

**C003/2015**



**Command Paper on  
a draft Bill for an Act to provide for certain matters of  
private international law in relation to Gibraltar trusts,  
and for connected purposes.**

**Presented to Parliament by  
the Minister with responsibility for financial services**

**by Command of Her Majesty  
23<sup>rd</sup> April 2015**

## **1. Draft Bill**

## **2. Draft Explanatory Memorandum**

Comments on this Command Paper should be sent by email to

[commandpapers@gibraltar.gov.gi](mailto:commandpapers@gibraltar.gov.gi) or delivered to

Command Papers Consultation c/o Kevin Warwick, Ministry of Education,  
Justice and International Exchange of Information, Suite 771, Europort,  
Gibraltar, no later than 7 May 2015.

Any comments received later than 7 May 2015 may not be taken into account for the purposes of the relevant consultation.

## **Trusts (Private International Law) Act 2015**

### **Section**

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# **BILL**

## **FOR**

**AN ACT** to provide for certain matters of private international law in relation to Gibraltar trusts, and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

### **Short title and commencement.**

1. (1) This Act may be cited as the Trusts (Private International Law) Act 2015.

(2) This Act comes into operation on the day appointed by the Minister by notice in the Gazette, and different days may be appointed for different purposes.

### **Interpretation.**

2. In this Act—

“Disposition”, in relation to any property, includes every form of disposition, conveyance, transfer, assignment, lease, licence, mortgage, charge, pledge, encumbrance or other transaction of that property or by which any interest in it is created or extinguished;

"Heirship rights" means any right, claim or interest arising under the law of a jurisdiction other than Gibraltar in, against or to the property of any person arising, accruing or existing in consequence of, or in anticipation of, that person's death, other than a right, claim or interest created by will or expressed in any other voluntary disposition by that person or resulting from an express limitation in the disposition of the property to that person;

“Foreign” means a jurisdiction other than Gibraltar;

"Foreign trust" means a trust the proper law of which is not the law of Gibraltar;

“Gibraltar trust” means a trust whose proper law is the law of Gibraltar;

“Judgment” means any judgment or arbitral award given by a court, tribunal or arbitrator in any part of the world, whatever the judgment or award may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court or by a tribunal or arbitrator;

"Personal relationship" includes every form of relationship by blood, adoption, marriage, civil partnership or cohabitation regardless of whether the law of any jurisdiction recognises the validity, legitimacy or existence of the relationship, and includes a former personal relationship which has in law or in fact terminated. A personal relationship also exists between two persons if such a relationship exists or existed between each of them and a third person.

#### **Jurisdiction of courts.**

3. The Gibraltar courts have jurisdiction where—

- (a) the trust is a Gibraltar trust;
- (b) a trustee of a foreign trust is resident in Gibraltar;
- (c) any trust property of a foreign trust is situated in Gibraltar;
- (d) administration of any trust property of a foreign trust is carried on in Gibraltar; or
- (e) the trust instrument contains a provision referring disputes to the jurisdiction of the Courts of Gibraltar.

#### **Choice of law rules applicable to Gibraltar trusts only.**

4. (1) Subject to subsection (3), and without prejudice to Articles 8 and 9 of the Hague Trusts Convention, any question in respect of a Gibraltar trust concerning—

- (a) the validity or interpretation of a trust;
- (b) the validity or effect of any transfer or other disposition of property to a trust;
- (c) the capacity of a settlor, trustee, beneficiary, protector, enforcer or object of a power;
- (d) the administration of the trust, whether the administration be conducted in Gibraltar or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees (including the rights and duties of trustees among themselves and their appointment, resignation or removal);
- (e) 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 of such powers;
- (f) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;
- (g) the distribution of trust assets;
- (h) the duty of trustees to account for their administration;
- (i) restrictions upon the duration of the trust and upon the power to accumulate the income of the trust;
- (j) the nature and extent of any beneficial rights or interests in the property; or
- (k) the fiduciary powers, obligations or duties of the trustees

shall be determined in accordance with the law of Gibraltar and no rule of foreign law shall affect such question.

(2) Subject to subsection (3), and without prejudice to the generality of subsection (1), no Gibraltar trust, and no disposition of property to or upon such a trust, is void, voidable, liable to be set aside, invalid or subject to any implied condition, nor is the capacity of any settlor, trustee, enforcer, protector, beneficiary or object of a power to be questioned, nor is any settlor, trustee, enforcer, protector, beneficiary, object of a power or third party to be subjected to any obligation or liability or deprived of any right, claim or interest, by reason that—

- (a) any foreign law prohibits or does not recognise the concept of a trust; or
- (b) any rights, claims, or interests are conferred by any foreign law upon any person including, in particular—
  - (i) by virtue of a personal relationship to the settlor or any beneficiary, or object of a discretionary trust or power of any nature; or
  - (ii) by way of heirship rights; or

any foreign judgment or order of a foreign court or decision of any other foreign tribunal (whether in an arbitration or otherwise) is made to recognise, protect, enforce or give effect to any such rights, claims or interests.

(3) Subsections (1) and (2)—

- (a) do not validate any disposition of property which is neither owned by the settlor nor the subject of a power of disposition vested in the settlor in accordance with Gibraltar's choice of law rules;
- (b) are subject to any express provision to the contrary in the terms of the trust or disposition;

- (c) do not confer capacity on a corporation unless it also has capacity according to the law of its place of incorporation;
- (d) are subject to any foreign law applicable by virtue of Gibraltar's choice of law rules to the formalities for the disposition of property;
- (e) are without prejudice to the requirement that a disposition of immovable property situated in a jurisdiction other than Gibraltar must be valid under the law of that jurisdiction; and
- (f) do not validate any testamentary disposition of movable property which is invalid according to Gibraltar's choice of law rules for succession. For the avoidance of doubt, nothing in this provision is to be construed as permitting any rights referred to in sub-section (2)(b) to be recognised or enforced or give rise to any right, obligation or liability or raise any estoppel.

(4) Save as provided in subsection (3), and subject to section 7 below, the choice of law rules applicable in Gibraltar to areas of law other than trusts shall not apply to the determination of any question referred to in this section.

(5) Subject to section 7 below, notwithstanding any legislation or other rule of law for the time being in force in relation to the recognition or enforcement of judgments, no judgment or order of a foreign court or decision of any other foreign tribunal (whether in an arbitration or otherwise) with respect to a Gibraltar trust shall be recognised or enforced or give rise to any right, obligation or liability or raise any estoppel if and to the extent that the foreign court or tribunal applied a foreign law or laws whose relevant provisions are substantively different to those which would be applicable by virtue of the choice of rules in this section. The burden of demonstrating that there is no such substantive difference shall lie on the party seeking recognition or enforcement of the foreign judgment or order.

#### **Foreign law Trusts.**

5. (1) Subject to subsection (2), a foreign trust shall be regarded as being governed by, and shall be interpreted in accordance with its proper law, as determined (for matters within its ambit) by Articles 6 and 7 of the Hague Trusts Convention.

(2) Without prejudice to Articles 15, 16 and 18 of the Hague Trusts Convention, a foreign trust shall be unenforceable in Gibraltar–

(a) to the extent that it purports–

- (i) to do anything the doing of which is contrary to the law of Gibraltar,
- (ii) to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Gibraltar, or
- (iii) to apply directly to immovable property situated in Gibraltar;

(b) to the extent that the trust, or any disposition thereto or right, claim or interest asserted in respect of such a trust is contrary to the public policy of Gibraltar.

(3) Where subsection (2)(a)(iii) applies, any person in whom the title to such immovable property is vested shall not be, and shall not be deemed to be, a trustee of such immovable property.

**Gibraltar to be treated as separate member State.**

6. For all purposes connected to the operation and application of this Act, Gibraltar shall be regarded as a separate member State in relation to the member States of the EU or to any of them.

**Relationship with existing legislation.**

7. This Act applies subject to the following legislation, as amended from time to time–

- (a) The Convention on the Law Applicable to Trusts and on their Recognition, as enacted by the Trusts (Recognition) Act 1989 (“the Hague Trusts Convention”);
- (b) Any EU Regulation, EU Directive or international convention by which Gibraltar is bound, or may become bound, which in relation to particular matters, contains rules as to jurisdiction or the recognition or enforcement of judgments;
- (c) Section 419A of the Insolvency Act 2011.

**Scope and retrospective validity.**

8. This Act applies to trusts whenever constituted or created, but nothing in this Act shall retrospectively invalidate any Gibraltar trust or disposition of property to a Gibraltar trust.

**Power to make subordinate legislation.**

9. (1) The Minister with responsibility for financial services may make such rules, regulations or orders, or provide for such other statutory instruments as he considers necessary or useful to fulfil the purposes and objects of this Act.

(2) The power referred to in subsection (1) may be exercised for the purpose of implementing an EU or international obligation.

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## **EXPLANATORY MEMORANDUM**

This Bill provides for various circumstances in which the Gibraltar courts have jurisdiction in relation to trusts. It also sets out when various questions relating to Gibraltar trusts, particularised in clause 4, are to be determined in accordance with the law of Gibraltar alone. The Bill further provides for the regulation of foreign law and foreign judgments, orders and decisions in relation to Gibraltar trusts, and also provides for a foreign trust to be regarded as being governed by and to be interpreted in accordance with its proper law, subject to specified exceptions. This Bill is subject in particular to the Hague Trust Convention as well as to EU legislation and international conventions applicable to Gibraltar.

**Copies may be purchased at 6, Convent Place, Price £1.45.**