

STANDARD PROVISIONS OF THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS

1. INTRODUCTORY

- 1(1) These Provisions may be called the standard provisions of the Society of Trust and Estate Practitioners (1st Edition).
- 1(2) These Provisions may be incorporated in a document by the words:-
The standard provisions of the Society of Trust and Estate Practitioners (1st Edition) shall apply
or in any manner indicating an intention to incorporate them.

2. INTERPRETATION

- 2(1) In these Provisions, unless the context otherwise requires:-
- (a) **Income Beneficiary**, in relation to Trust Property, means a Person to whom income of the Trust Property is payable (as of right or at the discretion of the Trustees).
 - (b) **Person** includes a person anywhere in the world and includes a Trustee.
 - (c) **The Principal Document** means the document in which these Provisions are incorporated.
 - (d) **The Settlement** means any settlement created by the Principal Document and an estate of a deceased Person to which the Principal Document relates.
 - (e) **The Trustees** means the personal representatives or trustees of the Settlement for the time being.
 - (f) **The Trust Fund** means the property comprised in the Settlement for the time being.
 - (g) **Trust Property** means any property comprised in the Trust Fund.
 - (h) **A Professional Trustee** means a Trustee who is or has been carrying on a business which consists of or includes the management of trusts or the administration of estates.
- 2(2) These Provisions have effect subject to the provisions of the Principal Document.

3. ADMINISTRATIVE POWERS

The Trustees shall have the following powers:

3(1) *Investment*

- (a) The Trustees may invest Trust Property in any manner as if they were beneficial owners. In particular the Trustees may invest in unsecured loans.
- (b) The Trustees may decide not to diversify the Trust Fund.

3(2) *Management*

The Trustees may effect any transaction relating to the management administration or disposition of Trust Property as if they were beneficial owners. In particular:

- (a) The Trustees may repair and maintain Trust Property.
- (b) The Trustees may develop or improve Trust Property.

3(3) *Joint property*

The Trustees may acquire property jointly with any Person.

3(4) *Income and capital*

The Trustees may decide not to hold a balance between conflicting interests of Persons interested in Trust Property. In particular:

- (a) The Trustees may acquire
 - (i) wasting assets and
 - (ii) assets which yield little or no income for investment or any other purpose.
- (b) The Trustees may decide not to procure distributions from a company in which they are interested.
- (c) The Trustees may pay taxes and other expenses out of income although they would otherwise be paid out of capital.

3(5) *Accumulated income*

The Trustees may apply accumulated income as if it were income arising in the current year.

3(6) *Use of trust property*

The Trustees may permit an Income Beneficiary to occupy or enjoy the use of Trust Property on such terms as they think fit. The Trustees may acquire any property for this purpose.

3(7) *Application of trust capital*

The Trustees may:

- (a) lend money which is Trust Property to an Income Beneficiary without security, on such terms as they think fit,

- (b) charge Trust Property as security for debts or obligations of an Income Beneficiary, or
- (c) pay money which is Trust Property to an Income Beneficiary as his income, for the purpose of augmenting his income

Provided that:–

- (i) the Trustees have power to transfer such Property to that Beneficiary absolutely; or
- (ii) the Trustees have power to do so with the consent of another Person and the Trustees act with the written consent of that Person.

3(8) *Trade*

The Trustees may carry on a trade, in any part of the world, alone or in partnership.

3(9) *Borrowing*

The Trustees may borrow money for investment or any other purpose. Money borrowed shall be treated as Trust Property.

3(10) *Insurance*

The Trustees may insure Trust Property for any amount against any risk.

3(11) *Delegation*

A Trustee may delegate in writing any of his functions to any Person. A Trustee shall not be responsible for the default of that Person (even if the delegation was not strictly necessary or expedient) provided that he took reasonable care in his selection and supervision.

3(12) *Deposit of documents*

The Trustees may deposit documents relating to the Settlement (including bearer securities) with any Person.

3(13) *Nominees*

The Trustees may vest Trust Property in any Person as nominee, and may place Trust Property in the possession or control of any Person.

3(14) *Offshore administration*

The Trustees may carry on the administration of the trusts of the Settlement outside the United Kingdom.

3(15) *Payment of tax*

The Trustees may pay tax liabilities of the Settlement (and interest on such tax) even though such liabilities are not enforceable against the Trustees.

3(16) *Indemnities*

The Trustees may indemnify any Person for any liability properly chargeable against Trust Property.

3(17) Security

The Trustees may charge Trust Property as security for any liability properly incurred by them as Trustees.

3(18) Supervision of company

The Trustees are under no duty to enquire into the conduct of a company in which they are interested, unless they have knowledge of circumstances which call for enquiry.

3(19) Appropriation

The Trustees may appropriate Trust Property to any Person or class of Persons in or towards the satisfaction of their interest in the Trust Fund.

3(20) Receipt by charities

Where Trust Property is to be paid or transferred to a charity, the receipt of the treasurer or appropriate officer of the charity shall be a complete discharge to the Trustees.

3(21) Release of powers

The Trustees may by deed release any of their powers wholly or in part so as to bind future trustees.

3(22) Ancillary powers

The Trustees may do anything which is incidental or conducive to the exercise of their functions.

4. POWERS OF MAINTENANCE AND ADVANCEMENT

Sections 31 and 32 Trustee Act 1925 shall apply with the following modifications:

- (a) The Proviso to section 31(1) shall be deleted.
- (b) The words one-half of in section 32(1)(a) shall be deleted.

5. TRUST FOR SALE

The Trustees shall hold land in England and Wales on trust for sale.

6. MINORS

6(1) Where the Trustees may apply income for the benefit of a minor, they may

do so by paying the income to the minor's parent or guardian on behalf of the minor, or to the minor if he has attained the age of 16. The Trustees are under no duty to enquire into the use of the income unless they have knowledge of circumstances which call for enquiry.

- 6(2) Where the Trustees may apply income for the benefit of a minor, they may do so by resolving that they hold that income on trust for the minor absolutely and:
- (a) The Trustees may apply that income for the benefit of the minor during his minority.
 - (b) The Trustees shall transfer the residue of that income to the minor on attaining the age of 18.
 - (c) For investment and other administrative purposes that income shall be treated as Trust Property.

7. **DISCLAIMER**

A Person may disclaim his interest under the Settlement wholly or in part.

8. **APPORTIONMENT**

Income and expenditure shall be treated as arising when payable, and not from day to day, so that no apportionment shall take place.

9. **CONFLICTS OF INTEREST**

9(1) In this paragraph:

- (a) **A Fiduciary** means a Person subject to fiduciary duties under the Settlement.
- (b) **An Independent Trustee**, in relation to a Person, means a Trustee who is not:
 - (i) a brother, sister, ancestor, descendant or dependent of the Person;
 - (ii) a spouse of the Person or of (i) above; or
 - (iii) a company controlled by one or more of any of the above.

9(2) A Fiduciary may:

- (a) enter into a transaction with the Trustees, or
 - (b) be interested in an arrangement in which the Trustees are or might have been interested, or
 - (c) act (or not act) in any other circumstances
- even though his fiduciary duty under the Settlement conflicts with other duties or with his personal interest;

Provided that:—

- (i) The Fiduciary first discloses to the Trustees the nature and extent of any material interest conflicting with his fiduciary duties, and

- (ii) there is an Independent Trustee in respect of whom there is no conflict of interest, and he considers that the transaction arrangement or action is not contrary to the general interest of the Settlement.

9(3) The powers of the Trustees may be used to benefit a Trustee (to the same extent as if he were not a Trustee) provided that there is an Independent Trustee in respect of whom there is no conflict of interest.

10. POWERS OF TRUSTEES

The powers of the Trustees may be exercised:

- (a) at their absolute discretion; and
- (b) from time to time as occasion requires.

11. TRUSTEE REMUNERATION

11(1) A Trustee who is a solicitor or an accountant or who is engaged in a business may charge for work done by him or his firm in connection with the Settlement, including work not requiring professional assistance. This has priority to any disposition made in the Principal Document.

11(2) The Trustees may make arrangements to remunerate themselves for work done for a company connected with the Trust Fund.

12. LIABILITY OF TRUSTEES

12(1) A Trustee (other than a Professional Trustee) shall not be liable for a loss to the Trust Fund unless that loss was caused by his own fraud or negligence.

12(2) A Trustee shall not be liable for acting in accordance with the advice of Counsel of at least five years standing, with respect to the Settlement, unless, when he does so:—

- (a) he knows or has reasonable cause to suspect that the advice was given in ignorance of material facts; or
- (b) proceedings are pending to obtain the decision of the court on the matter.

13. APPOINTMENT AND RETIREMENT OF TRUSTEES

13(1) A Person may be appointed trustee of the Settlement even though he has no connection with the United Kingdom.

- 13(2) A Professional Trustee who is an individual who has reached the age of 65 shall retire if:—
- (a) he is requested to do so by his co-trustees, or by a Person interested in Trust Property; and
 - (b) he is effectually indemnified against liabilities properly incurred as Trustee.

On that retirement a new Trustee shall be appointed if necessary to ensure that there will be two individuals or a Trust Corporation to act as Trustee.

In this sub-paragraph Trust Corporation has the same meaning as in the Trustee Act 1925.

This sub-paragraph does not apply to a Professional Trustee who is:

- (a) a personal representative
- (b) the settlor of the Settlement or
- (c) a spouse or former spouse of the settlor or testator.

14. PROTECTION FOR INTEREST IN POSSESSION AND ACCUMULATION AND MAINTENANCE SETTLEMENTS

These Provisions shall not have effect:-

- (a) so as to prevent a Person from being entitled to an interest in possession in Trust Property (within the meaning of the Inheritance Tax Act 1984);
- (b) so as to cause the Settlement to be an accumulation or discretionary settlement (within the meaning of section 5 Taxation of Chargeable Gains Act 1992);
- (c) so as to prevent the conditions of section 71(1) Inheritance Tax Act 1984 from applying to Trust Property.