



Dubai
International
Financial
Centre

TRUST LAW
DIFC LAW NO. 4 OF 2018

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PART 1: GENERAL

1. Title and repeal

This Law repeals and replaces the Trust Law 2005 (DIFC Law No. 11 of 2005) as it was in force immediately prior to the commencement of this Law (the “Previous Law”), and may be cited as the “Trust Law 2018” or “this Law”.

2. Legislative authority

This Law is made by the Ruler.

3. Application of the Law

This Law applies in the jurisdiction of the Dubai International Financial Centre.

4. Scope of the Law

This Law applies to all DIFC trusts, other than trusts created under the Investment Trust Law (DIFC Law No. 5 of 2006), and to foreign trusts in respect of all acts, omission or transaction occurring in the DIFC, whenever the trust was created, provided that all questions arising from acts or omissions occurring prior to the commencement of this Law shall be determined in accordance with the Previous Law.

5. Date of enactment

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

6. Commencement

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

7. Interpretation

(1) Schedule 1 contains:

- (a) interpretative provisions which apply to this Law; and
- (b) a list of defined terms used in the Law.

(2) Schedule 2 contains provisions relating to the application of the Arbitration Law.

8. Administration of this Law

This Law is administered by the DIFCA.

9. Default and mandatory rules

(1) Except as otherwise provided in the terms of the trust, this Law governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

(2) The terms of a trust prevail over any provision of this Law, except:

- (a) the requirements for creating a trust;
- (b) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (c) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy in the DIFC, and possible to achieve;
- (d) the power of the Court to modify or terminate a trust in accordance with this Law;

- (e) the effect of a protective trust as provided in Part 6;
- (f) the power of the Court under Article 56 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;
- (g) the effect of an exculpatory term under Article 79;
- (h) the rights under Article 82 of a person other than a trustee or beneficiary;
- (i) periods of limitation for commencing a judicial proceeding;
- (j) the power of the Court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and
- (k) the jurisdiction and powers of the Court under Articles 19 and 20.

10. Common law and principles of equity

- (1) The common law of trusts and principles of equity supplement this Law, except to the extent modified by this Law or any other DIFC law or by the Court.
- (2) The statute law of England and Wales applicable to trusts does not, except to the extent it is replicated in this Law, apply in the DIFC.

PART 2: CHOICE OF GOVERNING LAW; PLACE OF ADMINISTRATION**11. Governing law**

- (1) The meaning and effect of the terms of a trust are:
 - (a) determined by the law of the jurisdiction expressed by the terms of the trust as the governing law; failing which
 - (b) to be implied from the terms of the trust; or failing which
 - (c) to be determined by the law with which the trust at the time it was created had the closest connection.
- (2) The references in Article 11(1)(a) and (b) to “failing which” include references to cases:
 - (a) where no law is expressed or implied under Article 11(1)(a) or (b); and
 - (b) where a law is so expressed or implied, but that law does not provide for trusts or the category of trusts concerned.
- (3) In ascertaining, for the purpose of Article 11(1)(c), the law with which a trust had the closest connection, 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.
- (4) A settlor may, whether or not he is resident in the DIFC, expressly declare in the trust instrument that the laws of the DIFC shall be the governing law of the trust.
- (5) A term of the trust expressly declaring that the laws of the DIFC shall govern the trust is valid, effective and conclusive regardless of any other circumstance.

12. Provision for change of governing law

- (1) Where a term of a trust so provides, the governing law may be changed to or from the laws of the DIFC, in the manner prescribed by the terms of the trust, if:
 - (a) in the case of a change of the governing law to the laws of the DIFC by a foreign trust, such change is recognised by the governing law previously in effect; or
 - (b) in the case of a change of the governing law from the laws of the DIFC, the new governing law would recognise the validity of the trust and either all the trusts, powers and provisions of the trust remain enforceable, capable of being exercised and so taking effect or, prior to the change, the trustee obtains the approval of the Court to the change.
- (2) Where the governing law of the trust changes to DIFC law, that trust shall be for all purposes a DIFC trust.
- (3) A change in the governing law shall not affect the legality or validity of, or render any person liable for, anything done before the change.
- (4) If a foreign trust becomes a DIFC trust, notwithstanding Article 9(2) the trustee may:
 - (a) Exercise any power conferred upon the trustee to postpone the date of termination of the trust without reference to any limitations expressed upon that power by reference to a perpetuity period of any other jurisdiction; and

- (b) If no power is conferred upon the trustee to postpone the date of termination of the trust, apply to the Court for an order conferring such power which application the Court may grant absolutely or subject to such conditions as to the Court seem fit.

13. Matters determined by governing law

- (1) Subject to Article 13(2), all matters arising in regard to a DIFC trust or in regard to any disposition of property upon the trust thereof including questions as to:

- (a) the capacity of any settlor;
- (b) any aspect of the validity of the trust or disposition or the interpretation or effect thereof;
- (c) the administration of the trust, whether the administration be conducted in the DIFC or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment and removal; or
- (d) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment, and the validity of any exercise thereof,

shall be determined in accordance with the laws of the DIFC without reference to the laws of any other jurisdiction with which the trust or disposition may be connected.

- (2) Subject to Articles 14,15 and 16, Article 13(1) shall:

- (a) not validate any disposition of property which is neither owned by the settlor nor is the subject of a power in that behalf vested in the settlor;
- (b) not validate any trust or disposition of immovable property situated in a jurisdiction other than the DIFC in which such trust or disposition is invalid according to the laws of such jurisdiction;
- (c) not validate any testamentary trust or disposition which is invalid according to the laws of the testator's last domicile;
- (d) not affect the recognition of foreign laws in determining whether the settlor is or was the owner of the settled property or is or was the holder of a power to dispose of such property;
- (e) not affect the recognition of the laws of its place of incorporation in relation to the capacity of a corporation; and
- (f) not affect the recognition of foreign laws prescribing generally, without reference to the existence or terms of the trust, the formalities for the disposition of property.

14. Limitations in foreign law

- (1) Without limiting the generality of Article 13(1), no DIFC trust and no disposition of property to be held in trust that is valid under the laws of the DIFC is void, voidable, liable to be set aside or defective in any manner by reference to a foreign law; nor is the capacity of any settlor in relation to the trust or disposition to be questioned; nor is the trustee or any beneficiary or any other person to be subjected to any liability or deprived of any power or right, by reason that:

- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust;
- (b) the trust or disposition voids or defeats any rights, claims or interest conferred by foreign law upon any person by reason of a personal relationship to the settlor or any beneficiary or by way of heirship rights or contravenes any rule of foreign law or any foreign, judicial or administrative order, arbitration award or action intended to recognise, protect, enforce or give effect to any such rights, claims or

interest; or

- (c) the foreign law or foreign judicial or administrative order or arbitration award or imposes any obligation or liability on the settlor, trustee, enforcer, protector, beneficiary or any other party in relation to the trust or the trust property.
- (2) Subject to Article 14(3), a transfer of property to a trust shall not be void, voidable or liable to be set aside by reason of a Settlor's bankruptcy, the liquidation of a Settlor, or any action or claims made against a Settlor by any creditor, notwithstanding any foreign statute providing otherwise.
- (3) Notwithstanding Article 14(2), where the Court determines that, at the time when the property was transferred to a trust, a Settlor was insolvent or intended to defraud any creditor of the Settlor it may declare that the transfer of property was void to the extent of the creditor's claim.
- (4) In making claims to set aside transfers of property to a trust under Article 14(3), the burden of proof shall rest with the creditor.

15. Heirship rights

An heirship right conferred by foreign law in relation to the property of a living person shall not be recognised as:

- (a) affecting the ownership of immovable property in the DIFC and movable property wherever it is situated for the purposes of Article 13(2)(a) and (b) or for any other purpose; or
- (b) constituting an obligation or liability for any purpose.

16. Foreign judgments

A foreign judgment shall not be recognised or enforced or give rise to any estoppels insofar as it is inconsistent with Articles 14 and 15.

17. Place of administration

- (1) Without precluding other means for establishing a close connection with the designated jurisdiction, terms of a trust designating the place of administration are valid and conclusive if:
 - (a) a trustee's principal place of business is located in or a trustee is resident of the designated jurisdiction; or
 - (b) all or part of the administration occurs in the designated jurisdiction.
- (2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries or in furtherance of its purposes and in accordance with the terms of the trust.
- (3) Without precluding the right of the Court to order, approve, or disapprove a transfer in furtherance of the duty prescribed in Article 17(2), the trustee may transfer the trust's place of administration to another jurisdiction outside the DIFC.
- (4) In connection with a transfer of the trust's place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust.

PART 3: JUDICIAL AND NON JUDICIAL PROCEEDINGS**18. Role of the Court in administration of trust**

- (1) The Court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by Law.
- (2) A trust is not subject to continuing judicial supervision unless so ordered by the Court.
- (3) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

19. Jurisdiction of the Court

The Court has jurisdiction where:

- (a) the trust is a DIFC trust;
- (b) a trustee of a foreign trust is resident in the DIFC;
- (c) any trust property of a foreign trust is situated in the DIFC but only in respect of property so situated; or
- (d) administration of any trust property of a foreign trust is carried out in the DIFC.

20. Application to and certain powers of the Court

- (1) A trustee may make an application to the Court for direction, opinion or advice concerning the manner in which he may or should act in connection with any matter concerning the trust and the Court may make such order, if any, as it thinks fit.
- (2) The Court may if it thinks fit:
 - (a) make an order concerning:
 - (i) the execution or the administration of any trust;
 - (ii) the trustee of any trust, including an order relating to:
 - A. the exercise of any power, discretion or duty of the trustee;
 - B. the appointment or removal of a trustee;
 - C. the remuneration of a trustee;
 - D. the submission of accounts;
 - E. the conduct of the trustee; and
 - F. payments, whether payments into Court or otherwise;
 - (iii) the vesting of trust property;
 - (iv) a beneficiary or any person having a connection with the trust as the Court may determine; or
 - (v) the appointment or removal of an enforcer in relation to any non-charitable purposes of the trust;
 - (b) make a declaration as to the validity or the enforceability of a trust;
 - (c) rescind or vary any order or declaration made under this Law, or make any new or further order or declaration; or
 - (d) rectify the terms on an instrument creating or governing a trust so that it conforms

to the actual intentions of the party or parties to the instrument at the time of its execution as to either:

- (i) its legal effect; or
 - (ii) its intended operation in the circumstances of the case.
- (3) The Court may in any proceeding under this Part by order appoint a person to represent the interests of a person who the Court is satisfied is, or may become, a beneficiary under a trust, where:
- (a) the person is unborn; or
 - (b) the Court is satisfied that the person is unable to act on his, her or its own behalf;
- and may by order remove such person and give directions as to service of such person.
- (4) A person so appointed may represent the person whose interests he has been appointed to protect in any dealing with the trust or in any proceeding under this Part.
- (5) Where a representative has been appointed under Article 20(3), no settlement affecting a person to whom Article 20(3)(b) applies or the rights of beneficiaries not yet in existence shall be valid without the approval of the Court.
- (6) Articles 20(4) and 20(5) shall apply irrespective of any provision in the trust instrument.

21. Payment of costs

The costs and expenses of and incidental to an application to the Court under this Law shall be paid out of the trust property or be borne and paid in such other manner or by such other person as the Court may order.

22. Articles 23 to 28: Interpretation

- (1) In Articles 23 to 28:
- (a) references to a “transfer or other disposition of property” to a trust, do not include a testamentary disposition; and
 - (b) “power” includes a discretion as to the way in which an obligation is performed.
- (2) In Articles 24 and 26, “mistake” includes (but is not limited to):
- (a) a mistake as to:
 - (i) the effect of;
 - (ii) any consequences of; or
 - (iii) any of the advantages to be gained by,
 - a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property;
 - (b) a mistake as to a fact existing either before or at the time of, a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property; or
 - (c) a mistake of law including a law of a foreign jurisdiction.

23. Application of powers under Articles 24 to 28

Articles 24 to 28 apply in relation to the transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or trust property that occurs either before or after the coming into force of this Law.

24. Power to set aside a transfer or disposition of property to a trust due to mistake

- (1) In this Article, “person exercising a power” means a person who exercises a power to transfer or make other disposition of property to a trust on behalf of a settlor.
- (2) The Court may on the application of any person specified in Article 28(1), and in the circumstances set out in Article 24(3), declare that a transfer or other disposition of property to a trust:
 - (a) by a settlor acting in person (whether alone or with any other settlor); or
 - (b) through a person exercising a power,is voidable and:
 - (c) has such effect as the Court may determine; or
 - (d) is of no effect from the time of its exercise.
- (3) The circumstances referred to in Article 24(2) are where the settlor or person exercising a power:
 - (a) made a mistake in relation to the transfer or other disposition of property to a trust;
 - (b) would not have made that transfer or other disposition but for that mistake; and
 - (c) the mistake is of so serious a character as to render it just for the Court to make a declaration under this Article.

25. Power to set aside a transfer or disposition of property to a trust exercised by fiduciary power

- (1) In this Article, “person exercising a power” means a person who exercises a power to transfer or make other disposition of property to a trust on behalf of a settlor and who owes a fiduciary duty to the settlor in relation to the exercise of his or her power.
- (2) The Court may on the application of any person specified in Article 28(1), and in the circumstances set out in Article 25(3), declare that a transfer or other disposition of property to a trust by a settlor (whether alone or with any other settlor) through a person exercising a power, is voidable and:
 - (a) has such effect as the Court may determine; or
 - (b) is of no effect from the time of its exercise.
- (3) The circumstances referred to in Article 25(2) are where, in relation to the exercise of his or her power, the person exercising a power:
 - (a) failed to take into account any relevant considerations or took into account irrelevant considerations; and
 - (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for that failure to take into account relevant considerations or that taking into account of irrelevant considerations.

- (4) This Article applies whether or not the circumstances set out in Article 25(3) occurred as a result of any lack of care or other fault on the part of the person exercising a power, or on the part of any person giving advice in relation to the exercise of the power.

26. Power to set aside the exercise of powers in relation to a trust or trust property due to mistake

- (1) In this Article, “person exercising a power” means a person who, otherwise than in the capacity of trustee, exercises a power over, or in relation to a trust, or trust property.
- (2) The Court may on the application of any person specified in Article 28(2), and in the circumstances set out in Article 26(3), declare that the exercise of a power by a trustee or a person exercising a power over, or in relation to a trust, or trust property, is voidable and:
- (a) has such effect as the Court may determine; or
 - (b) is of no effect from the time of its exercise.
- (3) The circumstances referred to in Article 26(2) are where the trustee or person exercising a power:
- (a) made a mistake in relation to the exercise of his or her power;
 - (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for that mistake; and
 - (c) the mistake is of so serious a character as to render it just for the Court to make a declaration under this Article.

27. Power to set aside the exercise of fiduciary powers in relation to a trust or trust property

- (1) In this Article, “person exercising a power” means a person who, otherwise than in the capacity of trustee, exercises a power over, or in relation to a trust, or trust property and who owes a fiduciary duty to a beneficiary in relation to the exercise of that power.
- (2) The Court may on the application of any person specified in Article 28(2), and in the circumstances set out in Article 27(3), declare that the exercise of a power by a trustee or a person exercising a power over, or in relation to a trust, or trust property, is voidable and:
- (a) has such effect as the Court may determine; or
 - (b) is of no effect from the time of its exercise.
- (3) The circumstances referred to in Article 27(2) are where, in relation to the exercise of his or her power, the trustee or person exercising a power:
- (a) failed to take into account any relevant considerations or took into account irrelevant considerations; and
 - (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for that failure to take into account relevant considerations, or that taking into account of irrelevant considerations.
- (4) This Article applies whether or not the circumstances set out in Article 27(3) occurred as a result of any lack of care or other fault on the part of the trustee or person exercising a power, or on the part of any person giving advice in relation to the exercise of the power.

28. Applications and orders under Articles 24 to 27

- (1) An application under Article 24(2) or 25(2) may be made by any settlor or any of his or her personal representatives or successors in title.

- (2) An application under Article 26(2) or 27(2) may be made by:
 - (a) the trustee who exercised the power concerned, or the person exercising a power (as the case may be);
 - (b) any other trustee;
 - (c) a beneficiary, enforcer or protector;
 - (d) the settlor, his heirs, or DIFCA in relation to a trust containing charitable trusts, powers or provisions; or
 - (e) any other person with leave of the Court.
- (3) Without prejudice to Article 20 and subject to Article 28(4), the Court may, consequential upon a declaration made under any of Articles 24 to 27, make such order as it thinks fit.
- (4) No order may be made under Article 28(3) which would prejudice any purchaser in good faith for value of any trust property without notice of the matters which render the transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or trust property, voidable.

29. Savings in respect of applications made under Articles 24 to 27

Nothing in Articles 24 to 27 shall prejudice:

- (a) any application for a declaration that a transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or trust property, is void or voidable on grounds other than those specified in Articles 24 to 27; or
- (b) any personal remedy which may be available against a trustee or any other person.

30. Articles 31, 32 and Schedule 2: Interpretation

For the purposes of Articles 31 and 32 and Schedule 2:

"administration question" means any relief or question in respect of which an action, application or other reference to the court could be brought or made under this Law;

"dispute" includes a difference;

"power holder" means any person holding a power in relation to a trust (including any power of appointment, consent, direction, revocation or variation, and any power to appoint or remove trustee or power holders) and includes a person in the position of a protector or enforcer; and

"the parties in relation to the trust" means any trustee, beneficiary or power holder of or under the trust, in their capacity as such.

31. Arbitration of trust disputes

- (1) Where a trust instrument provides that any dispute or administration question arising between any of the parties in relation to the trust shall be submitted to arbitration ("a trust arbitration"), that provision shall, for all purposes under the Arbitration Law have effect as between those parties as if it were an arbitration agreement and as if those parties were parties to that agreement.
- (2) Where a trust instrument does not provide that any dispute or administration question arising between any of the parties in relation to the trust shall be submitted to arbitration but the parties to that dispute agree in writing to have it resolved by a trust arbitration, that agreement shall, for all purposes under the Arbitration Law, have effect as between those parties as if it were an arbitration

agreement.

- (3) The Arbitration Law shall apply to a trust arbitration in accordance with the provisions of Schedule 2.
- (4) The Court may make such orders in relation to an arbitration or possible arbitration which supplement or vary the application of Schedule 2 as may in the opinion of the Court be appropriate in the circumstances of the case.

32. Powers of the arbitral tribunal

- (1) This Article shall apply except to the extent otherwise provided in the trust instrument.
- (2) The arbitral tribunal (hereinafter referred to as "the tribunal") may, in addition to all other powers of the tribunal, at any stage in a trust arbitration, exercise all the powers of the Court (whether arising by law (including this Law), under the inherent jurisdiction of the Court or otherwise) in relation to the administration, execution or variation of a trust or the exercise of any power arising under a trust.

PART 4: CREATION, VALIDITY AND MODIFICATION OF A DIFC TRUST**33. Creation of a trust**

- (1) A trust may be created by:
 - (a) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
 - (b) the transfer of property from one (1) trust to another;
 - (c) declaration by the owner of identifiable property that thereupon the owner will hold the property as trustee; or
 - (d) exercise of a power of appointment in favour of a trustee.
- (2) A trust shall come into existence by an instrument in writing including a will or codicil.

34. Requirements for creation

- (1) A trust is created if:
 - (a) the settlor has the capacity to create a trust;
 - (b) the settlor indicates an intention to create the trust;
 - (c) the trust either:
 - (i) has a definite beneficiary;
 - (ii) is a charitable trust, as provided for in Article 38; or
 - (iii) is a non-charitable purpose trust, as provided for in Article 39;
 - (d) the trustee holds or has vested in him or it, property for the benefit of a beneficiary or for a purpose;
 - (e) the trustee has duties to perform; and
 - (f) the same person is not the sole trustee and sole beneficiary.
- (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future.
- (3) A trust may have at the same time a definite beneficiary and a purpose.

35. Trust purposes

- (1) A trust may only be created to the extent its purposes are sufficiently certain to allow the trust to be carried out, lawful and not contrary to public policy in the DIFC.
- (2) A trust and its terms shall be for the benefit of its beneficiaries or in furtherance and support of its purposes.

36. Duration of a trust

- (1) A trust may continue indefinitely or terminate in accordance with this Law or with the terms of the trust.
- (2) No rule against perpetuities or excessive accumulations shall apply to a trust or to any advancement, appointment, payment or application of assets from a trust.
- (3) Except where the terms of a trust provide to the contrary, any advancement, appointment, payment or application of assets from that trust to another trust shall be valid even if that other trust may continue after the date by which the first trust must terminate.

37. Validity and invalidity of a trust

- (1) Subject to Articles 37(2), (3) and (4), a trust shall be valid and enforceable in accordance with its terms.
- (2) A trust shall be invalid to the extent that:
 - (a) it purports to do anything which is contrary to DIFC Law;
 - (b) it is created for a purpose other than a charitable purpose in relation to which there is no beneficiary, unless it complies with Article 39;
 - (c) its creation was induced by fraud, duress, undue influence or misrepresentation;
 - (d) the trust is immoral or contrary to public policy in the DIFC; or
 - (e) the terms of the trust are so uncertain that its performance is rendered impossible.
- (3) Where a trust is created for two (2) or more purposes of which some are lawful and others are unlawful:
 - (a) if those purposes cannot be separated the trust shall be invalid; or
 - (b) where those purposes can be separated the Court may declare that the trust is valid as to the purposes which are lawful.
- (4) A trust may be validly created which has beneficiaries, charitable purposes and purposes which are not charitable, in which case Article 38 shall apply in relation to the charitable purposes and Article 39 shall apply in relation to the purposes which are not charitable.

38. Charitable trusts

- (1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health or art, the protection of the environment, or any other purposes which are beneficial to the general public.
- (2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary or a means by which a particular charitable purpose or beneficiary may be selected, the Court may select one or more charitable purposes or beneficiaries in accordance with the settlor's intention to the extent it can be ascertained.
- (3) Subject to Article 38(4) if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, contrary to public policy in the DIFC, or obsolete in that, by reason of changed circumstances, it fails to achieve the purpose of the trust:
 - (a) the trust does not fail, in whole or in part;
 - (b) the trust property does not revert to the settlor or the settlor's successors in interest; and
 - (c) the Court may apply *cy-près* to vary or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, to one (1) or more charitable purposes or beneficiaries in accordance with the settlor's intention to the extent it can be ascertained and otherwise as the Court may direct.
- (4) A provision in the terms of a charitable trust that would result in distribution of the trust property to a non-charitable beneficiary prevails over the power of the Court under Article 38(3) to apply *cy-près* to vary or terminate the trust only if, when the provision takes effect, the trust property is to revert to the settlor and the settlor is still living.
- (5) A charitable trust may be enforced by the settlor of the trust, if the settlor is still living, maintaining a proceeding to enforce such trust or by the Court on the application of any of the settlor's heirs or the DIFCA or a person designated by it.

39. Non-charitable trusts or purpose trusts

- (1) A trust shall not be invalid by reason of Article 37(2)(b) if the terms of the trust provide for the appointment of an enforcer in relation to its non-charitable purposes and for the appointment of a new enforcer at any time when there is none.
- (2) Subject to Article 39(1), a trust may be declared by trust instrument for a non-charitable purpose, including the purpose of holding or investing in shares in a company or juridical person or any other assets constituting the trust property if:
 - (a) the purpose is possible and sufficiently certain to allow the trust to be carried out;
 - (b) the purpose is not contrary to public policy in the DIFC or unlawful under the laws of the DIFC; and
 - (c) 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) It shall be the duty of an enforcer to enforce the trust in relation to its non-charitable purposes.
- (4) The appointment of a person as enforcer of a trust in relation to its non-charitable purposes shall not have effect if he is also a trustee of the trust or has a conflict of interest.
- (5) The terms of the trust may provide, or the Court may order, that some or all of the costs incurred by the enforcer in performing his duties shall be reimbursed to him out of the trust fund.
- (6) Except as permitted by this Law or expressly provided by the terms of the trust, or with the approval of the Court an enforcer shall not:
 - (a) directly or indirectly profit from his appointment;
 - (b) cause or permit any other person to profit directly or indirectly from such appointment; or
 - (c) on his own account enter into any transaction with the trustees or relating to the trust property which may result in profit to him or the trustee.
- (7) Subject to Article 39(8), an enforcer may resign his office by notice in writing delivered to the trustee. Such resignation shall take effect upon delivery of notice.
- (8) A resignation given in order to facilitate a breach of trust shall be of no effect.
- (9) An enforcer shall cease to be an enforcer of the trust in relation to its non-charitable purposes immediately upon:
 - (a) the enforcer's removal from office by the Court;
 - (b) the enforcer's resignation becoming effective;
 - (c) the coming into effect of a provision in the terms of a trust under which the enforcer is removed from office or otherwise ceases to hold office; or
 - (d) the enforcer's appointment as a trustee of the trust.
- (10) A trustee of a trust for non-charitable purposes shall, at any time when there is no enforcer in relation to them, take such steps as may be necessary to secure the appointment of a new enforcer.
- (11) Where the trustee of a trust for non-charitable purposes has reason to believe that the enforcer in relation to such purposes is unwilling or refuses to act, or is unfit to act or incapable of acting, he shall apply to the Court for the removal of the enforcer and the

appointment of a replacement.

- (12) The trustee shall apply to the Court for the appointment of a new enforcer where:
- (a) there is no provision for the appointment of a new enforcer in the trust instrument;
 - (b) the provisions in the trust instrument are not effective to secure the appointment of a new enforcer; or
 - (c) the enforcer is unwilling or refuses to act within thirty (30) days of becoming aware that there is no enforcer willing and able to act.
- (13) If the trustee does not make an application in accordance with Article 39(12), the Court may impose a fine on the trustee not exceeding ten per cent (10%) of the value of the trust property.

40. Variation and revocation of a trust

- (1) A trust may expressly provide that:
- (a) its terms are capable of variation; or
 - (b) the trust itself or a power exercisable under the trust is revocable either in whole or in part.
- (2) Unless the terms of a trust expressly provide that the trust is revocable, it shall be irrevocable.
- (3) Where a trust provides that the terms of the trust may be varied, such power to vary shall be without prejudice to the power vested in the Court by this Law for the variation of the terms of the trust.
- (4) No variation of the terms of the trust or revocation of a trust or a power exercisable under a trust shall prejudice anything lawfully done by a trustee in relation to a trust prior to his receiving a notice of such variation or revocation.
- (5) Subject to the terms of the trust, where a trust is revoked, either in whole or in part, the trustee shall hold the trust property affected by the revocation for the settlor absolutely or if the settlor is dead, for the settlor's personal representative or estate.
- (6) Where a power to revoke, a general power of appointment or the present beneficial interest in respect of all or part of the trust property is reserved or granted to a person, the trust instrument may provide that for so long as the settlor, beneficiary or other holder of the power is not the sole trustee, the trustee shall owe no duty to any other person in relation to all or such part of the trust property and accordingly shall have no responsibility to any other person for acts or omissions occurring during that person's lifetime in respect of that property.
- (7) For the purposes of this Article, the "settlor" is the particular person who provided the property which is the subject of revocation.
- (8) The Court may vary the terms of a trust:
- (a) even if unambiguous, to conform the terms to the settlor's intention if it is provided by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement;
 - (b) if, because of circumstances not anticipated by the settlor, modification will further the purpose of the trust; or
 - (c) if continuation of the trust on its existing terms would be impractical or wasteful or impair the administration of the trust,

with effect from either the date the order for variation of the trust was made or such earlier date as to the Court seems fit.

- (9) To achieve the settlor's tax objectives in relation to any jurisdiction to which the trust or settlor may be subject, the Court may vary the terms of a trust in a manner that is not contrary to the settlor's probable intention. The Court may provide that the variation has retroactive effect.
- (10) An application under Article 40(8) may be made by the settlor, the trustee, a beneficiary or the guardian or representative of a beneficiary who is a minor, incapacitated, unascertained or unborn.
- (11) The terms of a trust may provide that if at any time the trust property includes any property which by reason of the law of the United Arab Emirates or any other specified jurisdiction may be held only by a national of that country the only persons who may be a trustee, protector or beneficiary under the trust are nationals of that jurisdiction at that time, and may further provide that such provision may not be varied or revoked.
- (12) If the terms of a trust contain an irrevocable provision of the type referred to in Article 40(11), notwithstanding any other provision of this Law (including Article 9(1)), that provision may not be varied or revoked.

41. Power of Court to authorise dealings with trust property

- (1) Where any transaction affecting or concerning any trust property 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 trustee by the trust instrument, if any, or by law, the Court may, by order, confer upon the trustee, either generally or in any particular instance, the necessary power for that purpose, on such terms, and subject to such provision 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 make an order under this Article at a time after the dealing has commenced or is completed.
- (3) The Court may, from time to time, rescind or vary any order made under this Article, or may make any new or further order.
- (4) An application to the Court under this Article may be made by one (1) or more trustees, or by any beneficiary.
- (5) The power conferred by this Article is in addition to the powers conferred on the Court by Article 40(8).

42. Failure or lapse of interest

- (1) Subject to the terms of a trust and to any order of the Court, the trust property or interest under the trust shall be held by the trustee for the settlor absolutely or if the settlor is dead, for the settlor's personal representatives or estate where:
 - (a) the interest in question lapses;
 - (b) the trust property is vested in a person otherwise than for his sole benefit but the trusts upon which he is to hold the property are not declared or communicated to him; or
 - (c) the trust terminates otherwise than in pursuance of Article 43(1)(d).
- (2) For the purposes of this Article, the settlor is the particular person who provided the property affected by the failure or lapse.

43. Termination of a trust

- (1) Without prejudice to the powers of the Court under this Law a trust terminates:
 - (a) if the trust is revoked or expires pursuant to its terms;
 - (b) if there is no beneficiary or person who can become a beneficiary in accordance with the terms of the trust or if no purpose of the trust remains to be achieved;
 - (c) if the purposes of the trust have become unlawful, or impossible to achieve; or
 - (d) notwithstanding the terms of the trust, upon consent of all the beneficiaries in existence who have been ascertained and none of whom is a minor or a person under a legal disability.
- (2) The Court may terminate a trust:
 - (a) because of circumstances not anticipated by the settlor, if termination will further the purposes of the trust; or
 - (b) if the value of the trust property is insufficient to justify the cost of administration.
- (3) An application to the Court under this Article may be made by a settlor, a trustee or a beneficiary as the case may be.

44. Distribution of property

- (1) Without prejudice to the powers of the Court under Article 44(3), on the termination of the trust the trustee shall distribute the trust property to the persons entitled thereto within a reasonable time and in accordance with the terms of the trust.
- (2) The trustee may retain sufficient assets or obtain satisfactory security to make reasonable provision for liabilities, whether existing, future, contingent or otherwise, before distributing the trust property under Article 44(1).
- (3) The Court may, on the termination of a trust or at any time thereafter, upon an application made by a trustee or any beneficiary as the case may be:
 - (a) require the trustee to distribute the trust property;
 - (b) direct the trustee not to distribute the trust property; or
 - (c) make such other order as it thinks fit.

PART 5: THE BENEFICIARIES OF A DIFC TRUST**45. Beneficiaries of a trust**

- (1) A beneficiary shall be:
 - (a) identifiable by name; or
 - (b) ascertainable by reference to:
 - (i) a class; or
 - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.
- (2) The terms of a trust may provide for the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit.
- (3) A settlor or a trustee of a trust may also be a beneficiary of a trust.

46. Disclaimer

- (1) A beneficiary may disclaim his whole interest.
- (2) A disclaimer made under Article 46(1) shall be in writing and shall be irrevocable.
- (3) Subject to the terms of a trust, a beneficiary under a trust may disclaim part of his interest, whether or not he has received some benefit from his interest.
- (4) A disclaimer made under Article 46(3) may, subject to the terms of the trust, be revocable and it shall be exercisable in the manner and under the circumstances so expressed.

47. Interest of beneficiary and dealings thereof

- (1) The interest of a beneficiary shall constitute movable property.
- (2) Subject to the terms of a trust, a beneficiary may, by instrument in writing, sell, charge, transfer or otherwise deal with his interest in any manner.

48. Termination of interest of beneficiary upon trust being challenged

- (1) The terms of a trust may provide that the interest of a beneficiary shall terminate (or may be terminated in exercise of a power in that regard) upon:
 - (a) the validity of the trust being challenged, in whole or in part, in any court within or outside the DIFC;
 - (b) any action being taken to assist, promote or encourage a challenge; or
 - (c) the beneficiary refusing to agree to have a dispute or difference in relation to the affairs of the trust referred to arbitration.
- (2) Article 48(1) applies whether or not the challenge or action:
 - (a) is brought or taken by the beneficiary; or
 - (b) is brought or taken in good faith or with reasonable cause.
- (3) Unless otherwise provided in the trust instrument, no rule of law or equity giving relief against forfeiture shall apply to a provision referred to in Article 48(1).

- (4) In this Article:
 - (a) in relation to a beneficiary who is the object of a power or whose interest arises by virtue of his membership of a class, the termination of his interest includes his ceasing to be an object of the power or a member of the class;
 - (b) the "validity of the trust" includes the validity of any disposition of property to be held upon the trusts of the trust and any question whether any settlor of the trust intended to create a trust on the terms of the trust instrument.

PART 6: PROTECTIVE TRUSTS AND CREDITORS' CLAIMS**49. Protective trusts**

- (1) The terms of a trust may make the interest of the beneficiary liable to termination.
- (2) Without prejudice to the generality of Article 49(1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to:
 - (a) a restriction on alienation or disposal; or
 - (b) a diminution or termination in the event of the beneficiary becoming bankrupt or any of his property becoming liable to sequestration for the benefit of his creditors.
- (3) A trust under which the interest of a beneficiary is subject to restriction, diminution or termination under Article 49(2) is a protective trust.
- (4) A provision in the terms of a trust requiring the interest of a beneficiary in trust property to be held upon a protective trust shall be construed as a requirement that the interest of the beneficiary be subject to restriction, diminution or termination as mentioned in Article 49(2).

50. Creditors' claims in relation to a discretionary trust

- (1) In the case of a discretionary trust, whether or not such trust contains a protective provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:
 - (a) the discretion is expressed in the form of a standard of distribution; or
 - (b) the trustee has abused the discretion.
- (2) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:
 - (a) a distribution may be ordered by the Court to satisfy a judgment or Court order against the beneficiary for support or maintenance of the beneficiary's child, spouse or former spouse; and
 - (b) the Court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

PART 7: OFFICE OF TRUSTEE**51. Accepting or declining trusteeship**

- (1) Except as otherwise provided in Article 51(3) a person designated as trustee accepts the trusteeship:
 - (a) by substantially complying with a method of acceptance provided in the terms of the trust; or
 - (b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.
- (2) A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable amount of time after knowing of the designation is deemed to have rejected the trusteeship.
- (3) A person designated as a trustee, without accepting the trusteeship, may without liability for loss:
 - (a) act to preserve the trust property if, within a reasonable time after acting, he sends a written rejection of the trusteeship to the person (if any) with the power to appoint a new trustee;
 - (b) inspect or investigate trust property to determine potential liability under any law (including the law of any jurisdiction in which the trust property is located) or for any other purpose; or
 - (c) apply to the Court for directions or advice.
- (4) A person who knowingly does any act or thing in relation to the trust property consistent with the status of a trustee of that property shall be deemed to have accepted appointment as a trustee, but he shall not be remunerated for acting in such capacity as provided in Article 56, unless the trustee appointed under the terms of the trust otherwise agrees.

52. Vacancy in trusteeship and appointment of a new trustee

- (1) A vacancy in a trusteeship occurs if:
 - (a) a person designated as trustee rejects the trusteeship;
 - (b) a person designated as trustee cannot be identified or does not exist;
 - (c) a trustee resigns;
 - (d) a trustee is removed;
 - (e) a trustee dies, becomes bankrupt, or, being a corporation, has a petition for its winding up presented or an administrator appointed;
 - (f) a guardian is appointed for an individual serving as trustee; or
 - (g) a trustee is unable to freely exercise his rights or powers or to fulfil his duties or obligations hereunder because of duress or undue influence brought to bear on such person by any other person or persons.
- (2) Where the terms of a trust contain no provision for the appointment of a new trustee, the trustee for the time being may appoint a new trustee or failing that the Court may appoint a new trustee.
- (3) Subject to the terms of the trust, a trustee appointed under this Article shall have the same powers, discretions and duties and may act as if he had been originally appointed a trustee.

- (4) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the Court and the Court may appoint a new trustee.
- (5) If one (1) or more co-trustees remain in office, a vacancy in a trusteeship need not be filled.
- (6) A vacancy in trusteeship shall be filled if the trust has no remaining trustee.
- (7) Where there is no trustee a trust shall not fail on that account.

53. Resignation of trustee

- (1) Subject to the terms of the trust, a trustee may resign his office:
 - (a) by giving at least thirty (30) days' notice in writing to the person (if any) with the power to appoint a new trustee, and all his co-trustees (if any). Such resignation shall take effect upon termination of such thirty (30) day notice period or such earlier date as shall be agreed between the trustee resigning and the person (if any) with the power to appoint a new trustee, and his co-trustees (if any) provided that if no replacement trustee has been appointed within thirty (30) days following the giving of such notice and there are no continuing trustees, the trustee shall continue in office and seek the advice of the Court;
 - (b) with the approval of the Court; or
 - (c) otherwise in accordance with the terms of the trust.
- (2) A resignation given in order to facilitate a breach of trust shall have no effect.

54. Removal of trustee by Court or under the terms of a trust

- (1) The settlor, an enforcer, a co-trustee, a protector or a beneficiary may request the Court to remove a trustee, or a trustee may be removed by the Court on its own initiative.
- (2) The Court may remove a trustee if:
 - (a) the trustee has committed a breach of trust;
 - (b) lack of cooperation among co-trustees substantially impairs the administration of the trust;
 - (c) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust, the Court determines that removal of the trustee best serves the interests of the beneficiaries; or
 - (d) there has been a substantial change of circumstances or removal is requested by all of the beneficiaries, the Court finds that removal of the trustee best serves the interests of all the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available.
- (3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the Court may order appropriate relief under Article 74.
- (4) This power conferred by this Article is in addition to any power to remove a trustee contained in the trust instrument.

55. Position of outgoing trustee

- (1) A trustee who resigns or is removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the co-trustee, successor trustee or other person entitled to it.
- (2) Unless a co-trustee remains in office or the Court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has

resigned or been removed has the duties of a trustee and the powers necessary to protect the property.

- (3) A trustee who resigns or is removed may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before surrendering trust property.
- (4) A trustee who resigns or is removed and has complied with Article 55(1) shall be released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or the trustee's duty as a trustee except liability:
 - (a) arising from any breach of trust to which such trustee was a party or to which the trustee was privy; or
 - (b) in respect of actions to recover from such trustee trust property or the proceeds of trust property in the possession of such trustee.

56. Remuneration of a trustee

- (1) Unless authorised by:
 - (a) the terms of the trust;
 - (b) the consent in writing of all of the beneficiaries; or
 - (c) an order of the Court;

a trustee shall not be entitled to remuneration for his services.
- (2) If the terms of a trust specify the trustee's remuneration, the trustee is entitled to be remunerated as specified, but the Court may allow more or less remuneration if:
 - (a) the duties of the trustee are substantially different from those contemplated when the trust was created; or
 - (b) the remuneration specified by the terms of the trust would be unreasonably low or high.
- (3) A trustee may reimburse himself out of the trust property for or pay out of the trust all expenses and liabilities properly incurred in connection with the administration of the trust.

57. Advisory trustees

- (1) In the administration of any trust property any trustee may act, to the extent provided in this Article, with an advisory trustee or advisory trustees.
- (2) An advisory trustee or advisory trustees may be appointed in respect of all or any part of the trust property:
 - (a) by the testator, settlor or other creator of the trust, in the instrument creating the trust;
 - (b) by order of the Court made on the application of any beneficiary or trustee or of any person on whose application the Court would have power to appoint a new trustee; or
 - (c) by any person having power to appoint a new trustee.
- (3) Where a trustee acts with an advisory trustee or advisory trustees, the trust property shall be vested in the first mentioned trustee (in this Article referred to as the responsible trustee), who shall have the sole management and administration of the estate and its trusts as fully and effectually as if he were the sole trustee, and in any such case:

- (a) the responsible trustee may consult the advisory trustee on any matter relating to the trusts or the estate;
 - (b) the advisory trustee may advise the responsible trustee on any matter relating to the trusts or the estate, but shall not be trustee in respect of the trust;
 - (c) where any advice or direction is tendered or given by the advisory trustee, the responsible trustee may follow and act on that advice or direction without being liable for anything done or omitted to be done by him by reason of his following that advice or direction unless the trustee knew or ought to have known that the advice was unlawful, contrary to the terms of the trust or trustees' duties, or advice that no reasonable advisory trustee would have given;
 - (d) where the responsible trustee is of the opinion that any advice or direction of an advisory trustee conflicts with the trusts or any rule of law, or exposes him to any liability, or is otherwise objectionable, he may apply to the Court for directions in the matter, and any decision and order therein shall be final and shall bind the responsible trustee and the advisory trustee, and the Court may make such order as to costs as appears proper; but nothing in this Article makes it necessary for the responsible trustee to apply to the Court for any such directions; and
 - (e) where there are two (2) or more advisory trustees who are not unanimous, and tender to the responsible trustee conflicting advice or directions, the responsible trustee may apply to the Court for directions in a like manner and with like effect as provided by Article 57(3)(d).
- (4) A person dealing with the responsible trustee in relation to any trust property shall not be concerned to inquire as to the concurrence or otherwise of the advisory trustees or be affected by notice of the fact that the advisory trustees have not concurred.
 - (5) Subject to the provisions of the instrument (if any) creating the trust and to any order made by the Court, where remuneration is payable to the trustee of any trust property, remuneration or commission may be paid to both the responsible trustee and the advisory trustee, and subject as aforesaid the amount thereof shall be as may be determined by the responsible trustee (if he is entitled to fix his own remuneration) or by the Court.

58. Custodian trustees

- (1) Subject to the provisions of this Article and to the instrument (if any) creating the trust, any corporation or person may be appointed to be custodian trustee of the trust property or any part of the trust property in any case where, and in the same manner as, it could be appointed to be trustee.
- (2) Subject to the provisions of the instrument (if any) creating the trust, where a custodian trustee is appointed for any trust property:
 - (a) the trust property shall be vested in the custodian trustee as if the custodian trustee were the sole trustee, and for that purpose vesting orders may, where necessary, be made under this Law;
 - (b) the management of the trust property and the exercise of all powers and discretions exercisable by the trustee under the trust shall be and remain vested in managing trustees other than the custodian trustee (in this Article called the managing trustees) as fully and effectually as if there were no custodian trustee;
 - (c) the sole function of the custodian trustee shall be to get in and hold the trust property and invest its funds and dispose of the assets as the managing trustees direct in writing, for which purpose the custodian trustee shall execute all such documents and perform all such acts as the managing trustees direct in writing;
 - (d) for the purposes of Article 58(2)(c), a direction given by the majority of the managing trustees, where there are more than one (1), shall be deemed to be given

- by all the managing trustees;
- (e) the custodian trustee shall not be liable for acting on any direction to which Article 58(2)(c) refers, but if the custodian trustee is of opinion that:
- i. any such direction conflicts with the trust or the law;
 - ii. exposes the custodian trustee to any liability; or
 - iii. is otherwise objectionable,
- the custodian trustee may apply to the Court for directions and the Court:
- iv. shall give such directions binding both the custodian trustee and the managing trustee, as to the Court seem appropriate in the circumstances; and
 - v. may make such order as to costs as it thinks proper.
- (f) the custodian trustee shall not be liable for any act or default on the part of any of the managing trustees;
- (g) all actions and proceedings touching or concerning the trust property shall be brought or defended in the name of the custodian trustee at the written direction of the managing trustees, and the custodian trustee shall not be liable for the costs thereof apart from any payable out of the trust property;
- (h) a person dealing with the custodian trustee shall not be concerned to inquire as to the concurrence or otherwise of the managing trustees or be affected by notice of the fact that the managing trustees have not concurred; and
- (i) the power of appointing new trustees, when exercisable by the trustee, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power as any other trustee to apply to the Court for the appointment of a new trustee.
- (3) On the application of the custodian trustee, any managing trustees or any beneficiary and on satisfactory proof that it is the general wish of the beneficiaries or that on other grounds it is expedient to terminate the custodian trusteeship, the Court may make an order for that purpose and may also make such vesting orders and give such directions as in the circumstances seem to the Court to be necessary or expedient.
- (4) Subject to the provisions of the instrument (if any) creating the trust and to any order made by the Court, where remuneration or commission is payable to the trustee of any trust property, remuneration may be paid to both the custodian trustee and the managing trustees, and subject as aforesaid the amount thereof shall be as may be determined by the managing trustees if they are entitled to fix their own remuneration, or by the Court.

PART 8: DUTIES AND POWERS OF TRUSTEES**CHAPTER 1 – DUTIES OF TRUSTEES****59. Duty to administer a trust**

- (1) Upon acceptance of a trusteeship, the trustee shall in the execution of his duties and in the exercise of his powers and discretions:
 - (a) act with due diligence as would a prudent person to the best of his ability and skill; and
 - (b) observe the utmost good faith;in accordance with the terms and purposes of the trust and this Law.
- (2) A trustee shall administer the trust solely in the interest of the beneficiaries or in furtherance or support of the purposes of the trust.

60. Duties of trustees

- (1) Subject to the terms of the trust, a trustee shall so far as is reasonably practical preserve the value of the trust property.
- (2) Except with the approval of the Court or as permitted by this Law or expressly provided by the terms of the trust, a trustee shall not:
 - (a) directly or indirectly profit from his trusteeship;
 - (b) cause or permit any other person to profit directly or indirectly from such trusteeship; or
 - (c) on his own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.
- (3) Subject to Article 80, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:
 - (a) the transaction was authorised by the terms of the trust;
 - (b) the transaction was approved by the Court;
 - (c) the beneficiary did not commence judicial proceedings within the time allowed by Article 77; or
 - (d) the beneficiary consented to the trustee's conduct or ratified the transaction.
- (4) A trustee shall keep accurate accounts and records of his trusteeship.
- (5) A trustee shall keep trust property separate from his personal property and separately identifiable from any other property of which he is a trustee.
- (6) A trustee of an express trust shall:
 - (a) take reasonable steps to identify the ultimate beneficial owners of any party to the trust which is a body corporate, including the settlor, enforcer, protector, beneficiaries and any other person exercising effective ultimate control over the trust;
 - (b) keep records of the names and contact details of the agents and service providers engaged on behalf of the trust;

- (c) disclose its status as trustee to financial institutions and DNFBPs when engaging their services on behalf of the trust;
 - (d) maintain accurate and up-to-date records of the information required under Articles 60(6)(a) and (b) for a period of six (6) years from the date on which it ceased to act or be involved with the trust; and
 - (e) make the information referred to in Article 60(6)(a) and (b) available to the Registrar of Companies for the purposes of Article 60(7), within three (3) days of the date of receipt of such a request.
- (7) The Registrar of Companies shall:
- (a) collect and process information obtained under Article 60(6)(e) only for the purposes of regulation in relation to money laundering and terrorism financing, unlawful organisations and sanctions compliance in the DIFC, or to comply with any other applicable laws in the DIFC; and
 - (b) disclose such information only at the request of a regulator, a law enforcement agency or other government authority prescribed by legislation.
- (8) A trustee is entitled to rely in good faith, without further enquiry, on any information provided to the trustee in response to enquiries made pursuant to Article 60(6)(a), unless the trustee has reason to believe the response is misleading or false.
- (9) Where the trustee fails to comply with the requirements in Article 60(6), the Registrar of Companies may make an application to the Court for orders under Article 20(2)(a)(i) and if the trustee fails to comply with such an order, the Registrar may make an application under Article 54(1). For the avoidance of doubt, the Registrar of Companies shall be deemed, for the purpose of this Article, to have standing to make applications to the Court under Articles 20(2)(a)(i) and 54(1).

61. Duties of co-trustees to act together

- (1) Subject to the terms of the trust, where there is more than one (1) trustee all the trustees shall join in performing the trust.
- (2) Subject to Article 61(3), where there is more than one (1) trustee no power or discretion given to the trustees shall be exercised unless all the trustees agree on its exercise.
- (3) The terms of a trust may empower trustees to act by a majority but a trustee who dissents from a decision of the majority of the trustees may require his dissent to be recorded in writing.

62. Impartiality of a trustee

Subject to the terms of the trust, where there is more than one (1) beneficiary, or more than one (1) purpose, the trustee shall act impartially and shall not execute the trust for the advantage of one (1) at the expense of the other.

63. Cost of administration

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

64. Enforcement and defence of claims

A trustee may take reasonable steps to enforce claims of the trust and to defend claims against the trust.

65. Collecting trust property

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and, subject to the terms of the trust, to redress a breach of trust known to

the trustee to have been committed by a former trustee.

66. Duty to inform and report

- (1) Subject to the terms of a trust and any order of the Court, a trustee shall, on application in writing by a beneficiary, disclose to the applicant all documents which relate to or form part of the accounts of the trust.
- (2) A trustee shall not be required to disclose to any person any document which:
 - (a) discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred upon him;
 - (b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based; or
 - (c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.
- (3) Notwithstanding the terms of the trust:
 - (a) the Court may on application made to it declare that in the particular circumstances of the trust its terms do not render the trustees sufficiently or appropriately accountable to the beneficiaries or any of them; and
 - (b) the Court may pursuant to such declaration extend or restrict the rights of all or any beneficiaries to information regarding the trust or may make such other order as it thinks fit.

CHAPTER 2 – GENERAL POWERS OF TRUSTEES

67. Powers of trustee

- (1) Subject to the terms of the trust and duties under this Law, a trustee shall in relation to the trust property have:
 - (a) all the same powers as a natural person;
 - (b) any other powers appropriate to achieve the proper investment, management, and distribution of trust property; and
 - (c) any other powers conferred by this Law.
- (2) A trustee shall exercise his powers only in the interest of the beneficiaries and in furtherance and support of the purposes of the trust and in accordance with the terms of the trust.

68. Specific powers of trustees

Without limiting the generality of Article 67, and subject to the terms of the trust, a trustee may:

- (a) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (b) subject to the terms of a trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such matter and in accordance with such valuation as he thinks fit;
- (c) acquire or sell property, for cash or on credit, at public or private sale;
- (d) exchange, partition, or otherwise change the character of trust property;

- (e) deposit trust money in an account in a regulated financial services institution;
- (f) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (g) where the terms of a trust so permit, exercise a discretion in relation to the manner in which and to whom trust property is distributed;
- (h) with respect to an interest in a partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organisation or contributing additional capital;
- (i) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - (i) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
 - (ii) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
 - (iii) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and
 - (iv) deposit the securities with a depository or other regulated financial services institution;
- (j) with respect to an interest in immovable property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plots and adjust boundaries;
- (k) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;
- (l) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;
- (m) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust and the insurance proceeds shall belong to the trust fund;
- (n) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;
- (o) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;
- (p) pay taxes, assessments, remuneration of the trustee, protector or enforcer and of employees and agents of the trust, and other expenses incurred in the administration of the trust;
- (q) exercise elections with respect to any taxes;
- (r) indemnify outgoing trustees;
- (s) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and

- take appropriate action to collect the proceeds;
- (t) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, where the trustee has a lien on future distributions for repayment of those loans;
 - (u) pledge trust property to guarantee loans made by others to the beneficiary;
 - (v) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:
 - (i) paying it to the beneficiary's guardian and the receipt by such guardian shall constitute a full discharge of the trustee's obligation;
 - (ii) if the trustee does not know of a guardian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf and the receipt of such person shall constitute a full discharge of the trustee; or
 - (iii) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;
 - (w) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;
 - (x) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution and participate in any trust arbitration pursuant to Article 31;
 - (y) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;
 - (z) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and
 - (aa) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

69. Power of accumulation and advancement

- (1) Where the terms of a trust so authorise, a trustee may accumulate for a period part or all of the income of the trust.
- (2) Subject to Article 69(3), income of the trust which is not accumulated under Article 69(1) shall be distributed.
- (3) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, where a beneficiary is a minor and whether or not the beneficiary's interest:
 - (a) is a vested interest; or
 - (b) is an interest which will become vested:
 - (i) on attaining the age of majority;
 - (ii) at any later age; or
 - (iii) upon happening of any event;

the trustee may:

- (c) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or such later age or the happening of such event;
 - (d) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary; or
 - (e) advance or appropriate to for the benefit of any such beneficiary such interest or part of such interest.
- (4) The receipt of a parent or the lawful guardian of a beneficiary who is a minor shall be a sufficient discharge of the trustee's obligations for a payment made under Article 69(3).

70. Delegation by a trustee

- (1) A trustee shall not delegate his powers unless permitted to do so by this Law or by the terms of the trust.
- (2) Subject to Article 70(1), a trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:
 - (a) selecting a competent and qualified agent;
 - (b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
 - (c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
- (3) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
- (4) A trustee who complies with Article 70(1) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.
- (5) For the purposes of this Article an "agent" may include investment managers, accountants, lawyers, bankers, brokers, custodians, investment advisers, nominees, property agents, solicitors and other professional agents or persons to act in relation to any of the affairs of the trust or to hold any of the trust property.
- (6) A trustee may authorise a person referred to in Article 70(5) to retain any commission or other payment usually payable in relation to any transaction.

71. Corporate trustee may act by resolution

A corporate trustee may:

- (a) act in connection with a trust by a resolution of the corporate trustee or of its board of directors or other governing body, or
- (b) by such a resolution appoint an officer or employee, or a committee of officers or employees or both, to act on its behalf in connection with the trust.

72. Combination and division of trusts

- (1) Subject to the terms of the trust, a trustee may combine two or more trusts into a single trust or divide a trust into two (2) or more separate trusts, if the result does not impair rights of any beneficiaries or adversely affect achievement of the purposes of the trusts.
- (2) Subject to the terms of the trust, where a trustee divides a trust into two (2) or more separate trusts, he shall have the power to appoint trustees for such trusts.

PART 9: LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH A TRUSTEE**73. Liability for breach of trust**

- (1) Subject to this Law and to the terms of the trust, a trustee shall be liable for a breach of trust committed by the trustee or in which the trustee has concurred.
- (2) A trustee who is liable for a breach of trust shall be liable for:
 - (a) the loss or depreciation in value of the trust property resulting from such breach; and
 - (b) the profit, if any, which would have accrued to the trust property if there had been no such breach.
- (3) Where there are two (2) or more breaches of trust, a trustee shall not set off a gain from one (1) breach of trust against the loss resulting from another breach of trust.
- (4) A trustee shall not be liable for a breach of trust committed prior to his appointment, if such breach of trust was committed by some other person.
- (5) A trustee shall not be liable for a breach of trust committed by a co-trustee unless:
 - (a) he becomes aware or ought to have become aware of the commission of such breach or of the intention of his co-trustee to commit a breach of trust; and
 - (b) he actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent such breach.
- (6) A beneficiary may:
 - (a) relieve a trustee of liability to him for a breach of trust; or
 - (b) indemnify a trustee against liability for a breach of trust.
- (7) Article 73(6) shall not apply unless the beneficiary:
 - (a) has legal capacity;
 - (b) has full knowledge of all material facts; and
 - (c) is not improperly induced by the trustee to take action under Article 73(6).
- (8) Where two (2) or more trustees are liable in respect of a breach of trust, they shall be liable jointly and severally.
- (9) A trustee who becomes aware of a breach of trust under Article 73(4) shall take all reasonable steps to have such breach remedied.
- (10) Nothing in terms of a trust shall relieve, release, or exonerate a trustee from liability for breach of trust arising from his own fraud, willful misconduct or gross negligence.

74. Remedies for breach of trust

To remedy a breach of trust that has occurred or may occur, the Court may:

- (a) compel the trustee to perform the trustee's duties;
- (b) restrain the trustee from committing a breach of trust;
- (c) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

- (d) order a trustee to account;
- (e) appoint a special fiduciary to take possession of the trust property and administer the trust;
- (f) suspend the trustee;
- (g) remove the trustee as provided in Article 54;
- (h) reduce or deny compensation to the trustee;
- (i) subject to Article 82, invalidate an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (j) order any other appropriate relief.

75. Damages in absence of a breach

- (1) Except as expressly provided in the terms of the trust, a trustee is accountable to the trust for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.
- (2) Except as expressly provided in the terms of the trust, absent a breach of trust, a trustee is not liable for a loss or depreciation in the value of trust property or for not having made a profit.

76. Legal fees and costs

In a judicial proceeding involving the administration of a trust, the Court, as justice and equity may require, may award costs and expenses, including reasonable lawyers' fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

77. Limitation of action against trustee

- (1) A person may not commence a proceeding against a trustee for breach of trust more than three (3) years after the date such person or a representative of such person receives a report from the trustee that adequately disclosed information that could form the basis for a potential claim for breach of trust and informed such person or his representative of the time allowed for commencing a proceeding.
- (2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that such person or representative knows of the potential claim or should have inquired into its existence.
- (3) If Article 77(1) does not apply, a judicial proceeding by such person against a trustee for breach of trust shall be commenced within seven (7) years of the first occurrence of:
 - (a) the removal, resignation, or death of the trustee;
 - (b) in relation to a claim by a beneficiary, the termination of the beneficiary's interest in the trust; or
 - (c) the termination of the trust.
- (4) No period of limitation shall apply to an action brought against a trustee:
 - (a) in respect of any fraud to which the trustee was a party or to which the trustee was privy; or
 - (b) to recover from the trustee trust property:
 - (i) in the trustee's possession;

- (ii) under the trustee's control; or
 - (iii) previously received by the trustee and converted to the trustee's use.
- (5) This Article applies also to proceedings brought against an enforcer or a protector.

78. Reliance on trust instrument

Any person who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable for a breach of trust to the extent the breach resulted from the reliance.

79. Exculpation or insurance of trustee

- (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:
- (a) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or
 - (b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.
- (2) Any insurance purchased and maintained by the trust in respect of a trustee must not include insurance in respect of any liability the trustee may incur:
- (a) to the trust or a beneficiary;
 - (b) to pay a fine in respect of an offence; or
 - (c) any costs the trustee may incur:
 - (i) in defending criminal proceedings in which the trustee is convicted; or
 - (ii) in defending civil proceedings brought by a successor trustee or a beneficiary in which judgment is given against the trustee.

80. Beneficiary's consent, release or ratification

- (1) Subject to Article 73(10), a trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach as provided in Article 73(6) or ratified the transaction constituting the breach, unless:
- (a) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or
 - (b) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.
- (2) Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the Court may by order impound all or part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through the trustee.

81. Limitation on personal liability of trustee

- (1) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust, if the trustee in the contract disclosed the fiduciary capacity.
- (2) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property only if the trustee is personally at fault.

- (3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity or an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

82. Protection of persons dealing with trustees

- (1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.
- (2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.
- (3) A person who in good faith delivers assets to a trustee need not ensure their proper application.
- (4) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.
- (5) Comparable protective provisions of other DIFC laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this Article.

83. Trustees of more than one trust

A trustee acting as such for more than one (1) trust shall not, in the absence of fraud or bad faith, be affected by notice of matter in relation to a particular trust if the trustee has obtained notice of it merely by reason of acting or having acted for the business of another trust.

PART 10: RESERVED AND RESTRICTED POWERS AND INTERESTS**84. Reserved and restricted powers**

- (1) Without prejudice to the generality of Article 40, the reservation by the settlor to himself or grant to any other person in the trust instrument of a DIFC trust of any limited beneficial interest in the trust property whether of income or capital, or any or all of the powers specified in Article 84(2) (or both such an interest and any or all of such powers) shall not:
 - (a) invalidate the trust;
 - (b) prevent the trust taking effect according to its terms; or
 - (c) cause any or all of the trust property, or the interests or powers reserved, to be part of the real estate or personal estate of the settlor for any purpose.

- (2) The powers referred to in Article 84(1) are:
 - (a) in the case of a reservation to the settlor or other donor of trust property, power to revoke the trusts in whole or in part;
 - (b) power to vary or amend the terms of the trust instrument or any of the trusts, purposes or powers arising thereunder in whole or in part;
 - (c) a general, intermediate or special power to advance, appoint, pay, apply, distribute or transfer trust property (whether income or capital or both) or to give directions for the making of any such advancement, appointment, payment, application, distribution or transfer;
 - (d) power to act as, or give binding directions as to, the appointment or removal of, a director or an officer of any company wholly or partly owned by the trust or to direct the trustee as to the manner of exercising voting rights attaching to any of the shares held in such company;
 - (e) power to give binding directions in connection with the purchase, retention, holding, sale or other commercial or investment dealings with trust property or any investment or reinvestment thereof or the exercise of any powers or rights arising from such trust property;
 - (f) power to give binding directions that the trustee shall not be under any duty nor be bound to interfere in the business of any company to which any such direction applies in which the trust is interested, the manner in which the trustee shall act in respect of exercise of any right or power arising from the ownership of the shares of such company or any loan or advance of money to such company, and the liability of the trustee arising as a result of any such direction;
 - (g) power to appoint, add, remove or replace any trustee, protector, enforcer or any other office holder;
 - (h) power to add, remove or exclude any beneficiary, class of beneficiaries or purpose;
 - (i) power to change the governing law and the forum for administration of the trust; and
 - (j) power to restrict the exercise of any powers, discretions or functions of a trustee by requiring that they shall only be exercisable with the consent, or at the direction of, any person specified in the trust instrument or any other written notice to the trustee.

- (3) A trustee who:
 - (a) has acted, or refrained from acting, in compliance with, or as a result of, a valid

exercise of any of the powers set out in Article 84(2), shall not, by reason only of such compliance, commit a breach of trust or other fiduciary or equitable duty; or

- (b) is or has been prevented from acting in accordance with any of the powers specified in Article 84(2), or any exercise of those powers by reason of the provisions of any applicable law or because insufficient rights or powers are exercisable by the trustee in relation to the trust property, shall not, by reason only of such non-compliance or failure to act, commit a breach of trust or other fiduciary or equitable duty.
- (4) No person other than a person in whom trust property or an interest in trust property is vested and who is formally appointed as a trustee, shall be or become a trustee by reason only of the reservation or grant of any of the powers set out in Article 84(2).
- (5) The terms of a DIFC trust may provide that the reservation or grant of any of the powers set out in Article 84(2) shall not impose a fiduciary duty on the holder of such powers.
- (6) In the absence of any contrary provision of the terms of a DIFC trust:
 - (a) in the case of the reservation by a settlor, or the grant to another person, of any of the powers specified in Article 84(2), where so long as the holder of the power is not the sole trustee, such powers shall be personal and non-fiduciary; and
 - (b) in any other case, such powers shall be fiduciary.

85. Incapacitation of protector or settlor

- (1) If the settlor becomes incapacitated then the rights or powers (if any) reserved to him shall during his incapacitation be exercisable by the protector (if appointed) or by any other person designated by the trust instrument or appointed for that purpose by the Court declaring or confirming him to be incapacitated.
- (2) If the protector becomes incapacitated then the rights or powers (if any) reserved to him shall during his incapacitation be exercisable by the person designated by the trust instrument or appointed for that purpose by the Court declaring or confirming him to be incapacitated.
- (3) For the purposes of this Article:
 - (a) a person shall be deemed to be incapacitated if declared to be of unsound mind by a court of competent jurisdiction or if declared by two (2) qualified examining physicians to be of unsound mind or physically impaired so as to be unable to act responsibly prudently or effectively and shall be deemed to remain incapacitated until declared otherwise by such court or such physicians; and
 - (b) a corporation shall be deemed to be incapacitated if it has been dissolved, or if it is under administration or a petition for its winding up has been presented in any Court and has not been finally determined by the Court.
- (4) The trustee may declare in writing a person to be incapacitated during any period in which the trustee is of the opinion that such person is unable freely to exercise his rights or powers or to fulfil his duties or obligations hereunder because of duress or undue influence brought to bear on such person by any other person or persons but the trustee shall not be under any duty to make any inquiries as to whether any person is suffering from duress or undue influence and in any case the trustee shall not be under any duty to make any declaration as aforementioned.

PART 11: PROVISIONS APPLICABLE TO A FOREIGN TRUST**86. Enforceability of a foreign trust**

- (1) Subject to Article 86(2), a foreign trust shall be regarded as being governed by, and shall be interpreted in accordance with, its governing law.
- (2) A foreign trust shall be unenforceable in the DIFC:
 - (a) to the extent that it purports:
 - (i) to do anything which is contrary to DIFC Law; or
 - (ii) to confer any right or power or impose any obligation the exercise of which is contrary to DIFC Law; or
 - (b) to the extent that the Court declares that the trust is immoral or contrary to public policy in the DIFC.

but otherwise shall be enforceable in accordance with its terms and its governing law.

SCHEDULE 1**INTERPRETATION****1. Rules of interpretation**

- (1) In the Law, a reference to:
 - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
 - (b) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
 - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in the Law, include publishing or causing to be published in printed or electronic form;
 - (d) a day means a calendar day, unless expressly stated otherwise. If an obligation falls on a calendar day which is either a Friday or Saturday or an official state holiday in the DIFC, the obligation shall take place on the next calendar day which is a business day;
 - (e) a calendar year shall mean a year of the Gregorian calendar;
 - (f) a reference to the masculine gender includes the feminine; and
 - (g) the singular shall include the plural and vice versa.
- (2) The headings in the Law shall not affect its interpretation.
- (3) A reference in this Law to a Part, Chapter, Article or Schedule by number only, and without further identification, is a reference to the Part, Chapter, Article or Schedule of that number in this Law.
- (4) A reference in an Article or other division of this Law to an Article by number or letter only, and without further identification, is a reference to the Article of that number or letter contained in the Article or other division of this Law in which that reference occurs.
- (5) Unless the context otherwise requires, where this Law refers to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including any other provision of that enactment.

2. Legislation in the DIFC

References to legislation and Guidance in the Law shall be construed in accordance with the following provisions:

- (a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC;
- (d) the Law is the Trust Law, DIFC Law No.4 of 2018 made by the Ruler;
- (e) the Regulations are Legislation made by the Board of Directors of the DIFCA under this law and are binding in nature;
- (f) the Enactment Notice is the enactment notice pursuant to which this Law is brought into force; and

- (g) Guidance is indicative and non-binding and may comprise (i) guidance made and issued by the DIFCA under this Law or the Regulations; and (ii) any standard or code of practice issued by the Board of Directors of the DIFCA which has not been incorporated into the Regulations.

3. Defined terms

In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

Term	Definition
Arbitration Law	the DIFC Arbitration Law No. 1 of 2008.
beneficial interest	the interest of a beneficiary under a trust.
beneficiary	a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised.
breach of trust	a breach of any duty imposed on a trustee by the Law or by the terms of the trust.
charitable trust	a trust or portion of a trust, created for a charitable purpose described in Article 38.
Companies Law	the Companies Law No. 5 of 2018.
Court	DIFC Court as established under Dubai Law No. 12 of 2004.
DNFBP	Designated Non-Financial Business or Professions has the meaning given to it in the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook.
DFSA	the Dubai Financial Services Authority.
DIFC	Dubai International Financial Centre.
DIFCA	Dubai International Financial Centre Authority.
DIFC trust	a trust whose governing law is DIFC law.
discretionary trust	is a trust in which the settlor has delegated complete or limited discretion to the trustee to decide, amongst other things: <ul style="list-style-type: none"> (a) when and how much income or property is distributed to a beneficiary; and (b) which of the beneficiaries may benefit.
Enforce	in relation to a trust means to require or compel trustees to execute, carry out and perform their duties under the trust instrument in relation to its non-charitable purposes and to bring and prosecute proceedings to enforce the terms of the trust.
Enforcer	shall be construed in accordance with Article 39.
express trust	is a trust created with the settlor's express intent declared in writing or a written declaration of trust by the trustee.
foreign law	any law other than DIFC Law.
foreign trust	is a trust whose governing law is the law of a jurisdiction other than DIFC, including any trust within the meaning of the Hague Convention.
governing law	has the meaning given in Article 11.
Hague Convention	the Convention on the law applicable to trusts and on their recognition, done at The Hague on 1 July 1985.
heirship right	any right, claim or interest in, against or to property of a person arising, accruing or existing in consequence of, or in anticipation of, that person's death, other than any such right, claim or interest created by

Term	Definition
	will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property of such person.
Income	includes rents and profits.
Law	the Trust Law 2018.
minor	a person who has not attained the age of majority under the governing law of trust or the law of his domicile.
non-charitable trust	has the meaning given in Article 39.
person	has the meaning given in Article 1 of the Schedule.
personal relationship	<p>includes every form of relationship by blood adoption marriage or cohabitation regardless of whether the law of any jurisdiction recognises the validity, legitimacy or existence of the relationship, including a former personal relationship which has in law or in fact terminated and in particular a personal relationship between two (2) persons exists if:</p> <ul style="list-style-type: none"> (a) one (1) is the child of the other, natural or adopted, whether or not the adoption is recognised by law, legitimate or illegitimate; (b) one (1) is married to the other, whether or not the marriage is recognised by law; (c) one (1) cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, (d) obligations or responsibilities analogous to those of parents and child or husband and wife; or (e) personal relationships exist between each of them and a third person, <p>but no change in circumstances shall cause a personal relationship once established to terminate.</p>
President	the president of the DIFC appointed by a decree of the Ruler pursuant to Dubai Law No. 9 of 2004.
property	any movable or immovable property, and includes rights and interests, whether present or future and whether vested or contingent.
protective trust	is a trust that is designed to protect the trust property to ensure the continued support of the beneficiary.
protector	any person other than the settlor upon whom any power is conferred by Article 85.
purpose trust	a trust or portion of a trust, created for a purpose which is not a charitable purpose, described in Article 39.
Registrar of Companies	the Registrar of Companies appointed under the Companies Law.
Ruler	the ruler of the Emirate of Dubai.
Schedule	a schedule to the Law.
settlor	a person who provides trust property or makes a testamentary disposition on trust or to a trust.
terms of the trust	the written or oral terms of a trust or any other terms applicable under its governing law.
trust	is a right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title and includes a charitable trust, a purpose trust and a foreign trust.
trust instrument	an instrument by which a trust is created and includes a unilateral declaration of trust and any instrument varying the terms of the trust.

Term	Definition
trust property	the property for the time being held in trust.
trustee	a person appointed to act as a trustee of a trust or holding office as such in accordance with the provisions of this Law.
ultimate beneficial owners	has the meaning given in Article 197(2) of the Companies Law.

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SCHEDULE 2

APPLICATION OF THE ARBITRATION LAW

1. The Arbitration Law shall apply and be construed with respect to a trust arbitration, as stated hereunder.
2. In the Arbitration Law, "dispute" includes an administration question.
3. Article 12(1) of the Arbitration Law shall apply as if it read -

"The settlor of a trust shall be free to determine (by provision in the trust instrument) how, in relation to a trust, disputes are resolved, subject only to such safeguards as are necessary in the public interest;"
4. Where in the Arbitration Law reference is made to a matter agreed between the parties to an arbitration agreement (including a matter which may be authorised, chosen, conferred, designated, nominated or vested by the parties) that matter shall (except where no effective provision is made) be determined as provided in the trust instrument.
5. Neither Article 12 of the Arbitration Law nor any rule of law or construction treating an arbitration agreement separate to any agreement of which it is a part shall apply in relation to a trust arbitration.
6. The term "action" in Article 13 of the Arbitration Law includes an application or other reference to the Court concerning an administration question which the trust instrument requires to be submitted to arbitration and a stay of that application or other reference may be sought by any of the parties in relation to the trust, whether or not a party to that application or other reference.
7. In any application or other reference to the Court referred to in paragraph 6, the Court may stay the proceedings on its own volition unless all parties in relation to the trust affected by the application are before it or are represented by persons before it.
8. Article 38 of the Arbitration Law shall apply as if it included the following Articles:

"(6) Where a person is or has been a party to a trust arbitration in the capacity of trustee he shall, unless the tribunal otherwise orders, be entitled to the costs of the arbitration, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee; and the tribunal may otherwise order only on the ground that the trustee has in substance acted for his own benefit rather than for the benefit of the trust.

(7) Where a person is or has been a party to a trust arbitration in the capacity of trustee and is entitled to be paid his costs out of the fund held by the trustee any doubt as to whether costs were reasonably incurred shall be resolved in favour of the trustee. Costs shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee".
9. For the purposes of enforcing an arbitral award under Article 41(2)(a)(iii) of the Arbitration Law, the term "dispute" includes an administration question.