



This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
<http://www.icnl.org/knowledge/library/index.php>
for further resources and research from countries all over the world.

Disclaimers

Content. The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

Translations. Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

Warranty and Limitation of Liability. Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

TURKS AND CAICOS ISLANDS
THE VOLUNTARY DISPOSITIONS ORDINANCE 1998

ARRANGEMENT OF SECTIONS

1. Citation and commencement
2. Interpretation
3. Application
4. Dispositions to prejudice creditors
5. Powers of the Court
6. Burden of proof
7. Due diligence
8. Rules of Court
9. Ordinance not to affect recognition of foreign law
10. Relationship to Trusts Ordinance 1990
11. Trusts Ordinance amended
12. Enactments that cease to apply to certain dispositions

SCHEDULE: Enactments that shall cease to apply to dispositions to which this Ordinance applies

THE VOLUNTARY DISPOSITIONS ORDINANCE 1998

AN ORDINANCE TO AMEND THE LAW RELATING TO DISPOSITIONS TO PREJUDICE CREDITORS;
TO AMEND THE TRUSTS ORDINANCE 1990; AND FOR CONNECTED MATTERS

ENACTED by the Legislature of the Turks and Caicos Islands

Citation and commencement

1. This Ordinance may be cited as the Voluntary Dispositions Ordinance 1998 and shall come into operation on such day as the Governor may appoint by notice published in the Gazette.

Interpretation

2. In this Ordinance -

“appointed day,” means the day appointed by the Governor under section 1;

“contingent liability” does not include a contingent liability of which the transferor had no actual notice or in respect of which the transferor was not aware of the facts or circumstances giving rise to the liability;

“Court” means the Supreme Court;

“creditor” means a person to whom a liability (including a contingent liability) is owed by a transferor at the material date, which on the date of the action or proceedings brought under section 4(2) remains unsatisfied; and includes the trustee in bankruptcy (wherever appointed) or the personal representative of such a person;

“disposition”, in relation to property, means every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction whereby any legal or equitable interest in property is created, transferred or extinguished;

“insolvent” in respect of a transferor, means any transferor whose liabilities (actual or contingent) exceed the value of his assets;

“Islands” means the Turks and Caicos Islands;

“material date” means the date on which a relevant disposition is made;

“property” means property of any description wherever situated, and, in relation to rights and interests includes those rights and interests whether present or future, vested or contingent;

“relevant disposition” means a disposition to which section 4(1) applies;

“transferee” means a person to whom a relevant disposition is made and includes any successor in title;

“transferor” means a person who directly or indirectly makes a relevant disposition or causes it to be made;

“Turks and Caicos trust” has the same meaning as in the Trusts Ordinance 1990;

“undervalue”, in relation to a disposition of property, means a disposition in respect of which -

- (a) no consideration is given; or
- (b) the value of the consideration given is, in money or money’s worth, significantly less than the value in money or money’s worth, of the property the subject of the disposition.

Application

3.(1) With effect from the appointed day, this Ordinance shall apply in place of the law in force prior to the appointed day to every relevant disposition of property made before or after the appointed day and whether or not the property, the subject of the disposition, is situated in the Islands or elsewhere.

(2) Notwithstanding subsection (1), this Ordinance shall not apply to any action or proceedings commenced prior to the appointed day or within six months of the appointed day in respect of a disposition made prior to the appointed day, in which case the law to be applied shall be that which is in force prior to the appointed day.

Dispositions to prejudice creditors

4.(1) This section applies to every disposition of property at an undervalue made by a transferor where at the time of the transaction the transferor is either insolvent or becomes insolvent in consequence of the transaction.

(2) Subject to subsection (5), where a transferor has made a relevant disposition, the court may, on the application of a creditor thereby prejudiced, make such order as it thinks fit for restoring the position to what it would have been if the disposition had not been made.

(3) An application for an order under subsection (2) shall not be made in respect of a relevant disposition except -

- (a) in a case where the transferor has been adjudged bankrupt, by the trustee in bankruptcy (wherever appointed);
- (b) in a case where the transferor is a body corporate which is being wound up, by the official liquidator or by the liquidator of the body corporate; or
- (c) in any other case, by a creditor.

(4) An application made under paragraph (a) or (b) of subsection (3) is to be treated as made on behalf of every creditor.

(5) No action or proceeding shall be commenced pursuant to subsection (2) unless it is commenced within three years of the material date.

Powers of the court

5.(1) Without prejudice to the generality of section 4(2), an order made under that section with respect to a relevant disposition may -

- (a) require any property transferred as part of the disposition to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
- (b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the transferor;
- (d) require any person to pay to any other person in respect of benefits received from the transferor such sums as the court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the disposition to be under such new or revived obligations as the court thinks appropriate;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the disposition.

(2) Subject to subsection (3) an order under section 4(2) may affect the property of, or impose any obligation on, any person whether or not he is the transferee.

(3) An order section 4(2) -

- (a) shall not prejudice any interest in property which was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest;
- (b) where the Court is satisfied that a beneficiary under trust has not acted in bad faith shall not -
 - (i) prejudice any interest in property which the beneficiary has acquired without notice of the relevant circumstances by virtue of a distribution made consequent upon the prior exercise of a power or discretion vested in the trustee of a trust or any other person, and otherwise properly exercised; and
 - (ii) require a beneficiary under trust who has received the benefit from the relevant disposition without notice of the relevant disposition, to pay any sum of money;
- (c) where the Court is satisfied that a trustee of a Turks and Caicos trust has not acted in bad faith, negligently or with notice of the relevant circumstances, shall not prejudice the retention by the trustee of any money or other property which it has received in payment of fees charged or in reimbursement of costs incurred, in respect of the relevant disposition other than fees received or costs reimbursed in connection with proceedings brought under section 4(2).

(4) Where the Court is satisfied that a transferee has not acted in bad faith, negligently or with notice of the relevant circumstances, the transferee shall have security to be given to the transferee by way of a charge over the property, the subject of the relevant disposition, for an amount equal to all costs properly incurred by the transferee in connection with proceedings brought under section 4(2) as would be allowed on taxation of costs on an indemnity basis.

(5) For the purposes of this section, the relevant circumstances in relation to a disposition are the circumstances by virtue of which an order under section 4(2) may be made in respect of the relevant disposition.

(6) In this section, "security" means any mortgage, charge, lien or any other security.

Burden of proof

6. The burden of establishing that the transferor was insolvent at the time of the disposition or became insolvent in consequence of the disposition shall be upon the creditor.

Due diligence

7.(1) It shall be the duty of every trustee or professional person who advises a transferor in connection with the making of a relevant disposition to carry out such due diligence procedures as may be prescribed in guidelines made under subsection (2).

(2) The Governor in Council may from time to time prescribe regulations for the purposes of this section, and may prescribe different regulations for different cases or particular circumstances.

Rules of court

8. The power of the Chief Justice to make Rules of Court under section 16 of the Supreme Court Ordinance shall include the power to make Rules with respect to the practice and procedure of the Court in relation to the jurisdiction conferred upon it by this Ordinance; and until Rules are made under this section, that jurisdiction shall be exercised in accordance with such directions as the Chief Justice may give in any particular case.

Ordinance not to affect recognition of foreign law

9. Nothing in this Ordinance shall affect the recognition of a foreign law in determining whether the transferor is the owner of such property or the holder of such power.

Relationship to Trusts Ordinance 1990

10. Nothing in this Ordinance shall be construed as creating or enabling any right, claim or interest on behalf of a creditor or person which right, claim or interest would be avoided or defeated by the Trusts Ordinance 1990.

Trusts Ordinance amended

11. The Trust Ordinance 1990 is amended by repealing section 61.

Enactments that cease to apply to certain dispositions

12. The enactments mentioned in the Schedule, being statutes of England which are in force in the Islands by virtue of a Declaratory Law of the Bahamas Islands, shall cease to apply to any dispositions to which this Ordinance applies.

SCHEDULE

(Section 12)

**ENACTMENTS THAT SHALL CEASE TO APPLY TO DISPOSITIONS TO WHICH THIS
ORDINANCE APPLIES**

<i>Regnal year and chapter</i>	Subject or title
50 Edward III, c.6	Fraudulent assurances of lands or goods, to deceive creditors, shall be void.
27 Henry VIII, c.10	An Act concerning Uses and wills.
13 Elizabeth, c.5	An Act against fraudulent deeds, alienations, etc.
27 Elizabeth, c.4	Act against covinous and fraudulent conveyances.