BVI TRUSTEE ORDINANCE, 1961

(as amended)

Important

This is an unofficial consolidation of the Trustee Ordinance and the amendments thereto. Whilst every effort has been made to ensure correctness, no responsibility is assumed for any errors which may appear.

Note: Whilst the Interpretation Act (Cap. 136) provides that all statutes will henceforth be called Acts, the recent law revision continued the use of the word "Ordinance" for existing Ordinances and therefore this consolidation refers to "Ordinance" but where amended to "Act".

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PART I - Preliminary

Short title

1 . This Ordinance may be cited as the Trustee Ordinance.

Interpretation

2.(1) In this Ordinance-

"authorised investments" mean investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law;

"contingent right," as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

"convey" and "conveyance" as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;

"Court" means the High Court or a Judge thereof;

"income" includes rents and profits;

"land" includes land of any tenure, houses and other buildings, mines and minerals, and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, and also an undivided share in land; and in this definition "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and winning the same; and hereditaments mean real property which under an intestacy devolve on the next of kin;

“mortgage” and “mortgagee” include a charge or chargee by way of mortgage and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee, and also include and relate to an encumbrance under the Title by Registration Act;

“pay” and “payment” as applied in relation to stocks and securities and in connexion with the expression “into court” include the deposit or transfer of the same in or into court;

“personal representative” means the executor or administrator for the time being of a deceased person;

“person resident in the Territory” means a person who ordinarily resides within the Territory or carries on business from an office or other fixed place of business within the Territory but does not include a company incorporated under the International Business Companies Act;

“possession” includes receipt of rents and profits or the right to receive the same, if any; and “possessed” applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;

“property” includes real and personal property, and any estate, share and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

“rights” include estates and interests;

"sale" includes an exchange;

"securities" include stocks, funds, and shares; and so far as relate to payments into court have the same meaning as in the enactments relating to funds in the Court; and "securities payable to bearer" include securities transferable by delivery or by delivery and endorsement;

"settlor" includes a person who transfers property by way of gift or who makes a testamentary disposition on trust or to a trust;

"stock" includes fully paid up shares, and so far as relates to vesting orders made by the Court under this Ordinance, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

"transfer" in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee;

"trust for sale" in relation to land means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale;

"trustees for sale" means the persons (including a personal representative) holding land on trust for sale.

(2) For the purposes of this Act the term "trust" refers to the legal relationship created, either

inter vivos or on death, by a settlor when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a special purpose.

(3) A trust has the following characteristics:

(a) the assets constitute a separate fund and are not 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; and

(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 on him by law.

(4) 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.

(5) A trust does not include the duties incident to an estate conveyed by way of mortgage but it does extend to

(a) implied trusts;

(b) constructive trusts; and

(c) the duties incident to the office of a personal representative.

PART II – Investments

Authorized investments.

3. Subject to any provision contained in the instrument creating the trust, a trustee may at any time invest any portion of the trust funds in any kind of investment

(a) wherever the investment is situate; and

(b) whether or not at the time the funds are already in a state of investment;

and he may vary the investment or retain it in its original state as long as he exercises the diligence and prudence that a reasonable person would be expected to exercise in making an

investment as if it were his own money.

Investment in bearer securities.

4 .(1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer, which, if not so payable, would have been an authorized investment, except that securities to bearer retained or taken as an investment by a trustee shall, until sold, be retained in safe custody.

(1A) A direction that investments be retained or made in the name of a trustee shall not, for the purposes of subsection (1), be deemed to be an express prohibition.

(2) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

Discretion of trustees.

5. Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

Power to retain investment which has ceased to be authorised.

6 . A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law.

Loans and investments by trustees not chargeable as breaches of trust.

7 . (1) A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court -

(a) that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere; and

(b) that the amount of the loan does not exceed two-third parts of the value of the property as stated in the report; and

(c) that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require if in the opinion of the Court the title accepted be such as a person acting with prudence and caution would have accepted.

(3) This section applies to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement of this Ordinance.

Liability for loss by reason of improper investment.

8.(1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section applies to investments made before as well as after the commencement of this Ordinance.

Powers supplementary of powers of investment.

9 . (1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding seven years from the time when the loan was made, provided interest be paid within a specified time not exceeding thirty days after it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.

(2) On a sale of land for an estate in fee simple, trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a charge by way of first mortgage of the land sold, with or without the security of any other property, such charge or mortgage, if any buildings are comprised in the mortgage, to contain a covenant by the mortgagor to keep them insured against loss or damage by fire to the full value thereof.

The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such charge or mortgage, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being

insufficient at the date of the charge or mortgage.

(3) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement-

(a) for the reconstruction of the company,

(b) for the sale of all or any part of the property and undertaking of the company to another company,

(c) for the amalgamation of the company with another company, or

(d) for the release , modification, or variation of any rights, privileges or liabilities attached to the securities or any of them,

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(4) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may as to all or any of such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith:

Provided that the consideration for any such assignment shall be held as capital money of the trust.

(5) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(6) Where the loan referred to in subsection (1), or the sale referred to in subsection (2), is made under the order of the Court, the powers conferred by those subsections respectively shall apply only if and as far as the Court may by order direct.

Power to deposit money at bank and to pay calls.

10.(1) Trustees may, pending the negotiation and preparation of any mortgage or charge, or

during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income.

(2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

PART III - General Powers of Trustees and Personal Representatives

General Powers

Power of trustees for sale to sell by auction or private contract

11.(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.

Power to postpone sale.

12.(1) A power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears.

(2) Where there is a power to postpone the sale then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion, for any indefinite period; nor shall a purchaser of a legal estate be concerned in any case with any directions respecting the postponement of a sale.

(3) The foregoing provisions of this section apply whether the trust for sale is created before or after the commencement of this Ordinance.

(4) Where a disposition or settlement coming into operation after the commencement of this Ordinance contains a trust either to retain or sell land the same shall be construed as a trust to sell the land with power to postpone the sale.

Trust for sale of mortgaged property where right of redemption is barred.

13.(1) **W**here any property, vested in trustees by way of security, becomes, by virtue of any enactment relating to the limitation of actions, or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust for sale.

(2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable; but this subsection operates without: prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.

(3) This section does not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions.

Power to sell subject to depreciatory conditions

14.(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

(4) This section applies to sales made before or after the commencement of this Ordinance.

Power of trustees to give receipts

15.(1) The receipt in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

Power to compound liabilities

16. A personal representative, or two or more trustees acting together. may, if and as he or they think fit -

(a) accept any property, real or personal, before the time at which it is made transferable or payable; or

(b) sever and apportion any blended trust funds or property; or

(c) pay or allow any debt or claim on any evidence that he or they think sufficient; or

(d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or

(e) allow any time of payment of any debt; or

(f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's

or intestate's estate or to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

Power to raise money by sale, mortgage, or otherwise

17.(1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

(2) This section applies notwithstanding anything to the contray contained in the instrument, if any, creating the trust.

Protection to purchasers and mortgagees dealing with trustees

18. No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

Devolution of powers or trusts

19.(1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

(3) In this section "personal representative" does not include an executor who has renounced or has not proved.

Power to insure

20.(1) A trustee may insure against loss or damage by fire any buildings or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding the value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

Application of insurance money where policy kept up under any trust, power or obligation

21.(1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.

(2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money and shall pay the net residue thereof, after discharging any costs of recovering and receiving in, to the trustees of the trust or settlement, or, if there are not trustees capable of giving a discharge therefor, into Court.

(3) Any such money-

(a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;

(b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in Court, under the direction of the Court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing contained in this section shall prejudice or affect the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any law or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Ordinance, but only to money received after such commencement.

Deposit of documents for safe custody

22. Trustees may deposit any documents held by them relating to the trust, or to trust propepty, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

Reversionary interests, valuations, and audit

23.(1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession or becoming payable or transferable may-

(a) agree or ascertain the value thereof or any part thereof in such manner as they may think fit;

(b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate or value which they may think fit, any authorised investments;

(c) allow any deductions for duties, costs, charges and expenses which they think proper or reasonable;

(d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release, without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission-

(a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or in which such share or interest or other thing in action as aforesaid is derived, payable or charged; or

(b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested, unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any law, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs, attributable to capital shall be borne by capital and those attributable to income by income.

Powers to employ agents

24.(1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing or cultivating, or otherwise administering, any property subject to the trust or forming part of the testator's or intestate's estate in any place outside the Territory, or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.

(3) Without prejudice to such general power of appointing agents as aforesaid-

(a) a trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person

entitled to give a receipt for that consideration;

(b) a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the solicitor shall have the same statutory validity and effect as if the person appointing the solicitor had not been a trustee;

(c) a trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or solicitor to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making such appointment:

Provided that nothing in this subsection shall exempt a trustee from any liability which he would have incurred if this Ordinance had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the trustee.

This subsection applies whether the money or valuable consideration or property was or is received before or after the commencement of this Ordinance.

Power to concur with others

25. Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representative may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Power to delegate trusts during absence abroad

26.(1) A trustee may, notwithstanding any rule of law or equity to the contrary, by power of attorney delegate to any person the execution or exercise of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person.

(2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(4) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed.

(5) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by law or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power of transfer but not including the power to delegation conferred by this section.

(6) The fact that it appears from any power of attorney given under this section that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

Indemnities.

Protection against liability in respect of rents and covenants

27.(1) Where a personal representative or trustee liable as such for-

(a) any rent, covenant, or agreement reserved by or contained in any lease; or

(b) any rent, covenant or agreement payable under or contained in any grant made in consideration or a rent-charge; or

(c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs,

satisfies all liabilities under the lease or grant which may have accrued, or been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof, and thereafter-

(i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any

further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;

(ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) This section operates without prejudice to the right, of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) In this section "lease" includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; "grant" applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; "lessee" and "grantee" include persons respectively deriving title under them.

Protection by means of advertisement

28.(1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale, or personal representatives, may give notice by advertisement in the Gazette, and in a local newspaper, and such other like notices, including notices elsewhere than in the Territory, as would, in any special case, have been directed by the Court in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the

trustees or personal representatives within the time, not being less than twenty-eight days, fixed in the notice, or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person who may have received it.

(3) This section applies notwithstanding anything to the contrary in the will or other

instrument, if any, creating the trust.

Protection in regard to notice

29. A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust, or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

Exoneration of trustees in respect of certain powers of attorney

30. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability, or bankrupt, or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Provided that-

(a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;

(b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Implied indemnity of trustees

31.(1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other

trustee, nor for any banker, broker, or other person with whom any trust money or securities may be deposited, nor for any other loss, unless the same happens through his own wilful default.

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

Maintenance, advancement and protective trusts

Power to apply income for maintenance and to accumulate surplus income during a minority

32. (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property -

(a) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is-

(i) any other fund applicable to the same purpose, or

(ii) any person bound by law to provide for his maintenance or education; and

(b) if such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for this purpose, then so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations as follows-

(a) if any such person-

(i) attains the age of twenty-one years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest, or

(ii) on attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest, the trustees shall hold the accumulations in trust for such person absolutely, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

(b) in any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations

arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom;

but the trustees may, at any time during the infancy of such person, if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five per cent per annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

Power of advancement

33.(1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or

subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs:

Provided that-

(a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property; and

(b) if that person is or becomes absolutely and indefensibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and

(c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(2) This section applies only where the trust property consists of money or securities or of property held upon trust for sale, calling in and conversion, and such money or securities, or the proceeds of such sale, calling in and conversion are not by law or in equity considered as land.

Protective trusts

34.(1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called "the principal beneficiary") for the period of his life or for any less period, then, during that period (in this section called the "trust period") the said income shall, without prejudice to any prior interest, be held on the following trusts, namely-

(a) upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;

(b) if the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons (that is to say)-

(i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any, or

(ii) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be,

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) This section does not apply to trusts coming into operation before the commencement of this Ordinance, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section operates to validate any trusts which would, if contained in the

instrument creating the trust, be liable to be set aside.

PART IV - Appointment and Discharge of Trustees

Limitation of the number of trustees

35.(1) Where, at the commencement of this Ordinance, there are more than four trustees of a settlement of land, or more than four trustees holding land on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.

(2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement of this Ordinance-

(a) the number of trustees thereof shall not in any, case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy;

(b) the number of the trustees shall not be increased beyond four.

(3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply -

(a) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes; or

(b) where the net proceeds of the sale of the land are held for like purposes.

Power of appointing new or additional trustees

36 .(1) Where a trustee, either original or substituted, and whether appointed by the Court or otherwise is dead, or remains out of the Territory for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this Ordinance on the number of trustees-

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or

(b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustee or trustees for the time being, or the personal representatives of the last surviving or continuing trustee, may, by deed, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so

deceased, remaining out of the Territory, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee, or new trustees, may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly, but subject to the restrictions imposed by this Ordinance on the number of trustees.

(3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Ordinance, then, for the purposes of this section, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

(4) The power of appointment given by subsection (1) or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee, who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) Where a sole trustee is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees either original or substituted and whether appointed by the Court or otherwise, then and in such case-

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or

(b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being, may, by deed, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(6) Every new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(7) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(8) Where a person of unsound mind, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by the Court to make the appointment.

Power to appoint trustees of property belonging to infants or to persons out of the Territory

37.(1) Where an infant or a person out of the Territory is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Ordinance (in this subsection called "the deceased") to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant or the person out of the Territory, the personal representatives of the deceased may by writing appoint two or more persons not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, legacy, residue or share for the infant or the person out of the Territory, and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed.

On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any investment authorised by this Ordinance.

(2) Where a personal representative has before the commencement of this Ordinance retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the Court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into Court.

Supplemental provisions as to appointment of trustees

38. On the appointment of a trustee for the whole or any part of trust property-

(a) the number of trustees may, subject to the restrictions imposed by this Ordinance on the number of trustees, be increased; and

(b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees or, if only one trustee was originally appointed, then save as hereinafter provided, one separate trustee may be so appointed; and

(c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

Evidence as to a vacancy in a trust

39.(1) A statement, contained in any instrument coming into operation after the commencement of this Ordinance by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the Territory for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

Retirement of trustee without a new appointment

40. (1) Where a trustee is desirous of being discharged from the trust then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Ordinance, without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

Vesting of trust property in new or continuing trustees

41.(1) Where by a deed a new trustee is appointed to perform any trust, then-

(a) if the deed contains a declaration by the appointer to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the

declaration relates; and

(b) if the deed is made after the commencement of this Ordinance and does not contain such a declaration, the deed shall, subject to any express provisions to the contrary therein contained, operate as if it had contained such a declaration by the appointer extending to all the estates, interests and rights with respect to which a declaration could have been made.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then-

(a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates; and

(b) if the deed is made after the commencement of this Ordinance and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interest and rights with respect to which a declaration could have been made.

(3) An express vesting declaration whether made before or after the commencement of this Ordinance, shall, notwithstanding that the estate, interest and right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provisions to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such estates, interest and rights as are capable of being and ought to be vested in those persons.

(4) This section does not extend-

(a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;

(b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;

(c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Act.

In this subsection "lease" includes an underlease and an agreement for a lease or underlease

PART V - Powers of The Court

Appointment of new trustees.

Power of Court to appoint new trustees

42.(1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

In particular and without prejudice to the generality of the foregoing provision, the Court may make an order appointing a new trustee in substitution for a trustee who is convicted of a felony, or is a person of unsound mind, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this section gives power to appoint an executor or administrator.

Power to authorise remuneration

43. Where the Court appoints a corporation to be a trustee either solely or jointly with another person, the Court may authorise the corporation to charge such remuneration for its services as trustee as the Court may think fit.

Powers of new trustee appointed by the Court

44 . Every trustee appointed by the Court shall, as well as before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Vesting orders

Vesting orders of land

45. In any of the following cases namely-

(a) where the Court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;

(b) where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person-

(i) is under disability, or

(ii) is out of the jurisdiction of the Court, or

(iii) cannot be found, or being a corporation, has been dissolved;

(c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;

(d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;

(e) where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;

(f) where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement;

(g) where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the Court to be expedient, the Court may make an order (in this Ordinance called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct:

Provided that-

(i) where the order is consequential on the appointment of a trustee

the land or interest therein shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and

(ii) where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the Court or cannot be found, or being a corporation has been dissolved, the land interest or right shall be vested in such other person who remains entitled, either alone or with any other person the Court may appoint.

Orders as to contingent rights or unborn persons

46. Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on any trust, the Court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Vesting order in place of conveyance by infant mortgagee

47. Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the Court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

Vesting order consequential an order for sale or mortgage of land

48. Where the Court gives a judgement or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgement or order is given or made or is otherwise bound by the judgement or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Ordinance, and the Court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the Court thinks fit in the purchaser or mortgagee or in any other person.

Vesting order consequential on judgement for specific performance, etc

49. Where a judgement is given for the specific performance of a contract concerning any interest in land or for sale or exchange of any interest in land, or generally where any judgement is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the Court may declare-

(a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Ordinance, or

(b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgement is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Ordinance, and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting order

50. A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect-

(a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the Court directs; or

(b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the Court directs; and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Power to appoint person to convey

51. In all cases where a vesting order can be made under any of the foregoing provisions, the Court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Vesting orders as to stocks and things in action

52. (1) In any of the following cases, namely-

(a) where the Court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;

(b) where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person, to stock or to a thing in action-

(i) is under disability, or

(ii) is out of the jurisdiction of the Court, or

(iii) cannot be found, or being a corporation, has been dissolved, or

(iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been served on him; or

(v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, for twenty-eight days next after an order of the Court for that purpose has been served on him;

(c) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;

(d) where stock is standing in the name of a deceased person whose personal representative is under disability;

(e) where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient, the Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the Court may appoint:

Provided that-

(i) where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(ii) where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in the last-mentioned person either alone or jointly with any other person whom the Court may appoint.

(2) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Ordinance, may transfer the stock to himself or any other person, according to the order, and all companies shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section it shall not be lawful for any

company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The Court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Ordinance is to be exercised.

(6) The provisions of this Ordinance as to vesting orders shall apply to shares in ships registered under the Acts of Parliament or other law relating to merchant shipping as if they were stock.

Vesting orders of charity property

53. The powers conferred by this Ordinance as to vesting orders may be exercised for vesting any interest in land, stock, or thing in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.

Vesting orders in relation to infant's beneficial interests

54. Where an infant is beneficially entitled to any property the Court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order-

(a) appointing a person to convey such property; or

(b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the Court may think fit.

Orders made upon certain allegations to be conclusive evidence

55. Where a vesting order is made as to any land under this Ordinance founded on an allegation of any of the following matters namely-

(a) the personal incapacity of a trustee or mortgagee; or

(b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the Court or cannot be found, or being a corporation has been dissolved; or

(c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or

(d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or

(e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested,

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section does not prevent the Court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

Orders of Court to be registered

56. In all cases where the Court shall, under the provisions of this Ordinance, make a vesting order, or any order having the effect of a conveyance or assignment of any land or any interest therein, or having the effect of a release or disposition of the contingent right of any unborn person, or class of unborn persons, in any land, an office copy of such order shall be registered in the office of the Registrar of Deeds, and such order shall take effect upon and from the time of the registration of such office copy:

Provided that where the land or any interest therein is subject to the provisions of the Title by Registration Act, the Registrar of Deeds shall, on production of an office copy of the order and on payment of the prescribed fees, duly register such order and cause a note thereof to be endorsed on the grant or certificate of title in respect of such land, and thereupon the person in whom the land is vested by the order shall be the registered proprietor thereof without the production of any instrument of transfer.

Registration of vesting order made by Court in England

57.(1) Where the court in England has made a vesting order under the Trustee Act, 1925, in respect of land or personal estate in the Territory, and the vesting order so made is produced to the Registrar of Deeds for registration, such vesting order shall, on payment of a fee of five dollars be registered in the office of the Registrar of Deeds.

(2) For the purposes of this section, a duplicate of a vesting order sealed with the seal of the court making the same, or a copy thereof certified as correct by the officer having the custody of the original order, shall have the same effect as the original.

(3) In this section "court" has the same meaning as the court referred to in section 67 of the Trustee Act, 1925.

Jurisdiction of Court to vary trusts

58.(1) Where property, whether real or personal, is held on trusts arising whether before or after the passing of this Ordinance, under any will, settlement or other disposition, the Court may if it

thinks fit by order approve on behalf of -

(a) any person having, directly or indirectly, an interest, whether vested or contingent, under the trusts who by reason of infancy or other incapacity is incapable of assenting; or

(b) any person (whether ascertained or not) who may have become entitled, directly or indirectly, to an interest under the trusts as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so however that this

paragraph shall not include any person who would be of that description or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the Court; or

(c) any unborn person; or

(d) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined; any arrangement (by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trusts or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts:

Provided that except by virtue of paragraph (d) the Court shall not approve an arrangement on behalf of any person unless the carrying out thereof would be for the benefit of that person.

(2) In the foregoing subsection "protective trusts" means an interest specified in paragraphs (a) and (b) of subsection (1) of section 34 or any like trusts, "the principal beneficiary" has the same meaning as in the said subsection (1); and "discretionary interest" means an interest arising under the trust specified in paragraph (a) of the said subsection.

(3) Nothing in the foregoing provisions of this section shall apply to trusts affecting property settled by any law of the Territory.

(4) Nothing in this section shall be taken to limit the powers conferred by section 59 or by section 6 of the West Indies Associated States Supreme Court (Virgin Islands) Ordinance.

Power of Court to authorise dealings with trust property

59.(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court may by order confer upon the trustees, either generally or

in any particular instance, the necessary power for that purpose, on such terms, and subject to such provisions and conditions, if any, as the Court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The Court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the Court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

Persons entitled to apply for orders

60.(1) An order under this Ordinance for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof

(2) An order under this Ordinance concerning any interest in land, stock, or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Power to give judgement in absence of a trustee

61. Where in any action the Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in an action, to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to charge costs on trust estate

62. The Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of an incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

Power to relieve trustee from personal liability

63 . If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance, but has acted honestly and

reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same.

Power to make beneficiary indemnify for breach of trust

64 .(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the Court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

(2) This section applies to breaches of trust committed as well before as after the commencement of this Ordinance.

Payment into Court by trustees

65.(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into Court; and the same shall, subject to rules of court, be dealt with according to the orders of the Court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into Court, but the concurrence of the other or others cannot be obtained, the Court may order the payment into Court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker, or other depositary, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into Court.

(5) Every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

PART VI - General Provisions

Application of Ordinance

66.(1) This Ordinance, except where otherwise expressly provided, applies to trusts including, so far as this Ordinance applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Ordinance.

(2) The powers conferred by this Ordinance on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) This Ordinance does not affect the legality or validity of any thing done before the commencement of this Ordinance, except as otherwise hereinbefore expressly provided.

Indemnity

67. This Ordinance, and every order purporting to be made under this Ordinance, shall be a complete indemnity to all persons for any acts done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the Court by which the order was made had jurisdiction to make it.

PART VII - Perpetuities and Accumulations

Power to specify perpetuity period

68.(1) Subject to subsection (2) and subsection (3) of section 76, where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, shall be of a duration equal to such number of years not exceeding 100 as is specified in that behalf in the instrument.

(2) Subsection (1) shall not have effect where the disposition is made in exercise of a special power of appointment, but where a period is specified under that subsection in the instrument creating such a power the period shall apply in relation to any disposition under the power as it applies in relation to the power itself.

Presumptions and evidence as to future parenthood

69.(1) Where in any proceedings there arises on the rule against perpetuities a question which turns on the ability of a person to have a child at some future time, then, subject to subsection (2), it shall be presumed that a male can have a child at the age of 14 years or over, but not under that age, and that a female can have a child at the age of 12 years or over, but not under that age or over the age of 55 years.

(2) In the case of a living person evidence may be given to show that he or she will or will not be able to have a child at the time in question.

(3) Where any such question is decided by treating a person as unable to have a child at a particular time, and he or she does so, the Court may make such order as it thinks fit for placing the persons interested in the property comprised in the disposition, so far as may be just, in the position they would have held if the question had not been so decided.

(4) Subject to subsection (3) above, where any such question is decided in relation to a disposition by treating a person as able or unable to have a child at a particular time, then he or she shall be so treated for the purpose of any question which may arise on the rule against perpetuities in relation to the same disposition in any subsequent proceedings.

(5) In the foregoing provisions of this section references to having a child are references to begetting or giving birth to a child, but those provisions, except subsection (2), shall apply in relation to the possibility that a person will at any time have a child by adoption, legitimation or other means as they apply to his or her ability at that time to beget or give birth to a child.

Uncertainty as to remoteness

70.(1) Where, apart from the provisions of this section and sections 71 and 72 ("the said provisions") a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time, the disposition shall be treated, until such time, if any, as it becomes established that the vesting must occur, if at all, after the end of the perpetuity period, as if the disposition were not subject to the rule against perpetuities; and its becoming so established shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

(2) Where, apart from the said provisions, a disposition consisting of the conferring of a general power of appointment would be void on the ground that the power might not become exercisable until too remote a time, the disposition shall be treated, until such time, if any, as it becomes established that the power will not be exercisable within the perpetuity period, as if the disposition were not subject to the rule against perpetuities.

(3) Where, apart from the said provisions, a disposition consisting of the conferring of any power, option or other right would be void on the ground that the right might be exercised at too remote a time, the disposition shall be treated as regards any exercise of the right within the perpetuity period as if it were not subject to the rule against perpetuities and, subject to the said provisions, shall be treated as void for remoteness only if, and so far as, the right is not fully exercised within that period.

(4) Where this section applies to a disposition and the duration of the perpetuity period is not determined by virtue of section 68 or subsection (3) of section 76, it shall be determined as follows:

(a) where any persons falling within subsection (5) are individuals in being and ascertainable at the commencement of the perpetuity period the duration of the period shall be determined by reference to their lives and no others, but so that the lives of any description of persons falling within paragraph (b) or (c) of that subsection shall be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor; and

(b) where there are no lives in being within the meaning of paragraph (a) the period shall be 21 years.

(5) The said persons are as follows:-

(a) the person by whom the disposition was made;

(b) a person to whom or in whose favour the disposition was made, that is to say,

(i) in the case of a disposition to a class of persons, any member or potential member of the class,

(ii) in the case of an individual disposition to a person taking only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied,

(iii) in the case of a special power of appointment exercisable in favour of members of a class, any member or potential member of the class,

(iv) in the case of a special power of appointment exercisable in favour of one person only, that person or, where the object of the power is ascertainable only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied,

(v) in the case of any power, option or other right, the person on whom the right is conferred;

(c) a person having a child or grandchild within sub-paragraphs (i) to (iv) of paragraph (b), or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within those sub-

paragraphs; and

(d) any person on the failure or determination of whose prior interest the disposition is limited to take effect.

(6) The provisions of this section shall be deemed to apply to any trust created on or after 16th July, 1964 with an express perpetuity period not exceeding 80 years, and where a disposition made on or after 16th July, 1964 would have been void *ab initio* but for this provision the disposition shall be deemed to be valid if the trustees of the trust declare in writing that the provisions of this subsection shall apply to the disposition.

Reduction of age and exclusion of class members to avoid remoteness

71.(1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding 21 years, and it is apparent at the time the disposition is made or becomes apparent at a subsequent time that the disposition would, apart from this section, be void for remoteness, but that it would not be so void if the specified age had been 21 years, the disposition shall be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to that age which would, if specified instead, have prevented the disposition from being so void.

(2) Where in the case of any disposition different ages exceeding 21 years are specified in relation to different persons

(a) the reference in subsection (1) to the specified age shall be construed as a reference to all the specified ages; and

(b) subsection (1) shall operate to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

(3) Where the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents the foregoing provisions of this section from operating to save a disposition from being void for remoteness, those persons shall thenceforth be deemed for all the purposes of the disposition to be excluded from the class, and the said provisions shall thereupon have effect accordingly.

(4) Where , in the case of a disposition to which subsection (3) does not apply, it is apparent at the time the disposition is made or becomes apparent at a subsequent time that, apart from this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, would cause the disposition to

be treated as void for remoteness, those persons shall, unless their exclusion would exhaust the class, thenceforth be deemed for all the purposes of the disposition to be excluded from the class.

(5) Where this section has effect in relation to a disposition to which section 70 above applies, the operation of this section shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

Condition relating to death of surviving spouse

72. Where a disposition is limited by reference to the time of death of the survivor of a person in being at the commencement of the perpetuity period and any spouse of that person, and that time has not arrived at the end of the perpetuity period, the disposition shall be treated for all purposes, where to do so would save it from being void for remoteness, as if it had instead been limited by reference to the time immediately before the end of that period.

Saving and acceleration of expectant interests

73. A disposition shall not treated as void for remoteness by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so void, and the vesting of an interest shall not be prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remoteness.

Powers of appointment

74. For the purposes of the rule against perpetuities, a power of appointment shall be treated as a special power unless

(a) in the instrument creating the power it is expressed to be exercisable by one person only; and

(b) it could, at all times during its currency when that person is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power,

except that for the purpose of determining whether a disposition made under a power of appointment exerciseable by will only is void for remoteness, the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed.

Administrative powers of trustees

75. (1) The rule against perpetuities shall not operate to invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property for full consideration, or to do any other act in the administration (as opposed to the distribution) of any property, and shall not prevent the payment to trustees or other persons of reasonable remuneration for their services.

(2) Subsection (1) shall apply for the purpose of enabling a power to be exercised at any time after the commencement of this Part notwithstanding that the power is conferred by an instrument which took effect before that commencement.

Options relating to land

76. (1) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reversionary, whether directly or indirectly, on the term of a lease if

(a) the option is exercisable only by the lessee or his successors in title; and

(b) it ceases to be exercisable at or before the expiration of one year following the determination of the lease.

(2) Subsection (1) shall apply in relation to an agreement for a lease as it applies in relation to a lease, and "lessee" shall be construed accordingly.

(3) Except as provided in subsection (1), in the case of a disposition consisting of the conferring of an option to acquire for valuable consideration any interest in land, the perpetuity period under the rule against perpetuities shall be 21 years, and section 68 shall not apply.

(4) Subsection (3) shall not apply to a right of pre-emption conferred on any governmental or public authority in respect of land used or to be used for religious purposes where the right becomes exercisable only if the land ceases to be used for such purposes.

Possibilities of reverter conditions subsequent exceptions and reservations

77.(1) In the case of

(a) a possibility of reverter on the determination of a determinable fee simple;

or

(b) a possibility of a resulting trust on the determination of any other determinable interest in property,

the rule against perpetuities shall apply in relation to the provision causing the interest to be determinable as it would apply if that provision were expressed in the form of a condition subsequent giving rise, on breach thereof, to a right of re-entry or an equivalent right in the case of property other than land, and where the provision falls to be treated as void for remoteness the determinable interest shall become an absolute interest.

Accumulation of income

78. Subject to any term of a trust prohibiting the accumulation of income or directing or authorizing the accumulation of income for a period shorter than the period of the trust, income may be accumulated for the duration of the period of the trust.

Interpretation and extent of Part VII

79. (1) In this Part

(a) "disposition", includes the conferring of a power of appointment and any other disposition of an interest in or right over property, and references to the interest disposed of shall be construed accordingly;

(b) "in being" means living or *en ventre sa mere*;

(c) "power of appointment" includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration; and

(d) "will" includes a codicil.

(2) For the purposes of this Part a disposition contained in a will shall be deemed to be made at the death of the testator.

(3) For the purposes of this Part a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

(4) Nothing in this Part shall affect the operation of the rule of law rendering void for remoteness certain dispositions under which property is limited to be applied for purposes other than the benefit of any person or class of persons in cases where the property may be so applied after the end of the perpetuity period.

(5) This Part shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

(6) This Part shall apply, except as provided in subsection (6) of section 70, and subsection (2) of section 75, only in relation to instruments taking effect after the commencement of this Part, and in the case of an instrument made in the exercise of a special power of appointment shall apply only where the instrument creating the power takes effect after that commencement except that section 74 shall apply in all cases for construing the foregoing reference to a special power of appointment.

PART VIII - Special Provisions

Determination of proper law of trust

80.(1) The proper law of a trust or a particular aspect of a trust is

(a) the law of the jurisdiction expressly designated by the terms of the trust as being the law that is to govern the trust or the particular aspect of the trust, as the case may be;

(b) if the terms of the trust do not expressly designate the governing law for the trust or the particular aspect of the trust, then the law of the jurisdiction that may reasonably be inferred from the terms of the trust as being the law that is to govern the trust or the particular aspect of the trust, as the case may be; or

(c) if the terms of the trust do not expressly designate the governing law for the trust or the particular aspect of the trust and no reasonable inference may be drawn from the terms of the trust as to the governing law, then the law of the jurisdiction with which the trust at the time it was created had the closest connection.

(2) For the purposes of paragraph (c) of subsection (1) in ascertaining the law with which a trust is most closely connected at the time it was created reference 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; and

(d) the objects of the trust and the places where they are to be fulfilled.

Change of proper law

81.(1) If the terms of the instrument creating a trust so provide, the proper law of the trust may be changed from the law of the Territory to the law of another jurisdiction, or from the law of another jurisdiction to the law of the Territory, provided that in the case of a change from the law of the Territory the new proper law would recognize the validity of the trust and the respective interests of the beneficiaries.

(2) A change in proper law shall not affect the legality or validity of, or render any person liable for, anything done before the change.

(3) Without limiting or affecting subsection (2), the instrument creating a trust may provide that

(a) the proper law be changed to that of any other jurisdiction specified in the trust; or

(b) the trust assets be transferred to a trustee in that other jurisdiction,

upon the occurrence of an event specified in the trust instrument.

Jurisdiction of court

82. The court has jurisdiction where

(a) the proper law of a trust or a particular aspect of a trust is the law of the Territory;

(b) the trustee of any trust is resident in the Territory;

(c) in the case of a corporate trustee of any trust, it is incorporated or registered to do business in the Territory;

(d) any trust property is situate in the Territory but only in respect of property so situate;

(e) the administration of any trust is carried on in the Territory; or

(f) the court thinks it appropriate.

Proper law to determine disposition of personal property

83.(1) If a person transfers or disposes of personal property to the trustee of a trust

(a) he shall be deemed to have had capacity to do so if he is at the time of such transfer or disposition of full age and of sound mind under the law of his domicile; and

(b) no rule relating to inheritance or succession of the law of his domicile shall affect any such transfer or disposition or otherwise affect the validity of such trust.

(2) For the avoidance of doubt it is declared that the provisions of this section shall apply notwithstanding any other provisions of this Part and shall apply only to transfers or dispositions of property made to a trustee of a trust after the commencement of this Part, but this declaration shall be without prejudice to the validity or otherwise of transfers or dispositions made before that time.

Purpose trusts

84. (1) For the purpose of this section

(a) "designated person" means

(i) a barrister or solicitor practising in the Territory,

(ii) an accountant practising in the Territory who qualifies as an "auditor" for purposes of the Banks and Trust Companies Act, 1990,

(iii) a licensee under the Banks and Trust Companies Act, 1990, or

(iv) such other person as the Minister of Finance may by order designate; and

(b) "trust for any purpose" means a trust other than a trust

(i) that is for the benefit of particular persons whether or not immediately ascertainable, or

(ii) that is for the benefit of some aggregate of persons ascertained by reference to some personal relationship.

(2) A person may create a valid trust for any purpose, whether charitable or not, if

(a) the purpose is specific, reasonable and possible;

(b) the purpose is not immoral, contrary to public policy or unlawful;

(c) at least one trustee of the trust is a designated person;

(d) the trust instrument appoints a person, who may be a protector, to enforce the trust and provides for the appointment of a successor to such person;

(e) the person appointed to enforce the trust is a party to the trust instrument or consents in writing, addressed to the trustee who is a designated person, to enforce the trust; and

(f) the trust instrument specifies the event upon the happening of which the trust terminates and provides for the disposition of surplus assets of the trust upon its termination.

(3) The rule against perpetuities and remoteness of vesting shall not apply to a trust to which subsection (2) applies.

(4) Nothing in this section shall affect the existing law with respect to trusts established for charitable purposes.

(5) Where a trustee who is a designated person has reason to believe that a person who is appointed to enforce the trust is dead, is unwilling, refuses or is unfit to act or is incapable of acting, then that trustee shall as soon as practicable inform the Attorney General in writing of the fact and send him a copy of the instrument creating the trust.

(6) The Attorney General on being informed under subsection (5) shall within90 days apply for the appointment of a person to enforce the trust and the court may, unless it feels that the person is not fit, by order declare that person to be the person to enforce the trust.

(7) The order of the court under subsection (6) is conclusive evidence of the appointment of the person to enforce the trust and the appointment takes effect as from the date of the order.

(8) Where any costs are incurred by the Attorney General in connection with any application under subsection (6), the court may make such order as it considers just as to the payment of those costs out of the assets of the trust.

(9) Where a designated person fails to comply with subsection (5), then, subject to subsection (10), the designated person is guilty of an offence and is liable on summary conviction to a fine of not more than $5,000.

(10) It shall be a defence to a charge of committing an offence under subsection (9) to prove that the designated person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(11) The person appointed pursuant to paragraph (d) of subsection (1) shall be entitled, in addition to any documents, information or other rights specifically provided for in the trust instrument, to

(a) annual accounts of the trust;

(b) copies of the trust instrument and deeds and other written instruments executed pursuant to the trust instrument; and

(c) counsels' opinions and legal advice received by the trustees.

Trustees to act by majority

85.(1) Subject to any provision contained in the instrument creating the trust,

(a) every decision made, resolution passed or power or discretion exercised by trustees is valid if made, passed or exercised by a majority of the trustees if there are more than 2 of them; and

(b) any deed or other instrument executed pursuant to such a decision, resolution or exercise of power or discretion is likewise valid as if it had been executed by all the trustees.

(2) This section shall not apply to trusts in existence at the time the section comes into effect.

Protector of trusts

86.(1) An instrument creating a trust may contain provisions by virtue of which the exercise by the trustees of any of their powers and discretions shall be subject to the previous consent of the settlor or some other person, whether named as protector, nominator, committee or any other name; and if so provided in the instrument creating the trust the trustees shall not be liable for any loss caused by their actions if the previous consent was given.

(2) There may be conferred on the settlor or some other person, whether named as protector, nominator, committee or by any other name, by the instrument creating the trust, any powers, and without limitation to the foregoing power may be conferred on that person to do any one or more of the following:

(a) determine the law of which jurisdiction shall be the proper law of the trust;

(b) change the forum of administration of the trust;

(c) remove trustees;

(d) appoint new or additional trustees;

(e) exclude any beneficiary as a beneficiary of the trust;

(f) include any person as a beneficiary of the trust in substitution for or in addition to any existing beneficiary of the trust; and

(g) withhold consent from specified actions of the trustees either conditionally or unconditionally.

(3) A person exercising any of the powers set forth in paragraphs (a) to (d) and (g) of subsection (2) shall not by virtue only of the exercise of the power be deemed to be a trustee; and unless otherwise provided in the instrument creating the trust, is not liable to the beneficiaries for the bona fide exercise of the power.

Managing trustee

87. A trust instrument may contain provisions by virtue of which the exercise of any of the trustee's powers may be reserved to a managing trustee, and no other trustee is liable for any of the decisions, acts or transactions of the managing trustee in so far as they amount to exercise of powers reserved by the trust instrument to the managing trustee.

Successor trustee

88. In the absence of any contrary provisions in the trust instrument, a successor trustee may exercise all powers and discretions granted to the original trustee including, without limitation, any power to select from a class of beneficiaries those persons entitled to income or principal of the trust fund.

Power to revoke or amend trust

89. A trust may be revoked or amended only to the extent and in the manner expressly stated in the trust instrument or as provided by section 58.

Exemption from income tax, etc

90.(1) Notwithstanding any provisions of the Income Tax Act, the income of any trust in the hands of a trustee is exempt from income tax and the beneficiaries of any trust who are not persons resident in the Territory shall likewise be exempt from payment of income tax in respect of any moneys received by them from the trustee of any trust.

(2) No estate tax, inheritance tax, succession tax, gift tax, rate, duty, levy or other charge is payable by beneficiaries who are not resident in the Territory in respect of any distribution to them by the trustee of any trust.

(3) Notwithstanding any provision of the Stamp Act, any trust that does not have as beneficiaries persons resident in the Territory shall be exempt from the payment of stamp duty with respect to

(a) the deed or other written instrument creating the trust;

(b) all deeds and other written instruments of appointment made pursuant to the trust;

(c) all deeds and other instruments by which assets are transferred to or from the trustee of a trust; and

(d) all instruments relating to the transfer of beneficial interests in a trust.

(4) The exemptions in this section do not apply to any trust which

(a) has as an underlying asset land in the Territory; or

(b) carries on a business or trade in the Territory.

(5) The provisions of this section apply to all trusts in existence at the time of the coming into operation of this Act.

Exemption from registration

91. (1) Notwithstanding any provisions of the Registration and Records Act,

(a) any deed creating a trust;

(b) all deeds of appointment made pursuant to the terms of a trust; and

(c) all other deeds executed by the trustees, settlors, beneficiaries or protectors of a trust pursuant to the powers and discretions specified in the instrument creating the trust,

are exempt from registration under the provisions of the Registration and Records Act.

(2) The exemption granted by subsection (1) applies to all deeds referred to therein executed prior to the time when this provision becomes effective.

Trust duty

92.(1) Every trust instrument of which the proper law is the law of the Virgin Islands and which does not create a bare trust shall be liable to a duty called "the trust duty" in the sum of $50.00.

(2) The payment of the trust duty shall be denoted or expressed by the affixing of a revenue stamp to the trust instrument.

(3) A trust instrument shall be deemed to be duly stamped only when the person executing the trust instrument cancels the revenue stamp by writing on or across the stamp the name or initials of the trustee or the person acting on behalf of a corporation trustee as well as the date on which the name or initials of the person is affixed.

(4) A trust instrument not cancelled in accordance with the provisions of subsection (3) above shall not be admissible in civil proceedings, provided that a trust instrument may in the discretion of the Court be admissible in proceedings on proof of the payment in the manner prescribed by the Governor in Council of the trust duty together with a penalty in the sum of $100.00 for each calendar year from the execution of the trust instrument.

(5) The provisions of this section shall apply only to trusts created after the coming into effect of this section.

(6) Any trust instrument that is liable to trust duty shall not be produced to the Treasury, Post Office or any other public body for purposes of payment of trust duty.

(7) No trust instrument of which the proper law is the law of the Territory and of which a designated person is a trustee shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful or available in law or equity, unless it is duly stamped with trust duty in accordance with the law in force at the time when it was first executed.

(8) Any unstamped or insufficiently stamped trust instrument that is liable to be stamped pursuant to the provisions of this section may be pleaded or given in evidence or admitted to be good, useful or available in law or equity upon payment of the trust duty together with a penalty in the sum of $100.00 for each complete calendar year from execution of the instrument.

(9) The penalty referred to in subsection (8) shall be paid in such manner as the Governor in Council may by order direct.

(10) This section applies only to trust instruments created after the section comes into effect.

(11) This section comes into operation on such date as the Governor may appoint by proclamation published in the Gazette.

PART IX - Incorporation of Administrative Powers by Reference

Incorporation by reference

93. (1) 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 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;

(c) all income which, in accordance with the provisions of the trust, is accumulated by the Trustees and added to the capital thereof; and

(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.

(2) A memorandum signed by the Trustees as to property paid or transferred to or otherwise vested in or accepted by the Trustees is conclusive evidence of the payment, transfer or other vesting.

SCHEDULE

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 therefore 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 the British Virgin Islands and whether or not the proper law of such settlement is the law of the British

Virgin Islands) 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:

(a) 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;

(b) 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;

(c) 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 Trustee in their absolute discretion may determine;

(d) 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) -

(i) 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,

(ii) power to deposit any such shares securities or property in any voting trust or with any depository designated thereby,

(iii) 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

(iv) power to omit to register bonds or securities;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) 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;

(j) power to keep the Trust Fund either in or out of the British Virgin Islands 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;

(k) 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;

(l) 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;

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

(n) 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 for 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;

(o) 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;

(p) 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;

(q) power -

(i) 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

(aa) 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

(bb) shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the advice of the Investment Adviser,

(ii) 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;

(r) power for all or any of the Trustees

(i) 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

(ii) 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;

(s) 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 or 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;

(t) 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;

(u) 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; and

(v) 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 appointments

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 thereon in good faith.

Power in relation to underlying company

7 . ANY trustee of this instrument and 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 debenture.

Trustees 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.