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**BERMUDA**

**1989: No. 62**

**THE TRUSTS (SPECIAL PROVISIONS) ACT 1989**

**(as amended, 1998)**

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 trust and for matters connected therewith and incidental thereto:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same as follows:-

**Short title and commencement**

**1.** This Act may be cited as the Trusts (Special Provisions) Act 1989 and shall come into operation on such date as the Premier may appoint by notice published in the Gazette.

**PART I**

**TRUSTS**

**Trust described.**

**2.(1)** For the purposes 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 assets 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 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.

**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;
- (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 trust that is governed by the law of Bermuda 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.

**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.

#### **Jurisdiction of Supreme Court.**

**9.** The Supreme Court has jurisdiction -

- (a) where a trustee is resident in Bermuda;
- (b) where any trust property is situated in Bermuda but only in respect of property so situated;
- (c) where the administration of any trust is carried on in Bermuda, or
- (d) where the Court thinks it appropriate.

#### **Capacity to create trust.**

**10.(1)** Subject to subsection (2), a person has capacity to create a trust in the following cases:

- (a) where the trust property is movable -
  - (i) in the case of an inter vivos trust, if he has the capacity to create a trust of movable property by the law of Bermuda;
  - (ii) in the case of a testamentary trust, if he has the capacity to create a trust of movable property by the law of his domicile;
- (b) where the trust property is immovable, if he has the capacity to create a trust by the lex situs of the immovable.

**(2)** All questions as to the capacity of any settlor arising in regard to a trust which is for the time being governed by the law of Bermuda or in regard to any disposition of property upon the trusts thereof are to be determined according to the law of Bermuda without reference to the law of any other jurisdiction with which the trust or disposition may be connected except that this subsection -

- (a) does not validate any disposition of property which is neither owned by the settlor nor the subject of a power in that behalf vested in the settlor, nor does this subsection affect the recognition of foreign laws in determining whether the settlor is the owner of such property or the holder of such power;
- (b) does take effect subject to any express contrary term of the trust or disposition;
- (c) does not, as regards the capacity of a corporation, affect the recognition of the laws of its place of incorporation;
- (d) does not affect the recognition of foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property;
- (e) does not validate any trust or disposition of immovable property situate in a jurisdiction other than Bermuda which is invalid according to the laws of such jurisdiction;
- (f) does not validate any testamentary trust or disposition which is invalid according to the laws of testator's domicile.

#### **Varying or setting aside trust.**

**11.** Where a trust is validly created under the law of Bermuda the Court shall not vary it or set it aside pursuant to the law of another jurisdiction in respect of -

- (a) the personal and proprietary effects of marriage;
- (b) succession rights, testate and intestate, especially the indefeasible shares of spouses and relatives;
- (c) the protection of creditors in matters of insolvency,

unless the law of Bermuda has corresponding laws or public policy rules.

## PART II

### PURPOSE TRUSTS

#### 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
- (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)** The rule against perpetuities (also known as the rule against remoteness of vesting) as modified by the Perpetuities and Accumulations Act 1989 shall apply to a purpose trust.

#### 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. Schedule**

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.





**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 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 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 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 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 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 or 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;
  - (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 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 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 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 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 receipt 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 judgment 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;
- (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 powers 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 power.**

**(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;

**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 powers.**

**(22)** 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).

**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.

**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.