



TRUSTS AND TRUSTEES BILL 2022

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TRUSTS AND TRUSTEES BILL 2022

A BILL to amend the Trustee Act 2001 in respect of trustees' duties, powers and liabilities, to amend the Trustee Act 1961 in respect of trustees' powers and the powers of the court, to amend the Limitation Act 1984 in respect of actions against trust property and to amend the Apportionment Act 1982 in respect of entitlement to income arising under a trust; and for connected purposes

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Trusts and Trustees Bill 2022.

2 Commencement

(1) This Act comes into operation on such day or days as the Treasury may by order appoint and different days may be appointed for different provisions and for different purposes.

Tynwald procedure – laying only

(2) An order under subsection (1) may include such consequential, incidental, supplemental, transitional, transitory or saving provisions as the Treasury considers necessary or expedient in connection with the coming into operation of any provision of this Act.

PART 2 – AMENDMENT OF THE TRUSTEE ACT 2001

3 General

The Trustee Act 2001 is amended in accordance with this Part.

4 Insertion of new Part 1A

After Part 1 (the duty of care), insert—

PART 1A – DUTY TO DISCLOSE TRUST INFORMATION

2A Disclosure of trust information

(1) “Trust information” is information or a document relating to a trust including that relating to the accounts of the trust.

(2) The terms of a trust may –

- (a) confer on any person a right to request the disclosure of trust information;
- (b) restrict the right of any person to request the disclosure of trust information;
- (c) determine the extent of the right of any person to trust information;
- (d) impose a duty upon a trustee to disclose trust information to any person.

This is subject to any order of the court.

(3) The following may request disclosure of trust information by a trustee –

- (a) a beneficiary of the trust which is not a charitable trust;
- (b) a charity which is referred to by name as a beneficiary of the trust;
- (c) a protector.

This is subject to the terms of the trust and any order of the court.

(4) A trustee may refuse a request referred to in subsection (3) where he is satisfied that it is in the interests of one or more specific beneficiaries, or the beneficiaries as a whole, to do so.

This is subject to any order of the court.

(5) A trustee shall not be required to disclose trust information in respect of –

- (a) his deliberations in respect of any power, discretion or duty he has;
- (b) the reasons for any decision of his in respect of the exercise or non-exercise of any such power, discretion or duty;
- (c) some other beneficiary or potential beneficiary of the trust where requested to do so by another beneficiary of that trust.

This is subject to the terms of the trust and any order of the court.

(6) Despite the terms of a trust, the court may upon the application of P make such order as it sees fit determining whether –

- (a) generally or in a particular circumstance, the extent to which any person may request and receive trust information;
 - (b) any limitation on disclosure imposed by the terms of the trust is reasonable in all the circumstances.
- (7) P means —
- (a) a trustee of the trust,
 - (b) a beneficiary of the trust,
 - (c) a protector, and
 - (d) with leave of the court, any other person.
- (8) This section applies to trusts whether created before or after its commencement. **22**

5 Insertion of new Part 3A

After Part 3 (acquisition of land), insert —

33 PART 3A – CONTRACTS

10A Power of trustee to contract with himself

- (1) This Part applies where a person (T) is a trustee of more than one trust.
- (2) Despite any enactment or rule of law to the contrary, T may in the capacity of trustee of one trust enter into a contract with himself in his capacity as trustee of another trust.
- (3) T, as trustee of a trust (“trust No.1”) shall not be affected by notice of any instrument, matter, fact or thing in relation to another trust (trust No.2) where he has obtained notice of it in his capacity as trustee of trust No.2.
- (4) Despite any enactment or rule of law to the contrary, where —
 - (a) T is a trustee of trust No.1 and has an interest as trustee in trust No.2, and
 - (b) a transaction in relation to trust No.1 is to be entered into with a trustee of trust No.2,T shall not disclose to his co-trustee of trust No.1 any interest which T has as trustee of trust No.2.

10B Restriction, exclusion and application of this Part

- (1) The powers conferred by this Part are —

- (a) in addition to powers conferred on a trustee otherwise than by this Part, but
 - (b) subject to any restriction or exclusion imposed by the trust instrument or by any statutory provision.
- (2) This Part applies to trusts whether created before or after its commencement. 

6 Insertion of new Part 4A

After Part 4 (agents, nominees and custodians), insert —

PART 4A – THIRD PARTIES

27A Liability of trustees to third parties

- (1) This section applies where a trustee is a party to a transaction or other matter affecting the trust which involves a third party.
- (2) If the trustee informs a third party to the transaction or matter, or the third party is otherwise aware, that the trustee is acting as a trustee —
 - (a) the trustee is not personally liable in respect of the transaction or matter, and
 - (b) any claim by the third party in respect of the transaction or matter must be made against the trustee as trustee of the trust and extends only to the property of the trust.
- (3) Nothing in subsection (2) entitles a third party to have a claim against trust property other than to the extent that the trustee has a claim against the trust or has a beneficial interest in the trust.
- (4) Subsection (2) does not apply in respect of any transaction or matter in which the trustee acts in breach of trust.
- (5) If the trustee does not inform a third party to the transaction or matter [in writing], and the third party is otherwise unaware, that the trustee is acting as a trustee —
 - (a) the trustee is personally liable to the third party in respect of the transaction or matter, and
 - (b) the trustee has a right of indemnity against the property of the trust in any claim by the third party against the trustee personally in respect of the transaction or matter, unless —
 - (i) the trustee has acted in breach of trust, or
 - (ii) the right of indemnity has been otherwise excluded.
- (6) Nothing in this section affects —

- (a) a trustee’s liability for breach of trust or any claim for breach of warranty of authority, or
 - (b) a trustee’s duty under any statutory provision to disclose that the trustee acts as a trustee.
- (7) In this section, “matter affecting the trust” includes court proceedings properly brought or defended by a trustee when acting on behalf of the trust and references to a claim or liability in relation to such a matter include liability for any costs connected with those proceedings.
- (8) “Third party” includes a settlor, beneficiary, enforcer (within the meaning given in section 1(1)(d) of the *Purpose Trusts Act 1996*) or protector where such a person does not contract with the trustee in such a capacity.
- (9) This section applies to trusts whether created before or after its commencement but only in respect of transactions or matters referred to in subsection (1) taking place on or after its commencement. **22**

7 Insertion of new section 37A

After section 37 (authorised unit trusts), insert —

37A Validation of appointments where objects are excluded or take illusory shares

- (1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that —
- (a) an unsubstantial, illusory or nominal share only is appointed to any one or more of the objects of the power,
 - (b) an unsubstantial, illusory or nominal share only is left unappointed to devolve upon any one or more of those objects, or
 - (c) any object of the power is excluded under the exercise of the appointment.
- (2) An appointment referred to in subsection (1) shall be valid even though one or more of the objects of the power does not take a share in the property under that appointment or in default of any appointment.
- (3) This section does not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

- (4) This section applies to appointments made before or on or after this section comes into operation. **22**

8 Amendment of section 39

In section 39(1) (interpretation), at the appropriate place in the order insert —

23 “protector” has the meaning given in section 6 of the *Trusts Act 1995*; **22**.

9 Amendment of Schedule 1

In Schedule 1 (application of duty of care), after paragraph 2 (acquisition of land) insert —

24 *Contracts*

2A. The duty of care applies to a trustee —

- (a) when exercising the power under section 10A to enter into a contract with himself in his capacity of trustee of more than one trust;
- (b) when exercising any other power to enter into a contract with himself in his capacity of trustee of more than one trust, however conferred;
- (c) when exercising any power in relation to a contract entered into under a power mentioned in sub-paragraph (a) or (b).

Third Parties

2B. The duty of care applies to a trustee when entering into a transaction or other matter affecting the trust which involves a third party. **22**

PART 3 – AMENDMENT OF THE TRUSTEE ACT 1961

10 General

The Trustee Act 1961 is amended in accordance with this Part.

11 Amendment of section 55

In section 55(1) (power of court to authorise dealings with trust property), for “Where in the management or administration of” substitute **25** “Where any transaction affecting or concerning **22**.”

12 Insertion of new section 55A

After section 55, insert —

55A Power to declare exercise of a power voidable

- (1) This section applies to the exercise of a power by a trustee over or in respect of a trust or any transaction affecting or concerning trust property.
- (2) The court may, in the circumstances set out in subsection (3) and on the application of A, declare that such a transfer or other disposition is —
 - (a) voidable and has such effect as the court may determine; or
 - (b) void from the time of its exercise.
- (3) Those circumstances are where the trustee —
 - (a) failed to take into account any relevant considerations and, but for that failure, would not have exercised the power, or would not have exercised the power in the way or at the time it was exercised; or
 - (b) took into account irrelevant considerations and, but for doing so, would not have exercised the power, or would not have exercised the power in the way or at the time it was exercised.
- (4) It does not matter whether or not the circumstances set out in subsection (3) occurred as a result of a lack of care or other fault —
 - (a) on the part the trustee; or
 - (b) any other person giving advice in relation to the exercise of the power.
- (5) Nothing in this section affects a court’s power to set aside a transaction on the grounds of mistake.
- (6) This section applies to the transfer or other disposition of property to a trust, any transaction affecting or concerning trust property, or the exercise of any power over or in relation to a trust or trust property that occurs before or after the commencement of this section. **22**

13 Amendment of section 61

In section 61 (trustee, executor, etc, may apply by petition, etc, to judge of Civil Division of High Court for opinion, advice, etc, in management, etc, of trust property) for “, advice, or direction” (3 times) substitute **63** or advice **22**.

PART 4 – OTHER AMENDMENTS

14 Amendment of the Limitation Act 1984

- (1) The Limitation Act 1984 is amended as follows.
- (2) In section 18(1) (land held on trust), omit “and (2)”.
- (3) For section 21 (time limit for actions in respect of trust property) substitute –

21 Time limit for actions in respect of trust property

- (1) No period of limitation prescribed by this Act shall apply to an action brought against a trustee –
 - (a) in respect of any fraud to which the trustee was a party or privy; or
 - (b) to recover from the trustee trust property –
 - (i) in his possession;
 - (ii) under his control; or
 - (iii) previously received by him and converted to his use.
- (2) Where subsection (1) does not apply, an action by a beneficiary to recover trust property or in respect of any breach of trust, shall not be brought after the expiry of 3 years from whichever is the earlier of –
 - (a) the date of delivery of the final accounts to the beneficiary; or
 - (b) the date on which the beneficiary first has knowledge of the breach of trust.
- (3) Where, at the time of the breach, the beneficiary referred to in subsection (2) is a minor or is under any other legal disability the period referred to in that subsection shall not begin to run before the beneficiary –
 - (a) ceases to be a minor or under that other legal disability (as the case may be), or
 - (b) if sooner, dies.
- (4) Where subsection (1) does not apply, an action by an enforcer against a trustee in respect of a breach of trust shall not be brought after the expiry of 3 years from the earlier of –
 - (a) the date of delivery of the final accounts to the enforcer; or
 - (b) the date on which the enforcer first has knowledge of the breach of trust.

- (5) Where subsection (1) does not apply, an action by a trustee against a former trustee in respect of a breach of trust shall not be brought after the expiry of 3 years from the date on which the former trustee ceased to be a trustee.
 - (6) Where subsection (1) does not apply, an action in respect of a breach of trust shall not be brought against a trustee by any person after the expiry of the period of 21 years following the occurrence of the breach. **22**
- (4) In section 22 (time limit for actions claiming personal estate of deceased person), omit “and (2)”.

15 Amendment of the Apportionment Act 1982

- (1) The Apportionment Act 1982 is amended as follows.
- (2) After section 2 (recovery of apportioned income), insert —

2A New Trusts

- (1) A “new trust” is —
 - (a) a trust created or arising on or after the day on which this section comes into operation; and
 - (b) includes a trust created or arising on or after that day under a power conferred before that day.
- (2) Any entitlement to income under a new trust is to income as it arises (and accordingly section 1 of this Act does not apply in relation to such a trust).
- (3) The following do not apply in relation to a new trust —
 - (a) the rule known as the rule in *Howe v Earl of Dartmouth 1802* (the first part of which requires certain residuary personal estate to be sold and the second part of which withholds from a life tenant income arising from certain investments and compensates the life tenant with payments of interest);
 - (b) the rule known as the rule in *Re Earl of Chesterfield’s Trusts 1883* (which requires the proceeds of the conversion of certain investments to be apportioned between capital and income);
 - (c) the rule known as the rule in *Allhusen v Whittell 1867* (which requires a contribution to be made from income for the purpose of paying a deceased person’s debts, legacies and annuities).
- (4) Trustees have the power to sell any property which, but for the first part of the rule in *Howe v Earl of Dartmouth 1802*, they would have been under a duty to sell.

- (5) Subsections (2) to (4) are subject to any contrary intention in —
 - (a) any trust instrument of the trust; and
 - (b) any power under which the trust is created or arises. **22**