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ANGUILLA

**REVISED STATUTES OF ANGUILLA**

**CHAPTER T70**

**TRUSTS ACT**

Showing the Law as at 15 December 2000

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(2) Sections 1, 3, 6 and 51 and Parts 8 to 10, 12 and 13 apply to all trusts; the other sections of this Act shall apply only to trusts the proper law of which is the law of Anguilla.

(3) For greater certainty, section 18 of the Limitation Act applies to all trusts.

(4) Where, in the opinion of the Court, the application of this Act to a trust created before 1<sup>st</sup> January, 1995 would likely result in an injustice, the Court may, on application by a person interested in the trust, instead of making an order under this Act make any order in relation to the trust that it could have made under the Trustee Ordinance (Cap. 355) or the Trustees' Relief Act (Cap. 357) immediately before their repeal, and that order shall be as valid and effectual as if the Ordinance or Act had not been repealed.

(5) For the purposes of this section, a trust is created at the time at which property is first received by or vested in the trustee to be held by him in accordance with the terms of the trust.

### **Validity of trust**

3. Subject to the provisions of this Act, a trust is valid and enforceable in Anguilla.

### **Creation of a trust**

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

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

(3) No formalities or technical expressions are required for the creation of a trust if the intention of the settlor to create a trust is clearly manifested.

(4) A trust respecting land situated in Anguilla, other than a trust arising by operation of law, is unenforceable unless evidenced in writing.

### **Duration of a trust and of accumulation of income**

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

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

(3) For the avoidance of doubt, it is declared that the rules referred to in subsection (2) include—

(a) the application or effect of those rules in respect of accumulations; and

(b) the rule of law prohibiting trusts of perpetual duration.

(4) The terms of a trust may direct or authorise the accumulation of all or part of the income of the trust for a period not exceeding the maximum duration of the trust.

### **Restrictions upon validity of a trust**

6. (1) Subject to the provisions of this Act, a trust shall be valid and enforceable in accordance with its terms.

(5) No fiduciary duty or obligation shall be imposed on a trustee merely by the giving to him of a letter of wishes or the preparation by him of a memorandum of wishes.

**Definition of charitable purpose**

13. (1) For the purposes of this Act, and subject to subsections (2) and (3), the following purposes shall be regarded as charitable—

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the protection of the environment;
- (e) the advancement of human rights and fundamental freedoms;
- (f) any other purposes that are beneficial to the community.

(2) A purpose shall not be regarded as charitable unless the fulfilment of that purpose is for the benefit of the community or a substantial section of the community having regard to the type and nature of the purpose.

(3) A purpose may be regarded as charitable whether it is to be carried out in Anguilla or elsewhere and whether it is beneficial to the community in Anguilla or elsewhere.

**Trusts for non-charitable purposes**

14. (1) A trust may be created for a commercial or other purpose that is non-charitable if—

- (a) the purpose is specific, reasonable and capable of fulfilment;
- (b) the purpose is not immoral, unlawful or contrary to public policy; and
- (c) the terms of the trust provide for the appointment of a protector who is capable of enforcing the trust and for the appointment of a successor to any such protector.

(2) If the Attorney General has reason to believe that there is no protector of a trust for a non-charitable purpose or the protector is unwilling or incapable of acting, he may apply to the Court for the appointment of a person to be protector of the trust, and the Court may, unless it feels that the person is not fit, by order declare him to be the protector to enforce the trust.

(3) The order of the Court under subsection (2) is conclusive evidence of the appointment of the protector to enforce the trust and the appointment takes effect as from the date of the order.

(4) Where any costs are incurred by the Attorney General in connection with any application under subsection (2), the Court may make such order as it considers just as to the payment of those costs out of the assets of the trust.

- (a) may deal with a trustee in relation to trust property as if the trustee were the beneficial owner thereof; and
  - (b) is not affected by the trusts on which the property is held.
- (5) A third party paying or advancing money to a trustee is not concerned to see—
- (a) that the money is needed in the proper exercise of the trust functions;
  - (b) that no more than is so needed is raised; or
  - (c) that the transaction or the application of the money is proper.
- (6) In this section “third party” means a person other than a settlor, trustee, protector or beneficiary of the trust.

#### PART 4

#### DUTIES AND POWERS OF TRUSTEES

##### General duties of trustees

**26.** (1) A trustee shall in the execution of his functions—

- (a) act with due diligence;
- (b) observe utmost good faith;
- (c) act to the best of his skills and abilities; and
- (d) exercise the standard of care of a reasonable and prudent man of business.

(2) A trustee shall carry out and administer the trust in accordance with this Act and, subject to this Act, in accordance with the terms of the trust.

(3) A trustee shall owe a fiduciary duty to the beneficiaries of the trust, the members of a class for whose benefit the trust was established, or the purpose for which the trust was established.

(4) A fiduciary duty that is owed to a purpose for which a trust was established may be enforced by the protector of the trust or, in the case of a trust established for a charitable purpose, by the Attorney General.

(5) A trustee shall, subject to the terms of the trust and to the provisions of this Act—

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



(6) Except with the approval of the Court or in accordance with the terms of the trust or the provisions of this Act, a trustee shall not—

- (a) derive, directly or indirectly, any profit from his trusteeship;
- (b) cause or permit any other person other than a professional advisor consulted by him under section 30(6) directly or indirectly to derive any profit from his trusteeship; or
- (c) on his own account enter into any transaction with his co-trustees or relating to the trust property that may result in any such profit.

(7) The trustee of a trust shall keep accurate accounts and records of his trusteeship.

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

**Duty to supply information and duty of confidentiality**

27. (1) A trustee shall, so far as is reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the trust property and the conduct of the trust administration to—

- (a) the Court;
- (b) the settlor or protector of the trust;
- (c) in the case of a trust established for a charitable purpose, the Attorney General;
- (d) subject to the terms of the trust, any beneficiary of the trust who is of full age and capacity; and
- (e) subject to the terms of the trust, any charity for the benefit of which the trust was established.

(2) Subject to the provisions of this Act and to the terms of the trust, and except as is necessary for the proper administration of the trust or by reason of any other Act, the trustee of a trust shall keep confidential all information regarding the state and amount of the trust property or the conduct of the trust administration.

(3) Subject to the terms of the trust and to any order of the Court, a trustee is not obliged to disclose documents that reveal—

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

the interest or property concerned shall be held by the trustee in trust for the settlor absolutely, or if he is dead, as if it had formed part of his estate at death.

(2) Subsection (1) does not apply to a trust established for a charitable purpose to which section 44 applies.

**Application of property held on charitable trusts**

44. (1) Where trust property is held for a charitable purpose and—

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

the property or the remainder of the property, as the case may be, shall be held for such other charitable purpose as the Court, on the application of the Attorney General or the trustee, may declare to be consistent with the original intention of the settlor.

(2) Where trust property is held for a charitable purpose, the Court, on the application of the Attorney General or the trustee, may approve any arrangement that varies or revokes the purposes or terms of the trust or enlarges or modifies the powers of management or administration of the trustee, if it is satisfied that the arrangement—

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

(3) The Court shall not make a declaration under subsection (1) or approve an arrangement under subsection (2) unless satisfied that any person with a material interest in the trust or in any fund subject to the terms of the trust has had an opportunity to be heard.

(4) An application for entry on the Register shall be accompanied by—

- (a) a certified copy of the instrument creating the trust, if any; and
- (b) the prescribed fee.

(5) The Registrar shall, on receipt of an application for registration, a certified copy of the instrument creating the trust, if any, and the required fee—

- (a) enter on the Register the name of the trust, if any, the name of the settlor and the name of the beneficiary or the purpose for which the trust is established; and
- (b) issue to the trustee a certificate of registration.

(6) Where the terms of a trust that has been registered are varied, the trustee shall send to the Registrar a notification of the variation together with the prescribed fee and the Registrar shall amend the entry on the Register accordingly and issue an amended certificate of registration.

(7) Where a trust that has been registered terminates, the trustee shall notify the Registrar and return the certificate of registration and the Registrar shall then cancel the entry on the Register and the certificate of registration.

(8) The Register shall not be open for inspection except that the trustee of a trust may in writing authorise a person to inspect the entry of that trust on the Register.

#### **Exemption from taxes**

67. (1) For the purposes of this Act, a trust is an exempt trust if—

- (a) the settlor is not resident in Anguilla;
- (b) none of the beneficiaries are resident in Anguilla; and
- (c) the trust property does not include any land situated in Anguilla or the shares of any company beneficially owning any land situated in Anguilla.

(2) Subject to this Act, any exempt trust shall not be subject to any income tax, withholding tax, asset tax, gift tax, profits tax, capital gains tax, distributions tax, inheritance tax, estate duty or other like taxes based upon or measured by assets or income originating outside of Anguilla or in connection with matters of administration that may occur in Anguilla, except as provided in section 66.

### **PART 13**

#### **SUPPLEMENTAL**

#### **Regulations**

68. The Governor may make regulations for the better carrying out of this Act including regulations—

- (a) prescribing anything that may be prescribed under this Act; and
- (b) amending, making deletions from, adding to or replacing Schedule 1.

**Citation**

69. This Act may be cited as the Trusts Act, Revised Statutes of Anguilla, Chapter T70.

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**SCHEDULE 1**

(Section 31)

**AUTHORISED TRUSTEE INVESTMENTS****Interpretation**

1. In this Schedule—

“approved stock exchange” means—

- (a) The International Stock Exchange of the United Kingdom and Republic of Ireland Limited including the Unlisted Security Market of the International Stock Exchange;
- (b) the New York Stock Exchange, the American Stock Exchange and the National Association of Security Dealers' Automated Quotation System of the United States of America;
- (c) the major stock exchanges of Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, India, Italy, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, Singapore, South Africa, Spain, Sweden and Switzerland; or
- (d) the major stock exchanges of the countries of Central and South America;

“debentures” includes debenture stock and bonds, whether constituting a charge on assets or not, and loan stock or notes;

“quoted company” means a company the ordinary shares in which are quoted on an approved stock exchange;

“quoted mutual fund” means an open end or closed end mutual fund the shares in which are quoted on an approved stock exchange;

“quoted shares” means shares quoted on an approved stock exchange;

“quoted unit trust” means a unit trust the units in which are quoted on an approved stock exchange;

“securities” includes shares, debentures, treasury bills and tax reserve certificates;

“shares” include stock.

**Authorised trustee investments**

2. The following are specified as authorised trustee investments—

- (a) securities issued by, or the payment of interest on which is guaranteed by, the Government of Anguilla;
- (b) securities issued by, or the payment of interest on which is guaranteed by, any of the following—
  - (i) the Government of the United Kingdom,
  - (ii) the Government of the United States of America,
  - (iii) the Government of any territory within the Commonwealth,
  - (iv) the African Development Bank, the Asian Development Bank, the European Union, the European Investment Bank, the International Finance Corporation, the International Monetary Fund or the International Bank for Reconstruction and Development;
- (c) deposits with a company, incorporated, continued or registered under the Companies Act that is a licensed financial institution within the meaning of the Banking Act or the Trust Companies and Offshore Banking Act;
- (d) debentures issued by a quoted company;
- (e) units in a quoted unit trust;
- (f) quoted shares;
- (g) freehold property situated in Anguilla and leasehold property situated in Anguilla of which the unexpired term at the time of the investment is not less than 40 years and mortgages of that freehold or leasehold property;
- (h) shares in a quoted mutual fund.

## SCHEDULE 2

(Section 32)

### POWERS OF TRUSTEES

#### 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 any of the investments by this instrument authorised with powers to vary or transpose such investments for or into 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 debentures 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 Anguilla and whether or not the proper law of such settlement is the law of Anguilla) 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; or
- (b) (in 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 provisions 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, charges 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 or 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 company, trust, association or concern whether or not

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**Revised Regulations of Anguilla: T70-1**

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**TRUSTS ACT (R.S.A. c. T70)****TRUSTS FEES REGULATIONS**

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Note: These Regulations are enabled under section 68 of the Trusts Act, R.S.A. c. T70.

**Definition**

1. In these Regulations, "\$" means the unit of currency of the United States of America.

**Fees**

2. The fee payable to the Registrar for the service under the Trusts Act set out in Column 1 below is the amount set out opposite in Column 2.

COLUMN 1		COLUMN 2
		\$
(a)	For registration of trust under section 66(4)(b) of the Act	250
(b)	For registration of a variation to a registered trust under section 66(6) of the Act	150
(c)	For cancellation of registration of trust under section 66(7) of the Act	100

**Citation**

3. These Regulations may be cited as the Trusts Fees Regulations, Revised Regulations of Anguilla T70-1.
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