
TRUSTS (AMENDMENT) BILL 2014

Explanatory Memorandum

1. This Bill is promoted by the Treasury.
2. The objective of the Bill is —
 - (a) to amend the Trustee Act 1961 to remove the requirement for there to be two individuals or a trust corporation acting as trustees of a trust (and to make consequential amendments to the Settled Land Act 1891);
 - (b) to amend the Perpetuities and Accumulations Act 1968 to remove the requirement for future dispositions to vest within a perpetuity period; and
 - (c) to amend the Trusts Act 1995 to widen the exclusions of foreign law concerning trusts governed by the law of the Island.
3. Clause 1 states the short title of the Bill.
4. Clause 2 provides for the Bill to commence by appointed day order made by the Treasury.
5. Clause 3 amends the Settled Land Act 1891 so as to enable a settlement under that Act to have one or more trustees.
6. Clause 4 amends the Trustee Act 1961 so as to enable a trust to have one or more trustees.
7. Clause 5 amends the Perpetuities and Accumulations Act 1968 so as to abolish the rule against perpetuities in relation to future dispositions (but without precluding the creation of a trust for a specific or ascertainable period).
8. Clause 6 amends the Trusts Act 1995 so as —
 - (a) to widen the exclusion of foreign legal provisions when determining the validity of a trust governed by the laws of the Island or the capacity of the persons connected with it; and
 - (b) to exclude the recognition or enforcement of foreign court judgments which would be inconsistent with the Trusts Act 1995, unless the High Court so orders.
9. Clause 7 provides for the expiry of the resultant Act (which will not affect the amendments made by it).
10. The Bill is not expected to have any significant effect on public revenue, expenditure or personnel.
11. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



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TRUSTS (AMENDMENT) BILL 2014

A **BILL** to amend the Trustee Act 1961 to remove the requirement for there to be two individuals or a trust corporation acting as trustees in certain circumstances; to amend the Perpetuities and Accumulations Act 1968 to remove the requirement for future dispositions to vest within a perpetuity period and to make consequential amendments to the Settled Land Act 1891; to amend the Trusts Act 1995 to widen the exclusions of foreign law concerning trusts governed by the law of the Island; 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:—

1 Short title

The short title of this Act is the Trusts (Amendment) Act 2014.

2 Commencement

- (1) This Act (apart from this section and section 1) comes into operation on such day or days as the Treasury by order appoints and different days may be appointed for different purposes.
- (2) An order under subsection (1) may make transitional and saving provisions which the Treasury considers necessary or expedient.

3 Settled Land Act 1891 amended

- (1) The *Settled Land Act 1891* is amended as follows.
- (2) For section 34 (number of trustees to act), substitute —

34 References to trustees to include surviving or continuing trustee

A reference in this Act to the trustees of a settlement applies to the surviving or continuing trustee or trustees of the settlement for the time being.

34A Payment of capital money to trustees

- (1) Capital money arising under this Act must be paid to the trustees of the settlement.
- (2) In subsection (1), “**trustees of the settlement**” includes a sole trustee (where the settlement has a sole trustee), whether or not the sole trustee is a trust corporation. **22**.
- (3) In section 40 (notice to trustees), subsection (2) is repealed.

4 Trustee Act 1961 amended

- (1) The *Trustee Act 1961* is amended as follows.
- (2) In section 12 (power of trustees to give receipts), subsection (2) is repealed.
- (3) In section 36 (supplemental provisions as to appointment of trustees) —
 - (a) at the beginning of subsection (1), insert **66** Subject to subsection (2), **22**;
 - (b) for subsection (1)(c) substitute —
 - 66**(c) it shall not be obligatory —
 - (i) to appoint more than one new trustee, where only one trustee was originally or previously appointed;
 - (ii) to fill up the original or previous number of trustees, where more than one trustee was originally or previously appointed; or
 - (iii) for there to be more than one trustee to perform the trust; and **22**; and
 - (c) for subsection (2) substitute —
 - 66**(2) Subsection (1) has effect —
 - (a) if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust; and
 - (b) subject to the terms of that instrument. **22**.
- (4) In section 38 (retirement of trustee without a new appointment) —
 - (a) in the marginal note (section heading), omit **63** without a new appointment **22**; and
 - (b) in subsection (1) —
 - (i) for **63** “either a trust corporation or at least two individuals to act as trustees **22** substitute **63** a continuing trustee or continuing trustees **22**;
 - (ii) for **63** his co-trustees **22** and **63** the co-trustees **22** substitute **63** the continuing trustee or continuing trustees **22**; and

- (iii) for **“**without any new trustee being appointed in his place**”** substitute **“**whether or not a new trustee is appointed in his place**”**.

5 Perpetuities and Accumulations Act 1968 amended

- (1) The *Perpetuities and Accumulations Act 1968* is amended as follows.
- (2) In section 1 (power to specify perpetuity period), in subsection (1) —
- (a) for **“**Subject to section 10(2) of this Act and subsection (2) below**”** substitute **“**Subject to subsection (2), section 1A and section 10(2)**”**; and
- (b) for **“**any disposition is made**”** substitute **“**any disposition made before section 1A comes into operation**”**.
- (3) After section 1 insert —

1A Abolition of the rule against perpetuities for future dispositions

- (1) Section 1 does not apply to —
- (a) a disposition made after this section comes into operation; or
- (b) a disposition in trust (whenever made), the governing law of which is changed to the law of the Island in accordance with section 3 of the *Trusts Act 1995* after this section comes into operation.
- (2) The rule against perpetuities is abolished in respect of a disposition specified in subsection (1).
- (3) Subsections (4) and (5) apply in relation to a disposition under subsection (1)(b).
- (4) The application of this section does not operate to validate an interest disposed of which was invalid immediately before the change of governing law.
- (5) The possibility of the disposition being treated as void at a future date under the law governing the disposition immediately before the change of governing law to the law of the Island is to be ignored.
- (6) In subsection (1) **“disposition”** includes —
- (a) a disposition made in exercise of a power of appointment, whether or not a perpetuity period is specified in the instrument creating the power; and
- (b) a disposition in trust, whether or not—
- (i) a previous disposition has been made in relation to the trust; and

- (ii) section 1 applies in relation to the previous disposition.
- (7) Nothing in this section precludes the creation of a trust for a specified or ascertainable period. **22**.
- (4) In section 13(2) (interpretation), after the definition of “power of appointment” insert the following definition —
 - 23** “the rule against perpetuities” includes —
 - (a) the application or effect of that rule in respect of accumulations; and
 - (b) the rule of law prohibiting trusts of excessive duration; **22**.

6 Trusts Act 1995 amended

- (1) The *Trusts Act 1995* is amended as follows.
- (2) In section 5 (exclusion of foreign law) —
 - (a) re-number the existing text as subsection **24**(1) **22**;
 - (b) in subsection (1), for **24** nor is the capacity of any settlor to be questioned **22** substitute **24** nor is the capacity of a settlor, trustee, protector or beneficiary to be questioned, nor is any person to be subjected to an obligation or liability or deprived of a right, claim or interest, **22**;
 - (c) in subsection (1)(b)(i), for **24** the settlor **22** substitute **24** a settlor or beneficiary **22**; and
 - (d) after subsection (1), insert —
 - 24**(2) No judgment or order of a court outside the Island is to be recognised or enforced or give rise to any right, obligation or liability or raise any estoppel if and to the extent that —
 - (a) it is inconsistent with this Act; or
 - (b) the High Court so orders —
 - (i) for the purpose of protecting the interests of the beneficiaries of the trust; or
 - (ii) in the interests of the proper administration of the trust.
- (3) Subsection (2) has effect despite any other statutory provision or rule of law in relation to the recognition or enforcement of judgments.
- (4) This section applies —
 - (a) whenever the trust or disposition arose or was made; and
 - (b) despite any other statutory provision. **22**;
- (3) In section 6 (interpretation) —

- (a) before the definition of “disposition” insert the following definition —

“**beneficiary**” means a person entitled to benefit under a trust or in whose favour a power to distribute property may be exercised; and

- (b) after the definition of “personal relationship” insert the following definition —

“**protector**” means a person other than a trustee who, as the holder of an office created by or under the terms of a trust, is authorised or required to participate in the administration of the trust.

7 Expiry

- (1) This Act ceases to have effect on the day following —
- (a) its promulgation; or
 - (b) if all of its provisions are not in operation when it is promulgated, the day on which the last of those provisions comes into operation.
- (2) Subsection (1) does not affect the continuing validity of the amendments made by sections 3 to 6.