

# **THE FRAUDULENT DISPOSITIONS ORDINANCE 2000**

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# **THE FRAUDULENT DISPOSITIONS ORDINANCE 2000**

An Ordinance to amend the law relating to dispositions made with intent to defraud and to provide for matters connected therewith.

**ENACTED** by the Legislature of New Utopia.

## **1. Short title and Commencement**

This Ordinance may be cited as:

### **The Fraudulent Dispositions Ordinance 2000**

and shall come into operation on such date as the Board of Governors may, by notice in the Gazette, appoint.

[ Gazetted ( Date ) 2000 ]

## **PART I Preliminary**

### **2. Definitions**

In this Ordinance-

- (a) "Court" means the High Court of New Utopia or a Judge thereof;
- (b) "creditor" means a person to whom an obligation is owed;
- (c) "disposition" in relation to property means every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction whereby any legal or equitable interest therein is created transferred or extinguished;
- (d) "intent to defraud" means an intention of a transferor wilfully to defeat an obligation owed to a creditor;
- (e) "obligation" means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had notice;
- (f) "relevant disposition" means a disposition to which section 4(1) applies;

(g) "transferor" means the person who as owner or as the holder of a power in that behalf directly or indirectly makes relevant disposition or causes it to be made;

(h) "transferee" means the person to whom a relevant disposition is made and shall include any successor in title;

(i) "undervalue" in relation to a disposition of property means;

(i) no consideration for the disposition; or

(ii) a consideration for the disposition the value of which in money or money's worth is significantly less than the market value of the property, the subject of the disposition.

### **3. Application**

(1) With effect from the appointed date this Ordinance shall apply to every disposition of property made before or after the appointed date by any person and whether or not the property, the subject of the disposition, is situate in The Principality of New Utopia or elsewhere.

(2) In this section "the law in effect" means the law relating to fraudulent dispositions of property.

### **4. Avoidance of fraudulent dispositions**

(1) Subject to the provisions of this Ordinance, every disposition of property made with intent to defraud and at a significant undervalue shall be voidable at the instance of a creditor thereby prejudiced.

(2) The burden of establishing intent to defraud for the purposes of this Ordinance shall be upon the creditor seeking to set aside the disposition.

(3) No action or proceedings shall be commenced pursuant to this Ordinance unless commenced within three years of the date of the relevant disposition.

### **5. Saving of certain rights**

(1) In the event that any disposition shall be set aside pursuant to this Ordinance then;

(a) if the Court is satisfied that the transferee has acted in good faith,

(i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the Court); and

(ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee; and

(b) if the Court is satisfied that a beneficiary of a trust has not acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust, or any other person, and otherwise properly exercised.

(2) The burden of proving that a transferee or beneficiary has acted in bad faith shall be upon the person making the allegation.

## **6. Extent of avoidance of relevant dispositions**

A disposition shall be set aside pursuant to this Ordinance only to the extent necessary to satisfy the obligation to a creditor at whose instance the disposition has been set aside together with such costs as the Court may allow.

## **7. Ordinance not to validate certain dispositions**

Nothing in this Ordinance;

(a) shall validate any disposition of property which is neither owned by the transferor nor the subject of a power in that behalf vested in the transferor;

(b) shall affect the recognition of a foreign law in determining whether the transferor is the owner of such property or the holder of such power.

## **8. Relationship with Trusts Ordinance**

Nothing in this Ordinance shall create or enable any right, claim or interest on behalf of a creditor or person whose right, claim or interest would be avoided or defeated by the Trusts would be avoided or defeated by The Trusts Ordinance, 2000.