

Jersey Law 9/1989

TRUSTS (AMENDMENT) (JERSEY) LAW, 1989

A LAW to amend the Trusts (Jersey) Law, 1984, sanctioned by Order of Her Majesty in Council of the

13th day of JUNE, 1989

(Registered on the 21st day of July, 1989.)

STATES OF JERSEY

The 21st day of February, 1989

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

ARTICLE 1

After Article 8 of the Trusts (Jersey) Law, 1984¹ (hereinafter referred to as “the principal Law”) there shall be added the following Article –

“ARTICLE 8A

Transfer of property to a trust

- (1) Nothing in the terms of a trust shall cause a transfer or disposition of property to a trust to be invalidated by application of the rule “donner et retenir ne vaut”.
- (2) If a person domiciled outside Jersey transfers or disposes of property during his lifetime to a trust –

¹ Volume 1984–1985, page 36.

- (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 (including, but without prejudice to the generality of the foregoing, forced heirship, “légitime” or similar rights) of the law of his domicile or any other system of law shall affect any such transfer or disposition or otherwise affect the validity of such trust.

(3) For the avoidance of doubt it is declared that the provisions of this Article shall apply notwithstanding any other provisions of this Law and shall apply only to transfers or dispositions of property made to a trust after the commencement of the Trusts (Amendment) (Jersey) Law, 1989, but this declaration shall be without prejudice to the validity or otherwise of transfers or dispositions made before that time.

(4) In this Article –

- (a) the expressions “donner et retenir ne vaut”, and “légitime” have the meanings assigned to them by Jersey customary law; and
- (b) a reference to forced heirship is a reference to a legal rule restricting the right of a person to dispose of his property during his lifetime so as to preserve such property for distribution at his death, or having similar effect.”.

ARTICLE 2

At the end of clause (i) of sub-paragraph (b) of paragraph (2) of Article 10 of the principal Law² there shall be inserted the words “or in breach of fiduciary duty”.

² Volume 1984–1985, page 38.

ARTICLE 3

In paragraph (3) of Article 17 of the principal Law –³

- (a) for the word “A” there shall be substituted the words “Subject to the terms of the trust, a”;
- (b) the words “subject to the terms of the trust,” in subparagraphs (a) and (c) shall be deleted; and
- (c) paragraph (b) shall be deleted.

ARTICLE 4

For paragraph (2) of Article 22 of the principal Law⁴ there shall be substituted the following paragraph –

“(2) A trustee may reimburse himself out of the trust for or pay out of the trust all expenses and liabilities reasonably incurred in connexion with the trust.”.

ARTICLE 5

In Article 26 of the principal Law⁵

- (a) before paragraph (1) there shall be inserted the following paragraph –

“(A1) Subject to this Law and to the terms of the trust, a trustee shall be liable for a breach of trust committed by him or in which he has concurred.”;
- (b) in paragraph (1) for the words “commits or concurs in” there shall be substituted the words “is liable for”; and

³ Volume 1984–1985 page 42.

⁴ Volume 1984–1985, page 45.

⁵ Volume 1984–1985, page 46.

- (c) for paragraph (9) there shall be substituted the following paragraph –

“(9) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from his own fraud, wilful misconduct or gross negligence.”.

ARTICLE 6

For Article 28 of the principal Law⁶ there shall be substituted the following Article –

“ARTICLE 28

Dealings by trustee with other parties

(1) Subject to paragraph (2), where in any transaction or matter affecting a trust a trustee informs another party to the transaction or matter that he is acting as trustee, a claim by such other party in relation to that transaction or matter shall extend only to the trust property.

(2) Nothing in paragraph (1) shall affect the liability of a trustee for breach of trust.

(3) Where in any such transaction or matter as is referred to in paragraph (1), a trustee fails to inform such other party that he is acting as trustee and that party is otherwise unaware of it, the trustee shall –

- (a) be personally liable to such other party in respect thereof; and
- (b) have a right of recourse to the trust property by way of indemnity against such personal liability.”.

⁶ Volume 1984–1985, page 28.

ARTICLE 7

In Article 30 of the principal Law –⁷

- (a) for the heading there shall be substituted the heading **“Position of outgoing trustee.”**;
- (b) in paragraph (1) for the word “When” there shall be substituted the words “Subject to paragraph (1A), when”;
- (c) after paragraph (1) there shall be inserted the following paragraph –

“(1A) A trustee who resigns, retires or is removed may require to be provided with reasonable security for liabilities whether existing future contingent or otherwise before surrendering trust property.”;

- (d) in paragraph (2) –
 - (i) for the word “actions” there shall be substituted the word “liability”; and
 - (ii) for sub-paragraph (b) there shall be substituted the following sub-paragraph –

“(b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees”; and

- (e) paragraph (3) shall be deleted.

⁷ Volume 1984–1985, page 49.

Jersey Law 9/1989

Trusts (Amendment) (Jersey) Law, 1989

ARTICLE 8

For paragraph (2) of Article 39 of the principal Law⁸ there shall be substituted the following paragraph –

“(2) Notwithstanding paragraph (1), the trustee may require to be provided with reasonable security for liabilities whether existing future contingent or otherwise before distributing trust property.”.

ARTICLE 9

At the end of sub-paragraph (b) of paragraph (3) of Article 50 of the principal Law⁹ there shall be inserted the words “or a person (other than the trustee himself) deriving title through such a person”.

ARTICLE 10

Sub-paragraph (b) of paragraph (1) of Article 55 of the principal Law¹⁰ shall be deleted.

ARTICLE 11

This Law may be cited as the Trusts (Amendment) (Jersey) Law, 1989.

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⁸ Volume 1984–1985, page 55.

⁹ Volume 1984–1985, page 62.

¹⁰ Volume 1984–1985, page 65.