

Gavino's Trust Act

Principal Act

Act. No. 1955-09

Commencement

6.5.1955

Assent

5.5.1955

Amending
enactment

Relevant current
provisions

Commencement
date

Act. 1983-48 Sch.

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AN ACT TO CREATE A STATUTORY CORPORATION AND TO EMPOWER THE CORPORATION TO DEAL WITH AND ADMINISTER TRUST PROPERTY, AND OTHER MATTERS CONNECTED THEREWITH.

Short title.

1. This Act may be cited as the Gavino's Trust Act.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Board” means the Gavino's Trust Board of Trustees established by section 3;

“will of Manuel de la Rosa” means the will of Manuel de la Rosa dated the 20th day of October, 1880, and registered on the 14th day of January, 1886, under Article 6 of the Order in Council relating to Titles to Lands, of the 19th day of March, 1819;

“will of John Gavino” means the will of John Gavino dated the 12th day of January, 1818, as proved before the Court of Common Pleas of Gibraltar on the 16th day of June, 1818;

“will of Joseph Bertoloso” means the will of Joseph Bertoloso dated the 20th day of August, 1869, and registered on the 14th day of September, 1869, under Article 6 of the Order in Council relating to Titles to Lands of the 19th day of March, 1819;

“will of William Eschauzier” means the will of William Eschauzier dated the 31st day of March, 1886, as proved and registered in the Supreme Court of Gibraltar on the 4th day of October, 1888.

Establishment and constitution of board.

3.(1) There is established a Board of Trustees which shall be a body corporate with perpetual succession and a common seal, and power, subject to the provisions of this Act, to purchase, take, hold and dispose of lands and other property for the purposes of this Act in any manner authorized by law with such consent, if any, as may be by law required.

(2) The Board may sue and be sued by the name of the Gavino's Trust Board of Trustees, and may for all purposes be described by that name, and service on the Board of all legal processes and notices shall be effected by service on the secretary of the Board.

(3) The Board shall be constituted and their powers, duties, and procedure shall be determined in accordance with the bye-laws set out in the Schedule. Subject to such bye-laws the Board may regulate their own procedure and make standing orders governing the conduct

of their business whether by themselves or committees of their number. The bye-laws may be amended, added to or repealed by the Board by notice in the Gazette with the prior approval of the Governor.

Objects of the Board.

4. The objects for which the Board is established and incorporated are—

- (a) to administer the trusts of the wills of John Gavino, William Eschauzier, Joseph Bertoloso and Manuel de la Rosa and the trusts of Gavino's Asylum created by Letters Patent dated the first day of July One thousand eight hundred and forty-eight as amalgamated and consolidated by this Act and subject to the conditions and directions contained in this Act;
- (b) to acquire in any manner authorized by law with such consent, if any, as may be by law required, real and personal property and to apply both capital and income thereof and the proceeds of the sale or mortgage thereof for or towards all or any of the objects authorized by this Act;
- (c) to mortgage, charge, lease, dispose of, exchange and otherwise deal with any property of or held by the Board in any manner authorized by law with such consent, if any, as may be by law required; and
- (d) generally to do all things necessary or expedient for proper and effective carrying out of any of the aforesaid:

Provided that none of the objects aforesaid shall be carried out in such a manner as to give directly or indirectly to members of the Board a profit from the funds of the Board.

Application of income of the Board.

5. The income of the Board shall be applied solely towards the promotion of the objects of the trust as set forth in this Act and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profits to the members of the Board.

Trust for sale.

6. Notwithstanding the provisions of any other Act in force at the commencement of this Act, from and after such commencement the Board shall hold the freehold and leasehold lands vested in the Board constituted under section 3 upon trust to sell the same with power to postpone such sale for such time as the Board shall consider its postponement to be in the interests of the trust property.

Application of income by board.

7. The Board shall apply and dispose of all income arising from all property vested in them and of all other revenues which shall come to their hands under the provisions of this Act as follows —

- (a) in payment of the outgoings and costs, charges and expenses payable or incurred by them in the due execution of the charitable trusts declared by this Act;
- (b) in offerings for masses and suffrages for the repose of the soul of John Gavino and his brothers in accordance with the terms of the will of John Gavino;
- (c) to preserve and maintain the Roman Catholic Church of St. Mary the Crowned, particularly the Nave, in a fit and proper state of repair;
- (d) towards the relief of such resident natives of Gibraltar as are both poor and necessitous and of the Roman Catholic Faith;
- (e) towards the furnishing, equipment, upkeep and maintenance of an orphanage for the reception of orphan children and for almshouses for aged paupers to clothe, maintain and educate such orphans and to put and place them out as apprentices to some art, trade or profession with a suitable fee or premium and to give a sum by way of dowry or marriage portion to the orphan females on their contracting marriage according to the amount at the disposal of the Board and as the circumstances of each case of charitable relief may require.

Saving.

8. Nothing in this Act shall affect the rights of Her Majesty the Queen, Her Heirs and Successors, all bodies politic and corporate, and all others except such as are mentioned in this Act, and those claiming by, from, or under them.

SCHEDULE 1.**BYE-LAWS.**

Section 3(3)

CONSTITUTION OF THE BOARD.

1. The number of the members of the Board shall not exceed ten and not be less than five.
2. The Board shall have power to elect as a member any person of the Roman Catholic Faith who shall signify in writing his consent to become a member provided that in no case shall the number of members for the time being authorized be exceeded.
3. A member shall cease to be a member of the Board —
 - (a) on his retirement, to be signified in writing to the Board;
 - (b) on his death;
 - (c) on the passing of a resolution by not less than three-fourths of the members present at a general meeting, that he cease to be a member.
4. No person receiving any salary from the Board or deriving any emoluments or profit, whether of money or money's worth, from the Board or occupying as a tenant any property belonging to the Board, shall be eligible to be appointed or to be a member of the Board, until six months after such salary, emolument, interest or tenancy shall have wholly ceased.
5. If any member of the Board shall become bankrupt, or take the benefit of any Act for the relief of insolvent debtors, or suffer from mental disorder, or shall signify in writing to the Chairman of the Board his desire to retire, he shall, as from the happening of any of such events, cease to be a member of the Board.
6. Meetings of the Board shall be held at such times and places as they may determine. One-half of the members shall form a quorum, and the Board may act, notwithstanding any vacancy in its number.
7. All acts done by the Board or any sub-committee shall, notwithstanding the existence of some disqualification or some defect in the appointment of any member of the Board or any sub-committee thereof, or the existence of any vacancy in any sub-committee, be as valid as if such vacancy, disqualification or defect, had not existed.

DUTIES OF BOARD.

8. The Board may accept property to be held either—

- (a) upon trust for the general objects of the Act; or
- (b) upon special trusts for any of the objects mentioned in the Act:

Provided that the Board shall not be bound to accept property, the acceptance of which they may deem inexpedient, and shall not do so where such acceptance would impose on the Board any liability to pay rent exceeding one-third of the rack-rent, or to observe or perform any onerous covenants.

9. Where property is accepted by the Board for the general objects of the Act, they may apply both capital and income in or towards any of the objects mentioned in this Act, except in so far as they may be restricted by any resolution of a general meeting in that behalf, or they may accumulate such income until the same can in their opinion be usefully applied for all or any of such objects.

GENERAL POWERS OF THE BOARD.

10. The Board shall have full power to do all such acts and things as the Board may think fit and in particular the Board shall have the following powers—

- (a) to sell, exchange, partition, lease, invest, or otherwise dispose of the property of the present trusts or any part thereof, or any interest therein, for money or other valuable consideration, as fully as if they were absolute owners;
- (b) to borrow money on mortgage of the property or any part thereof or otherwise, provided that money so borrowed on mortgage shall not exceed two-thirds of the estimated selling value, at the date of the mortgage, of the property proposed to be mortgaged;
- (c) to invest money in the name of the Board in any investment in which a trustee may, by law, invest money, or in the improvement of any land or buildings required for actual occupation for the purposes of a charitable trust under the Act and authorized to be retained or acquired as the case may be;
- (d) to promote and contribute to any enterprise, whether conducted by individuals or associations present or future, which shall have for its objects the making or doing of any works or things conducive to the objects of the Act;
- (e) to pay expenses incurred in the management of the concerns of the Board out of the moneys coming into their hands;
- (f) to appoint or remove and delegate any of their powers to the management of a sub-committee or sub-committees consisting of one or more members of the Board and to fix the quorum of any such sub-committee;

- (g) to take counsel's opinion on any matter they think fit, and to act in accordance with such advice, without being responsible for any error thereby committed;
- (h) to appoint such officers, clerks or servants as they may, from time to time, deem necessary, and to fix their duties and remuneration, and, if considered necessary, to require security for the proper discharge of such duties; and also to discharge or suspend any officer, clerk or servant, for such reasons as they may deem sufficient.

GENERAL MEETINGS OF THE BOARD.

11. Annual general meetings shall be held once in every year, in the month of February or at such other time and at such place as the Board may, from time to time, determine.

12. The above-mentioned general meetings shall be called annual meetings; all others shall be called special meetings.

13. The chairman may, whenever he thinks fit, and he shall if required in writing by not less than one-third of the members of the Board, convene a special meeting. Every such requisition shall express the object of the meeting proposed to be called, and shall be left with the secretary, and thereupon a special meeting shall be convened by the chairman of the Board, to be held within twenty-one days from the date of the receipt of such requisition. If the chairman shall neglect to convene such meeting, the requisitionists may themselves do so.

14. Seven days' notice at least, specifying the place and time of meeting, and (in case of special business) the general nature thereof, shall be sent to each member but non-receipt of such notice by any member shall not invalidate the proceedings of any general meeting. All business shall be deemed special except the consideration at the annual meeting of—

- (a) the accounts;
- (b) the annual report of the Board; and
- (c) the election of chairman and other officers of the Board.

15. Any member may, on giving to the secretary not less than fourteen days notice in that behalf, submit any resolution to a general meeting, and notice thereof shall be given to the members by the secretary.

PROCEDURE AT GENERAL MEETINGS.

16. At any general meeting of the Board or any sub-committee thereof—

- (a) every question shall be decided by a majority of the members present and voting;

- (b) if the chairman shall not be present at the appointed time, the members present shall choose some person to be the chairman of the meeting;
- (c) no business shall be transacted unless the prescribed quorum is present. If at a general meeting there is not a quorum, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week and all members shall be so notified, but if, at such adjourned meeting, a quorum of members is not present, the members present shall form a quorum;
- (d) every meeting, with the consent of the majority of the persons present and entitled to vote, may be adjourned, from time to time, and from place to place, but only the business left unfinished shall be transacted at any adjourned meeting;
- (e) every member shall have one vote only, provided that the chairman shall have a second or casting vote and any objection to the validity of a vote shall only be made at the meeting at which it is tendered. Every vote not then and there disallowed shall be deemed valid for all purposes; and
- (f) subject to the provisions of the Act and of these bye-laws, the chairman shall be the sole and absolute judge of the validity of any vote tendered.

MINUTES.

17. Minutes of the proceedings of all meetings, whether of the Board or sub-committee thereof, shall be recorded in books to be kept for the purpose, and shall be signed by the chairman of the meeting, or of the meeting at which the minutes are read and confirmed, or in default, by any two members present, and every such minute purporting to be so signed, shall be prima facie evidence of the facts sited therein.

THE SEAL.

18. The Board shall provide a common seal which shall always be deposited at the office of the Board and shall not be used except by the authority of the Board previously given, and then only in the presence, and accompanied by the signatures of two members of the Board or of one member and the secretary. No person dealing with the Board shall be bound or concerned to see or inquire as to the authority under which any instrument is sealed or in whose presence.

ACCOUNTS.

19. The banking account shall be kept in the name of Gavino's Trust Board of Trustees at such bank as the Board shall, from time to time, appoint. Every sum to be paid by the Board exceeding £20 shall be paid by a cheque on the bankers.

20. Cheques shall be drawn, signed, and endorsed in such manner and by such person or persons as the Board shall, from time to time, direct.

21. No payment shall be made without the order of the Board except payments on petty cash account, for which the Board may place at the disposal of the secretary or manager such sum as they may think fit, not exceeding at any one time £40; and the secretary or manager shall make at such times as the Board direct a return of all receipts, payments, and liabilities on petty cash account.

22. All moneys payable to the Board shall be received by the treasurer, or such other officer as the Board shall appoint to receive the same, who shall forthwith pay them into the banking account. The receipt of the treasurer or such other officer shall be a sufficient discharge to the person paying the same.

23. The Board shall cause true accounts to be kept, in such manner as they think fit, of all the receipts, credits, payments, and liabilities of the Board, and of each object or purpose in the management of administration whereof the Board shall for the time being act, and of all other matters necessary for showing the true state and condition of the Board. Such books and all vouchers relating thereto, and all documents belonging to the Board shall be kept at such place or places, and under the control of such officer, as the Board shall from time to time appoint, and (subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed by the Board) shall be open to the inspection of members.

24. The Board shall submit a balance sheet to the annual general meeting, together with a statement made up to the 1st day of January next preceding, or such other day as the Board shall, from time to time, determine, of the income and expenditure of the Board since the last preceding statement, and a report on the state and progress of the Board. The balance sheet, statement and report shall be signed by at least two members of the Board and the secretary, or in such other manner as the Board shall, from time to time, direct, and a printed copy thereof shall, seven days previously to the annual meeting, be sent to each member.

25. Every balance sheet and statement, when audited and approved by a general meeting, shall be conclusive, except as regards any error discovered therein within two months after such approval, which shall forthwith be corrected.

AUDIT.

26. At the first general meeting of the Board and afterwards at the annual general meeting one or more auditors shall be appointed for the year, and the salary or remuneration, if any, of such auditor or auditors shall be fixed by the meeting, and paid out of moneys applicable to the general purposes of the Board. Any casual vacancy shall be filled by the Board.

27. Not less than six weeks before the annual meeting there shall be delivered by the Board to the auditors the accounts and vouchers relative thereto, and the balance sheet for the preceding

year, and the auditors shall examine the same and within twenty-one days after the receipt thereof shall report thereon.

28. The auditors shall have access to all the books of account and documents of the Board and shall receive such information and assistance from the Board, the treasurer, the secretary, and other officers of the Board as they may reasonably require.

NOTICES.

29. Every member shall, from time to time, in writing name to the secretary a place of address in Gibraltar as his address which shall be entered in the record of the Board.

30. A notice may be served by the Board on any member either personally, or by sending it through the post in a prepaid letter addressed to him at his registered address, and shall be conclusively deemed to have been served at the time when the letter containing the same would be delivered in the regular course of post.

INDEMNITY.

31. Every member, and every other officer for the time being of the Board, shall be indemnified out of the funds of the Board against all losses and expenses incurred in the discharge of his duties, except such as shall happen through his own wilful act or default; and each one shall be chargeable only for so much money or property as he shall himself actually receive for, or in the discharge of, the business of the Board; and each one shall be answerable only for his own acts, neglects, or defaults, and not for those of any other person, nor for the insufficiency of any security for money invested or of title to any estate or property acquired, nor for any loss or damage which may happen in the discharge of his duties, unless the same shall happen through his own wilful neglect or default.