



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

TRUSTS (SPECIAL PROVISIONS) REGULATIONS
2016

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TRUSTS (SPECIAL PROVISIONS) REGULATIONS 2016

Regulations to make provision in relation to trusts and for connected purposes.

Date of Enactment: 17 April 2016

The Board of Directors of Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations:-

1. Limitations in foreign law

No trust governed by the law of the Abu Dhabi Global Market and no disposition of property to be held in trust that is valid under that law 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 right, by reason that:

- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust; or
- (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 by way of heirship rights or contravenes any 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.

2. 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 real property in the Abu Dhabi Global Market and any property other than real property wherever it is situated; or
- (b) constituting an obligation or liability for any purpose.

3. Foreign judgments

A foreign judgment shall not be recognised or enforced or give rise to any estoppels insofar as it is inconsistent with sections 1 or 2.

4. Non-charitable purpose trusts

- (1) A trust created for a purpose in relation to which there is no beneficiary, not being a charitable purpose (a "non-charitable purpose trust"), shall not be invalid under any rule of law 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) Subsection (3) of section 4 of the Application of English Law Regulations 2015 is repealed.

- (3) A non-charitable purpose 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 Abu Dhabi Global Market. A non-charitable purpose trust shall be invalid to the extent that the trust:
 - (a) is immoral; or
 - (b) contrary to public policy or law in the Abu Dhabi Global Market.
- (4) Subject to paragraph (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 person or any other assets constituting the trust property, if:
 - (a) the purpose is possible and sufficiently certain to allow the purpose to be carried out;
 - (b) the purpose is not immoral or contrary to public policy in the Global Market or unlawful under the legislation of the Global Market; 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.
- (5) It shall be the duty of an enforcer to enforce the trust in relation to its non-charitable purposes.
- (6) 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.
- (7) Except as permitted by these Regulations 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.
- (8) Subject to paragraph (9), an enforcer may resign his office by notice in writing delivered to the trustee. Such resignation shall take effect upon delivery of notice.
- (9) A resignation given in order to facilitate a breach of trust or duty shall be of no effect.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) The Court may on the application of a trustee or any interested person if it thinks fit:
- (a) make an order concerning the appointment or removal of an enforcer in relation to any non-charitable purposes of the trust; or
 - (b) rescind or vary any such order or make any new or further order.
- (14) A non-charitable purpose trust terminates:
- (a) if no purpose of the trust remains to be achieved;
 - (b) if the purposes of the trust have become unlawful, impossible to achieve or contrary to public policy or law in the Abu Dhabi Global Market.

5. Protectors

- (1) A trust instrument may contain provisions by virtue of which the exercise by the trustees of any of their powers shall be subject to the previous consent of the settlor or some other person as protector, and, if so provided in the trust instrument, a trustee shall not be liable for any loss caused by his actions if the aforementioned consent was given and the trustee acted in good faith.
- (2) The trust instrument may confer on the settlor or on the protector any power, including without limitation the power to:
- (a) determine the law of which jurisdiction shall be the governing law of the trust;
 - (b) change the forum of administration of the trust;
 - (c) remove trustees;
 - (d) appoint new or additional trustees;
 - (e) exclude any beneficiary as beneficiary of the trust;
 - (f) add any person or purpose as a beneficiary of the trust, including in addition to any existing beneficiary or purpose of the trust;

- (g) give or withhold consent to specified actions of the trustee either conditionally or unconditionally; or
 - (h) release any of the settlor's or protector's powers.
- (3) A person exercising any one or more of the powers set forth in paragraph (2) shall not by virtue only of such exercise be deemed to be a trustee.
- (4) A person may charge reasonable remuneration for his services as protector unless otherwise provided by the trust instrument.

6. Enforceability of a foreign trust

- (1) Subject to subsection (2), a foreign trust shall be regard as being governed by, and shall be interpreted in accordance with its governing law.
- (2) A foreign trust shall be unenforceable in the Abu Dhabi Global Market:
- (a) to the extent that it purports:
 - (i) to do anything which is contrary to any law in force in the Abu Dhabi Global Market; or
 - (ii) to confer any right or power or impose any obligation the exercise of which is contrary to any law in force in the Abu Dhabi Global Market; or
 - (b) to the extent that the trust is immoral or contrary to policy in the Abu Dhabi Global Market.

7. Interpretation

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

"enforce" means, in relation to a trust, to require or compel trustees to execute, carry out or perform their duties under the trust instrument in relation to its purposes or beneficiaries, or to bring and prosecute proceedings to enforce the terms of the trust;

"foreign law" means the law of a jurisdiction other than the Abu Dhabi Global Market; and

"heirship right" means 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 will, intestacy or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property of such person.

8. Short title, extent and commencement

- (1) These Regulations may be cited as the Trusts (Special Provisions) Regulations 2016.
- (2) These Regulations shall apply in the Abu Dhabi Global Market.

- (3) These Regulations come into force on the date specified by the Board in rules made by the Board. Such rules may make any transitional, transitory, consequential, saving, incidental or supplementary provision as the Board thinks fit.