

1 Application of Act

- (1) This Act applies to every trust and every disposition of property in trust which is —
- (a) made on or after the date on which this Act comes into operation; or
 - (b) made before that date but the governing law of which is changed to the law of the Island after that date in accordance with section 3,
- but does not apply to —
- (i) a testamentary trust or disposition unless the trust or disposition is valid under the law of the domicile of the testator at death; or
 - (ii) a trust or disposition of immovable property unless the trust or disposition is valid under the law of the jurisdiction where the immovable property is situated.
- (2) In subsection (1), “property” includes property situate in the Island or elsewhere.

2 Governing law

A term of a trust selecting the law of the Island to govern the trust is valid, effective and conclusive regardless of any other circumstances.

3 Change of governing law

- (1) If the terms of a trust so provide, the governing law of the trust may be changed to or from the law of the Island if —
 - (a) in the case of a change to the law of the Island, the change is recognised by the prior governing law of the trust; or
 - (b) in the case of a change from the law of the Island —
 - (i) the validity of the trust; and
 - (ii) the respective rights or interests of the beneficiaries or potential beneficiaries;is recognised by the new governing law.
- (2) A change in the governing law shall not affect the legality or validity of, nor render any person liable for, any thing done before the change.

4 Matters determined by governing law

- (1) Subject to subsections (3) and (4), all questions arising in respect of —
 - (a) a trust which is governed by the law of the Island;
 - (b) any disposition of property upon the trusts of such a trust;
 - (c) any of the matters referred to in Article 8 of the Convention set out in the Schedule to the *Recognition of Trusts Act 1988*; and
 - (d) to the extent that they are not embraced by paragraphs (a) to (c), the matters specified in subsection (2),are to be determined according to the law of the Island, without reference to the laws of any other jurisdiction with which the trust or disposition may be connected.
- (2) The matters referred to in subsection (1)(d) are —
 - (a) the capacity of any settlor;
 - (b) the validity of a disposition or its construction or effect;
 - (c) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment, and the validity of any exercise of such powers;
 - (d) any other question relating to —
 - (i) the administration of the trust and its assets, whether the administration is conducted in the Island or elsewhere; or
 - (ii) the capacity, powers, duties, obligations, liabilities and rights of trustees.
- (3) Subsection (1) shall not affect the recognition of —
 - (a) the law of the place of incorporation of a body corporate as regards the capacity of that body;

- (b) foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property.
- (4) This section is subject to the express terms of a trust or disposition.

5 Exclusion of foreign law

Without prejudice to the generality of section 4, no trust governed by the law of the Island and no disposition of property to be held upon the trusts of such a trust is void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of any settlor to be questioned by reason that —

- (a) the law of any foreign jurisdiction prohibits or does not recognise the concept of a trust; or
- (b) the trust or disposition —
 - (i) avoids or defeats any right, claim or interest conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights; or
 - (ii) contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to such a right, claim or interest.

6 Interpretation

In this Act —

“**disposition**” includes —

- (a) every form of conveyance, transfer, assignment, sale, gift, lease, licence, mortgage, charge, pledge, encumbrance or other transaction (absolute or limited) by which any legal or equitable interest in property is created, transferred or extinguished;
- (b) the disposal of an interest in or right over property by the exercise of a power of appointment, power of maintenance, power of advancement or other authority, and also includes the conferring or variation or surrender of such powers or authority;
- (c) a contract to make any disposition referred to in paragraph (a) or (b);

“**foreign law**” means the law of any country or territory outside the Island other than a provision in an Act of Parliament or any instrument of a legislative character under such an Act which extends to the Island as part of the law of the Island;

“**formalities**” in relation to a disposition means the documentary and other actions required generally by the laws of a relevant jurisdiction for all

dispositions in the like form concerning property of the like nature, without regard to –

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

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

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

“personal relationship” includes every form of relationship by blood or marriage and, but without prejudice to the generality of the foregoing words in this definition, a personal relationship between two persons exists if –

- (a) one is the child of the other, natural or adopted (whether or not the adoption is recognised by law), legitimate or illegitimate; or
- (b) one is married to the other (whether or not the marriage is recognised by law); or
- (c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parent and child or husband and wife; or
- (d) personal relationships exist between both of them and a third person,

but no change in circumstances causes a personal relationship, once established, to terminate;

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

“term” includes both an express and an implied term.

7 Short title and commencement

- (1) This Act may be cited as the Trusts Act 1995.

- (2) This Act shall come into operation on such day as may be appointed by order made by the Treasury and different days may be so appointed for different provisions and for different purposes.¹

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

¹ ADO (whole Act) 17/1/1996 (SD21/96).