



BERMUDA

TRUSTS (SPECIAL PROVISIONS) ACT 1989

1989 : 62

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17 Incorporation by reference SCHEDULE

WHEREAS it is expedient to make provision on the law respecting trusts, to make provision respecting a trust for a purpose or purposes, to make provision for administrative powers in trusts and for matters connected therewith and incidental thereto:

[words of enactment omitted]

Short Title and commencement

1 This Act may be cited as the Trusts (Special Provisions) Act 1989 and shall come into operation on 31 January 1990.

Interpretation

1A In this Act, unless the context provides otherwise—

- (1) “Bermuda trust” means a trust governed in whole or in part by the law of Bermuda;
- “child” has the meaning given in subsection (2);
- “foreign court” means any court or tribunal (including an arbitral tribunal), or any other person or body exercising judicial or quasi-judicial functions, in a territory other than Bermuda;
- “foreign law” means any law of a jurisdiction other than Bermuda;
- “foreign order” means any interim or final judgment, award, order or other decision of a foreign court;
- “foreign trust” means any trust other than a Bermuda trust;
- “settlor” includes
- (a) a testator who grants powers under a testamentary trust by the terms of his last will and testament; and
 - (b) a person who by a declaration of trust declares that assets held by him beneficially shall be held by him on the terms of the trust so declared.

(2) A reference to a child or children in a trust instrument shall be construed as provided under section 18A of the Children Act 1998, unless an express contrary intention appears in the trust instrument.

[Section 1A inserted by 2020 : 43 s. 2 effective 5 August 2020; Section 1A subsection (1) renumbered, and definition "child" and subsection (2) inserted by 2020 : 44 s. 2 effective 5 August 2020]

PART I
TRUSTS

Trust described

2 (1) For the purpose of this part, the term “trust” refers to the legal relationship created, either inter vivos or on death, by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

(2) A trust has the following characteristics:

- (a) the assets constitute a separate fund and are not a part of the trustee’s own estate;
- (b) title to the trust stands in the name of the trustee or in the name of another person on behalf of the trustee;
- (c) the trustee has the power and the duty in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

(3) The reservation or grant by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

[Section 2 subsection (3) amended by 2014 : 22 s. 2 effective 16 July 2014]

Reserved powers

2A (1) Without prejudice to the generality of section 2(3), the reservation by the settlor to himself or grant to any other person in a trust instrument governed by the laws of Bermuda of any limited beneficial interest in the trust property whether of income or capital, or any or all of the powers specified in subsection (2) (or both such an interest and any or all of such powers) shall not —

- (a) invalidate the trust; or
- (b) prevent the trust taking effect according to its terms; or
- (c) cause any or all of the trust property to be part of the real estate or personal estate of the settlor for the purposes of the Wills Act 1988.

(2) The powers referred to in subsection (1) are—

- (a) in the case of a reservation to the settlor or other donor of trust property, power to revoke the trusts in whole or in part;
- (b) power to vary or amend the terms of a trust instrument or any of the trusts, purposes or powers arising thereunder in whole or in part;
- (c) a general, intermediate or special power to advance, appoint, pay, apply, distribute or transfer trust property (whether income or capital or both) or

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to give directions for the making of any such advancement, appointment, payment, application, distribution or transfer;

- (d) power to act as, or give binding directions as to the appointment or removal of, a director or an officer of any company wholly or partly owned by the trust or to direct the trustee as to the manner of exercising voting rights attaching to any of the shares held in such company;
 - (e) power to give binding directions in connection with the purchase, retention, holding, sale or other commercial or investment dealings with trust property or any investment or reinvestment thereof or the exercise of any powers or rights arising from such trust property;
 - (f) power to appoint, add, remove or replace any trustee, protector, enforcer or any other office holder or any advisor including any investment advisor or any investment manager;
 - (g) power to add, remove or exclude any beneficiary, class of beneficiaries or purpose;
 - (h) power to change the governing law and the forum for administration of the trust; and
 - (i) power to restrict the exercise of any powers, discretions or functions of a trustee by requiring that they shall only be exercisable with the consent, or at the direction of, any person specified in the trust instrument.
- (3) A trustee who—
- (a) has acted, or refrained from acting, in compliance with, or as a result of, a valid exercise of any of the powers set out in subsection (2), shall not, by reason only of such compliance, commit a breach of trust or other fiduciary or equitable duty; or
 - (b) is or has been prevented from acting in accordance with any of the powers specified in subsection (2), or any exercise of those powers by reason of the provisions of any applicable law or because insufficient rights or powers are exercisable by the trustee in relation to the trust property, shall not, by reason only of such non-compliance or failure to act, commit a breach of trust or other fiduciary or equitable duty.

(4) Where a power to revoke, a general power of appointment or the present beneficial interest in respect of all or part of the trust property is reserved or granted to a person, a trust instrument may provide that for so long as the settlor, beneficiary or other holder of the power is not the sole trustee, the trustee shall owe no duty to any other person in relation to all or such part of the trust property and accordingly shall have no responsibility to any other person for acts or omissions occurring during that person's lifetime in respect of that property.

(5) No person other than a person in whom trust property or an interest in trust property is vested and who is formally appointed as a trustee, shall be or become a trustee by reason only of the reservation or grant of any of the powers set out in subsection (2).

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(6) A trust instrument governed by the laws of Bermuda may provide that the reservation or grant of any of the powers set out in subsection (2) shall not impose a fiduciary duty on the holder of such powers.

(7) In relation to any trust governed by the laws of Bermuda created after the commencement date of the Trusts (Special Provisions) Amendment Act 2014, in the absence of any contrary provision of the trust—

- (a) in the case of the reservation by a settlor or the grant to a beneficiary of any of the powers specified in subsection (2), where so long as the holder of the power is not the sole trustee, such powers shall be personal and non-fiduciary; and
- (b) in any other case, such powers shall be fiduciary.

(8) Subject to any contrary provision herein, this section and section 2(3) apply to any trusts governed by the laws of Bermuda, whether created before, on or after the commencement date of the Trusts (Special Provisions) Amendment Act 2014, and to acts and omissions occurring while the trust was governed by the laws of Bermuda.

(9) *[Repealed by 2020 : 43 s. 3]*

[Section 2A inserted by 2014 : 22 s. 3 effective 16 July 2014; Section 2A subsection (9) repealed by 2020 : 43 s. 3 effective 5 August 2020]

Application

3 This Part applies to trusts created voluntarily and evidenced in writing and also to any other trusts of property arising under the law of Bermuda or by virtue of a judicial decision whether in Bermuda or elsewhere.

Non-application

4 This Part does not apply to the extent that the law specified by section 5 or 6 does not provide for trusts or the category of trusts involved.

Governing law

5 (1) A trust shall be governed by the law chosen by the settlor whose choice shall be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of circumstances of the case.

(2) Where the law chosen under subsection (1) does not provide for trusts or the category of trusts involved, the choice shall not be effective and the law specified in section 6 applies.

No applicable law chosen

6 (1) Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected and in ascertaining the law with which a trust is most closely connected references shall be made in particular to—

- (a) the place of administration of the trust designated by the settlor;

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

(2) A Bermuda trust may provide terms to change the law governing the trust from the law of Bermuda to a new governing law but such change is valid and effective only if the new governing law recognises the validity of the trust and the respective interests of the beneficiaries.

(3) A change in the law governing a trust shall not affect the legality or validity of or render any person liable for anything done before the change.

[Section 6 subsection (2) amended by 2020 : 43 s. 4 effective 5 August 2020]

Law governing validity and construction of trust

7 The law specified by section 5 or 6 shall govern the validity of the trust, its construction, its effects and the administration of the trust and in particular the law shall govern—

- (a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
- (b) the rights and duties of trustees among themselves;
- (c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;
- (d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;
- (e) the powers of investment of trustees;
- (f) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;
- (g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;
- (h) the variation or termination of the trust;
- (i) the distribution of the trust assets;
- (j) the duty of trustees to account for their administration.

Choosing different laws

8 In applying this part a severable aspect of the trust, particularly matters of administration, may be governed by a different law.

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Jurisdiction of Supreme Court

9 (1) The Supreme Court has jurisdiction to hear and determine any claim concerning the validity, construction, effects or administration (including in respect of any of the matters referred to in section 7(a) - (j)) of—

- (a) a Bermuda trust; or
 - (b) a foreign trust to which subsection (2) applies.
- (2) A foreign trust referred to in subsection (1)(b), is a trust where—
- (a) the trust instrument contains a clause conferring jurisdiction on the courts of Bermuda;
 - (b) all or part of the administration of the trust is carried on in Bermuda;
 - (c) a trustee is incorporated or resident in Bermuda; or
 - (d) trust property is situated in Bermuda (but only in relation to a claim concerning that property).

(3) The jurisdiction of the Supreme Court is applicable as provided under this section notwithstanding that the person against whom the claim is made is not in Bermuda or (where applicable) that any wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.

[Section 9 repealed and substituted by 2020 : 43 s. 5 effective 5 August 2020]

Exclusion of application of foreign law

10 (1) No foreign law that is excluded under subsection (2) shall apply to the determination of any question concerning a Bermuda trust, including any question concerning—

- (a) the capacity of a settlor to dispose of property upon the trusts of a Bermuda trust;
- (b) any right or interest in or to property disposed upon the trusts of a Bermuda trust;
- (c) the validity of a disposition of, or a declaration of trust in respect of, property upon the trusts of a Bermuda trust, including whether any such disposition should be declared void or invalid, rescinded, set aside, varied or amended; or
- (d) any obligation or liability of a settlor, trustee or beneficiary of a Bermuda trust.

(2) For the purposes of subsection (1), a foreign law is excluded if it creates, recognises, or defeats, or gives a foreign court power to create, recognise, or defeat, any right or interest in or to property, or any obligation or liability on any person, by virtue or in consequence of, or in anticipation of—

- (a) the death of a person (other than as a result of a voluntary disposition, whether testamentary or otherwise, by the deceased);

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(b) the creation, existence or dissolution of a relationship of marriage, domestic partnership (or analogous relationship), cohabitation or other familial relationship, whether by blood or adoption; or

(c) bankruptcy, liquidation or an analogous insolvency process, including a provisional process or a process for the restructuring of debts.

(3) No foreign law shall apply to the determination of any question concerning the validity, construction, effects or administration of a Bermuda trust, including any of the matters referred to under section 7(a) – (j).

(4) If and to the extent that this section excludes the application of foreign law, to that extent the court shall apply instead the law of Bermuda excluding rules of conflict of laws (save for those set out herein).

(5) This section shall not apply to the determination of any question to the extent that the question—

(a) concerns immovable property outside Bermuda; or

(b) relates to a severable aspect of a Bermuda trust governed by foreign law.

[Section 10 subsection (3) inserted by 2004:35 s.2 effective 17 December 2004; Section 10 repealed and substituted by 2020 : 43 s. 6 effective 5 August 2020]

Restriction on effect of foreign orders

11 (1) The court shall not give effect to any foreign order that is inconsistent with section 10.

(2) In this section, to give effect to a foreign order means to recognise, enforce, or otherwise give effect directly or indirectly to that foreign order, including by the conferral of any right, the imposition of any obligation or liability, or the raising of any estoppel.

[Section 11 substituted by 2004:35 s.3 effective 17 December 2004; Section 11 repealed and substituted by 2020 : 43 s. 7 effective 5 August 2020]

PART II

PURPOSE TRUSTS

[Part II substituted by 1998:24 effective 1 September 1998]

Purpose trusts

12A (1) A trust may be created for a non-charitable purpose or purposes provided that the conditions set out in subsection (2) are satisfied; and in this Part such a trust is referred to as a “purpose trust”.

(2) The conditions are that the purpose or purposes are—

(a) sufficiently certain to allow the trust to be carried out,

(b) lawful, and

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(c) not contrary to public policy.

(3) A purpose trust may only be created in writing.

(4) The rule of law (known as the rule against excessive duration or the rule against perpetual trusts) which limits the time during which the capital of a trust may remain unexpendable to the perpetuity period under the rule against perpetuities shall not apply to a purpose trust.

(5) *[Repealed by 2009:23]*

[Section 12A amended by 2009:23 s.11 effective 1 August 2009]

Enforcement and variation of purpose trust by the court

12B (1) The Supreme Court may make such order as it considers expedient for the enforcement of a purpose trust on the application of any of the following persons—

- (a) any person appointed by or under the trust for the purposes of this subsection;
- (b) the settlor, unless the trust instrument provides otherwise;
- (c) a trustee of the trust;
- (d) any other person whom the court considers has sufficient interest in the enforcement of the trust;

and where the Attorney-General satisfies the court that there is no such person who is able and willing to make an application under this subsection, the Attorney-General may make an application for enforcement of the trust.

(2) On an application in relation to a purpose trust by any of the following persons—

- (a) any person appointed by or under the trust for the purposes of this subsection;
- (b) the settlor, unless the trust instrument provides otherwise;
- (c) a trustee of the trust,

the court may if it thinks fit approve a scheme to vary any of the purposes of the trust, or to enlarge or otherwise vary any of the powers of the trustees of the trust.

(3) Where any costs are incurred in connection with any application under this section, the Supreme Court may make such order as it considers just as to payment of those costs (including payment out of the property of the trust).

Effect of non-compliance

12C Nothing in this Part affects the creation, termination or validity of any trust created under any other law, but, save as aforesaid, purpose trusts which do not comply with section 12A are invalid.

Land in Bermuda

12D No interest in land in Bermuda shall be held, directly or indirectly, in a purpose trust.

PART III
INCORPORATION OF ADMINISTRATIVE POWERS
BY REFERENCE

Incorporation by reference

17 Any instrument creating any trust 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, the meanings respectively assigned to them:

“the Settlor” includes a person who provides trust property or makes a testamentary disposition on trust or to a trust;

“the Trustees” means the trustees 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 Trustees and in respect of which a memorandum signed by the Trustees is conclusive evidence;
- (c) all income which, in accordance with the provisions of the trust, is accumulated by the Trustees and added to the capital thereof;
- (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.

SCHEDULE

(SECTION 17)

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 monies held or received by them as capital monies Upon Trust to invest the same at their discretion in or upon any of the investments by this instrument authorised with power to vary or transpose such investments for or into any others of a like nature.

Powers of Investment

2 TRUST moneys to be invested under the trusts of this instrument may be applied or invested in any currency and in any part of the world 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 land or other investments 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 without being restricted to trustee investments prescribed under the proper law governing this instrument and to the intent that the Trustees shall have the same powers in all respects as if they were absolute owners beneficially entitled And in addition (but without prejudice to the generality of the foregoing) the Trustees may invest the Trust Fund in the shares or debenture of any company whatsoever and wheresoever incorporated without the need for diversification and without being liable for any loss occasioned thereby.

Power with regard to mode of application of capital and income

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)—

- (a) by paying or transferring the same to the trustees of any settlement (whether or not such trustees are resident in Bermuda and whether or not the proper law of such settlement is the law of Bermuda) 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

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Provided however that no such payment or transfer shall be made so as to infringe the rule against perpetuities as applicable to the trusts created by this instrument; 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 to those conferred by law:

(1) 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 provision of any other settlement or trust or otherwise;

(2) 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 charge or undertakings relating thereto as the Trustees may in their absolute discretion think fit;

(3) 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;

(4) With respect to any property comprised 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)—

- (a) 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 the purchase or sale or lease of the assets of any such corporation trust association or concern;
- (b) Power to deposit any such shares securities or property in any voting trust with any depository designated thereby;
- (c) 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; and
- (d) Power to omit to register bonds or securities;

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(5) 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 on 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;

(6) Power at any time to apply any part of the Trust Fund of [*sic*] 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 exercise any option thereunder or otherwise deal with such policies as if the Trustees were absolutely entitled thereto;

(7) 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 or building (whether freehold leasehold or of any other tenure or interest and of whatsoever [*sic*] description by any beneficiary And power to permit any beneficiary to occupy until sale any land or building 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;

(8) 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 a building 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;

(9) 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;

(10) Power to keep the Trust Fund either in or out of Bermuda 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 name of the Trustees or nominees without disclosing the fiduciary relationship;

(11) 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;

(12) Power to make such reserves out of the Trust Fund or the income thereof as the Trustees deem proper for expenses taxes and other liabilities and to pay from capital or

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income or to apportion between capital and income any expenses of making or changing investments and selling exchanging or leasing (including brokers commissions and charges) and generally to determine what part of the expenses of administering the trusts of this instrument shall be charged to capital and what part to income;

(13) Power to make execute and deliver deeds assignments transfers leases mortgages instruments of pledge creating liens contracts and other instruments sealed and unsealed;

(14) 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 trustees upon evidence that the Trustees shall deem sufficient and to make partition upon such terms (including if thought fit the payment or receipts of equality money) as the Trustees shall deem desirable with co-owners or joint tenants besides the Trustees 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;

(15) 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 judgement of the Trustees which shall be binding on all persons interested under this instrument;

(16) Power to take at the expense of the Trust Fund or the income thereof the opinion of legal counsel 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;

(17) Power—

- (a) to engage the services of such investment counsel adviser or manager (“the Investment Adviser”) as the Trustees may from time to time think fit (including the Settlor or any trustee of this instrument or any corporate trustee or any parent subsidiary or affiliate of such corporate trustee) 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
 - (i) 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 deem proper and such remuneration and expenses may be paid by the Trustees from and out of the Trust Fund; and
 - (ii) shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the advice of the Investment Adviser;

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- (b) 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 solicitors bankers accountants stockbrokers managers or other persons (including the Settlor or any trustee of this instrument or any corporate trustee or any parent subsidiary or affiliate of such corporate trustee) 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 trustee, the corporate trustee or the parent subsidiary or the affiliate of such corporate trustee is 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;

Trustee may exercise power despite personal interest

(18) Power for all or any of the Trustees

- (a) 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 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

To effect transactions

- (b) 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 independent valuer employed for the purpose by the Trustees;

Residuary powers

(19) 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 in the interests of the Trust Fund or any beneficiary And for the purpose of this sub-paragraph "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 of pre-emption and any compromise or partition and any company reconstruction or amalgamation 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;

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Powers of Sale, etc.

(20) All the powers of 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 including (without prejudice to the generality of the foregoing) the power of borrowing on the security of the Trust Fund and for such purpose to make any outlay out of the income or capital of the Trust Fund and to make such contracts and to enter into such undertakings relating thereto as the Trustees in their absolute discretion shall think fit;

Power to give guarantees

(21) Power at any time in the Trustees' discretion and on such terms as they deem 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 the performance of any obligations of any beneficiary and to give any guarantee or to become surety for any beneficiary 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.

To release fiduciary power

(22) Power from time to time by deed revocable or irrevocable wholly or partially to release extinguish or restrict any power by this instrument of by law conferred on the Trustees notwithstanding the fiduciary nature of any such power (but not so as to invalidate any prior exercise thereof).

Exclusion of apportionments

5 UNLESS the Trustees in their absolute discretion shall 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 of third parties in dealings with trustees

6 (1) NO person or corporation 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 under 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.

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Power in relation to underlying company/ies

7 ANY trustee of this instrument and any 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 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 either alone or in conjunction with other matters or by reason of their non-exercise 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.

Trustee not bound to interfere with company management

8 THE Trustees shall not be bound or required to interfere in the management or conduct of the affairs or business of any company in which the Trust Fund may be invested (and whether or not the Trustees have the control of such company) And so long as no trustee of this instrument has notice of any wilful negligence wilful default or fraud or dishonesty on the part of the directors having the management of such company they may leave the same (including the payment or non-payment of dividends) wholly to such directors And no beneficiary is entitled as such beneficiary in any way to compel control or forbid the exercise (including in any particular manner) of any voting or other rights at any time vested in the Trustees with regard to such company including without prejudice to the generality of the foregoing any powers the Trustees may have (even if also directors of such company) of compelling such company to distribute any dividend.

[Amended by:

1998 : 24

2004 : 35

2009 : 23

2014 : 22

2020 : 43

2020 : 44]