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I assent,

CUTHBERT M. SEBASTIAN
Governor-General

22nd of January, 1997.

SAINT CHRISTOPHER AND NEVIS

No. of 1996

AN ACT to make provisions with regard to trusts, trustees and persons interested under trusts and generally to provide for purposes connected therewith and incidental thereto.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows:-

PART I

Preliminary

- 1. (1) This Act may be cited as the Trusts Act, 1996.
- (2) This Act shall come into operation on such date as the Minister by notice published in the Gazette appoints.

Short Title and Commencement.

- 2. (1) In this Act unless the context otherwise requires -
 - “annual statement” means the statement to be made by a trust under Section 60;
 - “attestation” means the attestation delivered to the Registrar under Section 5 and includes all amendments made to the attestation;
 - “auditor” means a person who is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a practising member in good standing of one of those institutes or is otherwise approved by any supervisory body of the accounting profession recognised under the law of the Federation;
 - “bankruptcy” includes any proceedings of a similar nature in a place outside the Federation;
 - “beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised;
 - “body corporate” includes a body corporate wherever or however incorporated, other than a corporate sole;
 - “breach of trust” means a breach of any duty imposed on a trustee by this Act or by the terms of the trust;
 - “business” includes any trade, occupation or profession;
 - “corporate trustee” means a trustee which is a body corporate;
 - “Court” means the Eastern Caribbean Supreme Court or any Court with similar jurisdiction established in succession to that Court;

Interpretation.

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- “exempt trust” means a trust the beneficiary of which are exempt from taxes under sub-section (1) of Section 71.
- “existing trust” means a trust constituted or created before the commencement of this Act;
- “the Federation” means the Federation of Saint Christopher and Nevis;
- “interdict” means a person in respect of whom a curator has been appointed by any court having jurisdiction (whether in the Federation or elsewhere) in matters concerning mental disorder;
- “lawyer” means a barrister or solicitor of the Court;
- “Minister” means the Minister responsible for finance;
- “minor” means a person who under the law of the Federation or under the law of his domicile has not reached the age of legal capacity;
- “Order” means an Order made by the Minister;
- “ordinary trust” means a trust which is not an exempt trust;
- “personal representative” means the executor or administrator for the time being of a deceased person and, in the context of this Act, includes the principal heir;
- “prescribed” means prescribed by Order;
- “property” means property of any description wherever situated, and, in relation to rights and interests includes those rights and interests whether vested, contingent, defeasible or futures;
- “prospectus” has the meaning assigned to it by paragraph (a) of sub-section (4) of Section 69;
- “protector” in relation to a trust, means a person who is the holder of a power which when invoked is capable of directing a trustee in matters relating to the trust and in respect of which matters the trustee has discretion and includes a person who is the holder of a power of appointment or dismissal of trustees;
- “Registrar” means the Registrar of trusts appointed pursuant to Section 86 and “his seal” in relation to the Registrar means a seal prepared under that Section;
- “resident trustee” means a trustee who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation;
- “securities” includes any certificate or other instrument representing the right to any unit;
- “settlor” means a person who provides trust property or makes a testamentary disposition on trust or to a trust;
- “terms of a trust” means the written or oral terms of a trust, and also means any other terms made applicable by the proper law;
- “trust” means a trust established in accordance with this Act and includes -
- (a) the trust property; and
 - (b) the rights, powers, duties, interests, relationships and obligations under a trust;
- “trustee” means a person who is named as such in the attestation and if more than one shall mean each trustee;
- “trust property” means the property for the time being held in a trust;

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“unit” has the meaning assigned to it by paragraph (b) of sub-section (4) of Section 69

“unit trust” has the meaning assigned to it by sub-section (1) of Section 12.

(2) A reference in this Act to a Section by number only, and without further identification, is a reference to the Section of that number contained in this Act.

(3) A reference in a Section or other division of this Act to a sub-section or paragraph or sub-paragraph by number or letter only, and without further identification, is a reference to the sub-section or paragraph or sub-paragraph of that number or letter contained in the Section or other division of this Act in which that reference occurs.

(4) A reference in this Act to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

(5) A reference to dollars in this Act is a reference to the currency of the Eastern Caribbean Central Bank.

3. (1) A trust exists where a person (known as a trustee) holds or has vested in him or is deemed to hold or have vested in him property of which he is not the owner in his own right -

Meaning of “trust”.

- (a) for the benefit of any person (known as a beneficiary) whether or not yet ascertained or in existence; or
- (b) for any purpose which is not for the benefit only of the trustee; or
- (c) for such benefit as is mentioned in paragraph (a) and also for any such purpose as is mentioned in paragraph (b).

PART II

Creation and Establishment of Trusts

4. (1) Any person (who is not a minor or an interdict or a bankrupt) may create a trust for any lawful purpose and subject to sub-section (2) of Section 16 -

Creation of a trust.

- (a) any property may be held by or vested in a trustee upon trust; and
- (b) a trustee may accept from any person property to be added to the trust property.

(2) A trust shall have at least one resident trustee.

(3) A body corporate may be the settlor or a trustee or a beneficiary of a trust and the settlor or a trustee of a trust may be a beneficiary at the same time of the same trust.

(4) A trust shall not be recognised by the law of the Federation as valid and enforceable until the requirement of sub-section (2) has been satisfied and the Registrar has issued a certificate under sub-section (2) of Section 7.

5. (1) Any of the trustees of a trust or a person acting on their behalf may on delivering to the Registrar an attestation and on payment of the prescribed registration fee apply for the registration of the attestation under this Act.

Attestation of existence of a trust.

(2) An attestation delivered to the Registrar under sub-section (1) shall be in the English language, shall be printed and shall state -

- (a) the name by which the trust is to be referred;
- (b) if the trust is a charitable trust or unit trust, that it is such a trust; and

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- (c) the full name and address of each trustee who is an individual, or in the case of a body corporate its full name, the place where it is incorporated and the address of its registered or principal office.

(3) The attestation shall be signed by each person who is, on the creation of the trust, to be a trustee.

6. (1) With the attestation there shall be delivered to the Registrar a statement signed by or on behalf of each of the trustees setting out -

Documents to be delivered to the Registrar.

- (a) the trust's name and the address of its office for service;
- (b) whether the trust is an ordinary or an exempt trust;
- (c) in the case of an exempt trust, an undertaking that the trustees of the trust will forthwith notify the Minister by notice in writing if the trust should no longer qualify as an exempt trust; and
- (d) any other prescribed particulars.

(2) Where an attestation is delivered by a person as agent for the trustees, the statement shall specify that fact and the person's name and address.

7. (1) If the Registrar is satisfied that all requirements of this Act in respect of the registration of an attestation have been complied with, he shall register the attestation delivered to him under Section 5.

Registration of attestation.

(2) On the registration of an attestation, the Registrar shall -

- (a) allocate a registration number to the attestation in accordance with Section 88; and
- (b) give a certificate of registration in respect of the attestation stating -
 - (i) the name of the trust;
 - (ii) the registration number of its attestation;
 - (iii) the date of the registration of its attestation; and
 - (iv) that it is a charitable trust or unit trust, if its attestation so states.

(3) Every certificate of registration shall be signed by the Registrar and sealed with his seal.

(4) A certificate of registration is conclusive evidence of the registration of the attestation and, if the certificate of registration states that the trust is a charitable trust or unit trust, that the trust is such a trust.

8. (1) If during the continuance of a trust any change is made or occurs in any of the particulars delivered pursuant to Section 5, a statement signed by a trustee, specifying the nature of the change shall within 21 days be delivered to the Registrar.

Amendment of attestation.

(2) On the registration of a statement under this Section the Registrar shall issue a certificate to that effect.

(3) The certificate shall be signed by the Registrar and sealed with his seal.

(4) If default is made in compliance with sub-section (1) of this Section every trustee who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

9. (1) No attestation of a trust shall be registered if the trust has any name which indicates or may reasonably be understood to indicate (whether in English or any other language) that it is a unit trust unless its resident trustee has in respect of the trust first obtained the permission of the Minister to use any such name. Names.

(2) The Registrar may refuse to register -

(a) an attestation; or

(b) a statement under sub-section (1) of Section 8 changing the name of a trust,

where the name to be registered is in his opinion in any way misleading or otherwise undesirable.

PART III

Types of Trusts

10. (1) A trust under which the income or capital or the income and capital of the trust property is applied for a purpose regarded as charitable under this Section is a charitable trust. Charitable trusts.

(2) The Minister shall by Order issue a list containing the purposes which, subject to sub-section (4), are regarded as charitable under this Section.

(3) The Minister may prescribe alterations to the list mentioned in sub-section (2); but no alteration of the list shall affect a charitable trust established before the alteration takes effect.

(4) Notwithstanding any rule of law or equity to the contrary, a purpose shall be regarded as charitable notwithstanding that such purpose may not be of a public nature or for the benefit of the public, but may be for the benefit of a section of the public or members of the public, or that it may also benefit privately one or more persons within a class of persons or is liable to be defeated whether by the exercise of a power of appointment or disposition or that the trustee has the power to defer the enjoyment of any charity or other beneficiary of the trust for any period not exceeding the perpetuity period applying or expressed to apply to the trust, and notwithstanding further that the trust may be discretionary or contingent upon the happening of any event.

(5) A charitable trust may be created only by an instrument in writing.

11. (1) The terms of a trust may make the interest of a beneficiary liable to termination.

Spendthrift or protective trusts.

(2) Without prejudice to the generality of sub-section (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) 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 paragraph (2) is a spendthrift or 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 spendthrift or protective trust shall be construed as a requirement that the interest of the beneficiary be subject to restriction, diminution or termination as mentioned in sub-section (2).

(5) A spendthrift or protective trust may be created only by an instrument in writing.

12. (1) A trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition of any property whatsoever is a unit trust. Unit trusts.

- (2) A unit trust may be created only by an instrument in writing.
13. (1) A trust which is not - Common trusts.
- (a) a charitable trust; or
 - (b) a spendthrift or protective trust, or
 - (c) a unit trust,
- is a common trust.
- (2) A common trust may come into existence in any manner.
- (3) Without prejudice to the generality of sub-section (2), a common trust may come into existence by oral declaration, or by an instrument in writing (including a will or codicil) or arise by conduct.
- (4) Notwithstanding any rule of law or equity to the contrary a common trust shall not be void or voidable by virtue of the fact that the trust is created for a purpose which is not a charitable purpose, provided that the trust must vest in natural persons within the perpetuity period applying or expressed to apply to the trust; and any trust so created shall be enforceable by the settlor or his personal representative or by a person named in the terms of the trust as the person appointed to enforce the trust and the trust shall be enforceable at the instance of the person so named notwithstanding that such person may not be a beneficiary under the trust.

PART IV

Proper Law, Jurisdiction of the Court, Validity and Duration of Trusts

14. (1) Subject to sub-section (4), the proper law of a trust shall be the law of the Proper law.
jurisdiction -
- (a) expressed by the terms of the trust as the proper law; or failing that
 - (b) to be implied from the terms of the trust; or failing either
 - (c) with which the trust at the time it was created had the closest connexion.
- (2) The references in sub-section (1) to “failing that” or “failing either” include references to cases -
- (a) where no law is expressed or implied under paragraph (a) or (b) of that sub-section; and
 - (b) where a law is so expressed or implied, but that law does not provide for trusts or the type of trusts concerned.
- (3) In ascertaining, for the purpose of paragraph (c) of sub-clause (1), the law with which a trust had the closest connexion, 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;
 - (d) the objects of the trust and the places where they are to be fulfilled.
- (4) Where the terms of a trust so provide -
- (a) a severable aspect of the trust may be governed by a law different from that applicable to another aspect;

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- (b) the proper law of the trust or the law governing a severable aspect of the trust may be changed to or from the law of the Federation if -
 - (i) in the case of a change to the law of the Federation, the law of the other jurisdiction recognises such change; and
 - (ii) in the case of a change from the law of the Federation, the law of the other jurisdiction recognises the validity of the trust and the respective interests of the beneficiaries.

(5) A change in the proper law of a trust or in the law governing a severable aspect of a trust shall not affect the legality or validity of, or render any person liable for, anything done before the change.

15. (1) The Court has jurisdiction in respect of any matters concerning a trust where -
- (a) the proper law of the trust is the law of the Federation; or
 - (b) a trustee of the trust is resident in the Federation; or
 - (c) any trust property of the trust is situated in the Federation; or
 - (d) any part of the administration of the trust is carried on in the Federation.

Jurisdiction of the Court.

(2) Where the Court has jurisdiction in respect of a trust, no proceedings for or in relation to the enforcement or recognition of a judgement obtained in a jurisdiction other than the Federation against -

- (a) a trust;
- (b) a settlor of a trust;
- (c) a trustee of a trust;
- (d) a protector of a trust;
- (e) a beneficiary of a trust;
- (f) a person appointed or instructed in accordance with the express or implied provisions of an instrument or disposition to exercise a function or undertake any act, matter or thing in connexion with a trust; or
- (g) property of either a trust or of a trustee or a beneficiary thereof,

shall be entertained by the Court if that judgement is based upon the application of any law inconsistent with the law of the Federation or if that judgement relates to a matter or particular aspect that is governed by the law of the Federation.

(3) Sub-section (2) shall apply notwithstanding -

- (a) the provisions of any treaty or convention;
- (b) the provisions of any statute; or
- (c) any rule of law or equity,

to the contrary.

(4) Subject to sub-clause (5), all questions arising in regard to a trust which is for the time being subject to the jurisdiction of the Court or in regard to any disposition of property upon the trusts thereof including, but without prejudice to the generality of the foregoing, questions as to -

- (a) the capacity of the settlor;

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- (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 Federation 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,

are to be determined according to the law of the Federation, without reference to the law of any other jurisdiction with which the trust or disposition may be connected.

(5) Sub-section (4) takes effect subject to any express contrary terms of the trust or disposition and does not -

- (a) validate any disposition of property which is neither owned by the settlor nor the subject of a power in that behalf vested in the settlor, nor does that sub-section affect the recognition of foreign laws in determining whether the settlor is the owner of such property or the holder of such a power;
- (b) as regard the capacity of a body corporate, affect the recognition of the law of its place of incorporation;
- (c) 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;
- (d) validate any trust or disposition of real property situate in a jurisdiction other than the Federation which is invalid according to the laws of such jurisdiction;
- (e) validate any testamentary trust or disposition which is invalid according to the laws of the testator's domicile.

(6) Without limiting the generality of sub-sections (4) and (5), it is expressly declared that no trust which is subject to the jurisdiction of the Court and no disposition of property to be held upon the trusts thereof is void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of any settlor to be questioned 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 avoids or defeats rights, claims or interests 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 rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests.

16. (1) Subject to this Act, a trust shall be recognised by the law of the Federation as valid and enforceable in accordance with its terms. Validity.

(2) A trust shall be invalid -

- (a) to the extent that -
 - (i) it purports to do anything the doing of which is contrary to the law of the Federation; or
 - (ii) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of the Federation;or

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- (iii) it has no beneficiary or purpose;
- (b) to the extent that the Court declares that -
 - (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty; or
 - (ii) the trust is immoral or contrary to public policy; or
 - (iii) the terms of the trust are so uncertain that its performance is rendered impossible.
- (3) Where a trust is created for two or more purposes of which some are lawful and others are unlawful -
 - (a) if those purposes cannot be separated the trust shall be invalid;
 - (b) where those purposes can be separated the Court may declare that the trust is valid as to the purposes which are lawful.
- (4) Where a trust is partially invalid the Court may declare what property is trust property, and what property is not trust property.
- (5) Property as to which a trust is wholly or partially invalid shall, subject to any order of the Court, be held by the trustee in trust for the settlor absolutely or if he is dead for his personal representative.
- (6) In sub-section (5) "settlor" means the particular person who provided the property as to which the trust is wholly or partially invalid.
- (7) An application to the Court under this Section may be made by the Attorney General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

- 17. (1) Subject to sub-section (2), a trust may continue until the one hundredth anniversary of the date on which it came into existence and if not sooner terminated shall then terminate. Duration.
- (2) Sub-section (1) shall not apply to a trust established as a charitable trust.

PART V

Settlor

- 18. (1) If a person transfers or disposes of property during his lifetime to a trust - Capacity of settlor.
 - (a) he shall be deemed to have had capacity to do so if he is at the time of such transfer or disposition not a minor or interdict under the law of his domicile; and
 - (b) no rule relating to inheritance or succession (including, but without prejudice to the generality of the foregoing, forced heirship or similar rights) of the law of his domicile or any other system of law shall affect any such transfer or disposition or otherwise affect the validity of such trust.
- (2) Where a husband and wife transfer property to a trust and, immediately before being transferred, such property or any part or any accumulation thereto is, pursuant to the law of its location or the law of the transferors' domicile, determined to be communal property, then notwithstanding such transfer and except where the provisions of the terms of the trust may provide to the contrary, that property and any accumulation thereto shall, for the purpose of giving effect to that law, be deemed to be community property and be dealt with in a manner consistent with that law but in every other respect shall be dealt with in accordance with the terms of the trust.

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(3) Nothing contained in sub-section (2) shall be construed so as to cause the trust or any of its trustees to be liable or obliged for any debt or responsibility of the settlor merely by reason of that sub-section.

(4) For the avoidance of doubt it is declared that the provisions of this Section shall apply notwithstanding any other provisions of this Act and shall apply to transfers or dispositions of property made to a trust after the commencement of this Act, but this declaration shall be without prejudice to the validity or otherwise of transfers or dispositions made before that time.

(5) In this Section a reference to forced heirship is a reference to a legal rule restricting the right of a person to dispose of his property during his lifetime so as to preserve such property for distribution at his death, or having similar effect.

19. A trust shall not be declared invalid or be affected in any way by reason of the fact that the settlor, and if more than one, any one of them, either -

Retention of control and benefits by settlor.

- (a) retains, possesses or acquires any benefit interest or property from the trust;
- (b) retains, possesses or acquires the power to remove or appoint a trustee or protector;
- (c) is a beneficiary of the trust either solely or together with others.

20. Notwithstanding any provision of the law of the settlor's domicile or place of ordinary residence or the settlor's current place of incorporation and notwithstanding further that a trust is voluntary and without valuable consideration being given for the same, or is made on or for the benefit of the settlor's spouse or children or any of them, a trust and a disposition to a trust shall not be void or voidable in the event of the settlor's bankruptcy, insolvency or liquidation other than in the case of a company registered pursuant to the Companies (Saint Christopher and Nevis) Act, 1996, that is in liquidation or in any action or proceedings at the suit of creditors of the settlor but shall remain valid and subsisting and take effect according to its tenor subject to the provisions of Section 21.

Bankruptcy of settlor.

21. (1) Where it is proven beyond doubt by a creditor that a trust settled or established or property disposed to a trust -

Fraud on settlor's creditors.

- (a) was so settled or established or disposed by or on behalf of the settlor with principal intent to defraud that creditor of the settlor; and
- (b) did at the time such settlement or establishment or disposition took place render the settlor insolvent or without property by which that creditor's claim (if successful) could have been satisfied,

then such settlement or establishment or disposition shall not be void or voidable and the trust shall be liable to satisfy the creditor's claim and such liability shall only be to the extent of the interest that the settlor had in the property prior to settlement, establishment or disposition and any accumulation to the property (if any) subsequent thereto.

(2) In determining whether a trust settled or established or property disposed to a trust has rendered the settlor insolvent or without property by which a creditor's claim (if successful) may be satisfied, regard shall be held to the fair market value of the settlor's property, (not being property of or relating to the trust) at the time immediately after the settlement or establishment or disposition referred to in paragraph (b) of sub section (1) and in the event that the fair market value of such property exceeded the value of the creditor's claim, at that time, after the settlement or establishment or disposition, then the trust so settled or established or the disposition shall for the purpose of this Act be deemed not to have been so settled or established or the property disposed of with intent to defraud the creditor.

(3) A trust settled or established and a disposition to such trust shall not be fraudulent as against a creditor of a settlor -

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- (a) if settled, established or the disposition takes place after the expiration of 2 years from the date that creditor's cause of action accrued; or
- (b) where settled, established or the disposition takes place before the expiration of 2 years from the date that the creditor's cause of action accrued, that creditor fails to commence such action before the expiration of 1 year from the date such settlement or establishment or disposition took place.

(4) A trust settled or established and a disposition of property to such trust shall not be fraudulent as against a creditor of a settlor if the settlement or establishment or disposition of property took place before that creditor's cause of action against the settlor accrued or had arisen.

(5) A settlor shall not have imputed to him an intent to defraud a creditor, solely by reason that the settlor -

- (a) has settled or established a trust or has disposed of property to such trust within 2 years from the date of that creditor's cause of action accruing;
- (b) has retained, possesses or acquires any of the powers or benefits referred to in Section 19;
- (c) is a beneficiary.

(6) Where a trust is liable to satisfy a creditor's claim in the manner provided for in sub-section (1) but is unable to do so by reason of the fact that the property has been disposed of, other than to a *bona fide* purchaser for value, then any such disposition shall be void.

(7) Every creditor before bringing any action or proceeding against any trust property shall first deposit with the Minister a bond in the sum of 25,000 dollars from a financial institution in the Federation, for securing the payment of all costs as may become payable by the creditor in the event of the creditor not succeeding in such action or proceeding against the trust property.

(8) For the purpose of this Section the onus of proof of the settlor's intent to defraud the creditor lies on the creditor.

(9) For the purpose of this Section -

- (a) the date of the cause of action accruing shall be, the date of that act or omission which shall be relied upon to either party or wholly establish the cause of action, and if there is more than one act or the omission shall be a continuing one, the date of the first act or the date that the omission shall have first occurred, as the case may be, shall be the date that the cause of action shall have accrued;
- (b) in the case of an action upon a judgement, the date of the cause of action accruing shall be, the date of that act or omission or where there is more than one act or the omission shall be a continuing one, the date of the first act or the date that the omission shall have first occurred, as the case may be, which gave rise to the judgement itself.

(10) The provisions of this Section shall apply to all proceedings by every creditor alleging fraud against a settlor or a trust, or against any person who shall settle property upon, or dispose of property to, or establish a trust on behalf of the settlor, to the exclusion of any other remedy, principle or rule of law whether provided by statute or founded in equity or common law.

(11) In this Section the term "creditor" includes any person who alleges a cause of action.

PART VI

Beneficiaries and Protector

22. (1) A beneficiary shall be - Beneficiaries.
- (a) identifiable by name; or
 - (b) ascertained 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) The terms of a trust may impose upon a beneficiary an obligation as a condition for benefit.
- (4) The interest of a beneficiary shall constitute moveable property.
- (5) Subject to the terms of the trust, a beneficiary may sell, pledge, charge, transfer or otherwise deal with his interest in any manner.
- (6) The settlor or a trustee of a trust may also be a beneficiary of the trust.
23. (1) Subject to the terms of the trust, a beneficiary may disclaim his interest or any part of it, whether or not the beneficiary has received some benefit from his interest. Disclaimer of a beneficial interest.
- (2) A disclaimer shall be in writing and, subject to the terms of the trust, may be temporary and, if so provided in the writing effecting the disclaimer, shall be capable of revocation in the manner and under the circumstances therein mentioned or referred to.
- (3) A disclaimer shall not be effective until received by a trustee.
24. (1) Subject to the terms of a trust, the following provisions apply where a trust or an interest under a trust is in favour of a class of persons - Class interests.
- (a) a class closes when it is no longer possible for any other person to become a member of the class;
 - (b) a woman who is over the age of 55 years shall be deemed to be no longer capable of bearing a child;
 - (c) where any class interest relates to income and for any period there is no member of the class in existence the income shall be accumulated and, subject to Section 17 shall be retained until there is a member of the class in existence or the class closes.
- (2) In this Section “class interest” means a trust or an interest under a trust which is in favour of a class of persons.
25. (1) The terms of a trust may provide for the appointment of a person to the office of protector of the trust. Protector.
- (2) No person is qualified for appointment as protector of a trust if he is a person who is -
- (a) a trustee of the trust; or

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- (b) a shareholder or member of the governing body of or is an officer or employee or servant of a body corporate which is a trustee of the trust; or
 - (c) is a partner or associate of or in the employment of any person mentioned in paragraph (a) or (b).
- (3) Except in the case of a common trust -
- (a) no person shall be appointed as protector of the trust unless he is -
 - (i) a lawyer; or
 - (ii) an auditor; or
 - (iii) a member in good standing of such other professional bodies as the Minister may by Order designate,who is not disqualified for appointment to that office under sub-section (2).
 - (b) Notwithstanding paragraph (a), -
 - (i) a body corporate; or
 - (ii) a partnership,is so qualified if, but only if, each director (in the case of a body corporate) or each partner (in the case of a partnership) is a person so qualified under paragraph (a).
- (4) Subject to sub-sections (2) and (3), a person who is the settlor or a beneficiary of a trust may be the protector of the trust.
- (5) No person shall act as protector of a trust at a time when he knows that he is disqualified for appointment to that office; and if a protector of a trust to his knowledge becomes so disqualified during his term of office he shall thereupon vacate his office and give notice in writing to the trustees that he has vacated it by reason of that disqualification.
- (6) A person who acts as protector in contravention of sub-section (5), or fails without reasonable excuse to give notice of vacating his office as required by that sub-section, is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.
- (7) The protector shall have the powers -
- (a) of directing a trustee in such matters relating to the trust as are specified in the terms of the trust and in respect of which matters the trustee has discretion; and
 - (b) subject to the terms of the trust, of -
 - (i) removing a trustee; and
 - (ii) appointing a new or additional trustee.
- (8) A protector, in the exercise of his office, shall -
- (a) act honestly and in good faith with a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust is created; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (9) Subject to the terms of the trust, a protector shall be entitled to remuneration for his services and to reimbursement out of the trust of all expenses and liabilities reasonably incurred in connexion with the exercise of his office.

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(10) Where the terms of a trust provide for the appointment of a protector but contain no provision for the appointment of a new protector, then -

- (a) the beneficiaries for the time being; or failing them
- (b) the last remaining beneficiary; or failing him
- (c) the personal representative or the liquidator of the last remaining beneficiary; or
- (d) if such person does not exist or is unwilling to act, the Court

may appoint a new protector.

(11) Neither the protector nor any person who is or is acting as an officer, servant or agent of the protector or performing any duty on behalf of the protector, shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the protector under this Act or any Order made or purportedly made, under this Act, unless it is shown that the act or omission was in bad faith.

PART VII

Trustees

26. (1) Subject to the terms of the trust, the number of trustees shall be not less than two, unless only one trustee was originally appointed or the sole trustee is a corporate trustee.

Number of trustees.

(2) Where there is no trustee or less than the number required under sub-section (1) a trust shall not fail on that account.

27. (1) Where the terms of a trust contain no provision for the appointment of a new or additional trustee, then -

New or additional trustee.

- (a) the protector (if any); or failing him
- (b) the trustees for the time being; or failing them
- (c) the last remaining trustee; or failing him
- (d) the personal representative or the liquidator of the last remaining trustee; or
- (e) if such person does not exist or is unwilling to act, the Court

may appoint a new or additional trustee.

(2) Subject to the terms of the trust, a trustee appointed under this Section shall have the same powers, discretion and duties and may act as if he had been originally appointed a trustee.

(3) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the Court.

(4) On the appointment of a new or additional trustee anything requisite for vesting the trust property in the trustees for the time being of the trust shall be done.

28. (1) No person shall be obliged to accept appointment as a trustee, but 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.

Prohibition of renunciation after acceptance.

(2) A person who has not accepted and is not deemed to have accepted appointment as a trustee may disclaim such appointment within a reasonable period of time after becoming aware of it by notice in writing to the settlor or to the trustees or to the protector (if any).

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(3) If the settlor is dead or cannot be found and there is neither any other trustee nor a protector a person to whom sub-section (2) applies may apply to the Court for relief from his appointment and the Court may make such order as it thinks fit.

29. (1) Subject to sub-section (3), a trustee, not being a sole trustee, may resign his office by notice in writing delivered to his co-trustees.

Resignation or removal of trustee.

(2) A resignation takes effect on the delivery of notice in accordance with sub-clause (1).

(3) A resignation -

- (a) given in order to facilitate a breach of trust; or
- (b) which would result in there being no trustee or fewer than the number of trustees required under sub-clause (1) of Section 26,

shall have no effect.

(4) A trustee shall cease to be a trustee of a trust immediately upon -

- (a) his removal from office by the Court; or
- (b) his resignation becoming effective; or
- (c) the coming into effect of a provision in the terms of a trust under which he is removed from office or otherwise ceases to hold his office.

(5) A person who ceases to be a trustee under this Section shall concur in executing all documents necessary for the vesting of the trust property in the new or continuing trustees.

30. Subject to the terms of the trust, where the number of trustees falls below the minimum number required under sub-section (1) of Section 26, the required number of new trustees shall be appointed and until such minimum number is reached the surviving or continuing trustees shall act only for the purpose of preserving the trust property.

Position of continuing trustee on reduction in number of trustees.

31. (1) A trustee shall in the execution of his duties and in the exercise of his powers and discretion -

Duties of trustee.

- (a) act -
 - (i) with due diligence;
 - (ii) as would a prudent person;
 - (iii) to the best of his ability; and
- (b) observe the utmost good faith.

(2) Subject to this Act, a trustee shall carry out and administer the trust in accordance with its terms.

(3) Subject to the terms of the trust, a trustee shall -

- (a) so far as is reasonable preserve the value of the trust property;
- (b) so far as is reasonable enhance the value of the trust property.

(4) Except -

- (a) with the approval of the Court; or
- (b) as permitted by this Act or expressly provided by the terms of the trust,

a trustee shall not -

- (i) directly or indirectly profit from his trusteeship; or

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- (ii) cause or permit any other person to profit directly or indirectly from such trusteeship; or
- (iii) on his own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.

(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.

32. (1) Subject to the terms of the trust, where there is more than one trustee all the trustees shall join in performing the trust.

Duty of co-trustees to act together.

(2) Subject to sub-section (3), where there is more than one 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.

33. (1) Subject to the provisions of this Act and except as is necessary for the proper administration of the trust, the trustees of a trust shall keep confidential all information regarding the state and amount of the trust property or the conduct of the trust administration.

Duty of confidentiality.

(2) A trustee shall so far as is reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the trust property and the conduct of the trust administration to -

- (a) the Court;
- (b) the inspectors appointed under Section 74; and
- (c) subject to the terms of the trust -
 - (i) the settlor;
 - (ii) the protector of the trust (if any);
 - (iii) any beneficiary of the trust who is not a minor or interdict; and
 - (iv) any charity for the benefit of which the trust was established.

(3) Subject to the terms of the trust and subject to any order of the Court, a trustee shall not be required to produce and make available to any person, any document which -

- (a) discloses his deliberation as to the manner in which he has exercised a power or discretion or performed a duty conferred or imposed upon him; or
- (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.

34. Subject to the terms of the trust, where there is more than one beneficiary, or more than one purpose, or at least one beneficiary and at least one purpose, a trustee shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

Impartiality of trustee.

35. (1) Subject to the terms of the trust and subject to his duties under this Act, a trustee shall in relation to the trust property have all the same powers as an individual acting as the beneficial owner of such property.

General powers of trustee.

(2) A trustee shall exercise his powers only in the interests of the beneficiaries and in accordance with the terms of the trust.

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(3) The terms of a trust may require a trustee to obtain the consent of the protector of the trust before exercising a power or a discretion.

(4) Subject to the terms of the 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 manner and in accordance with such valuation as he thinks fit.

36. (1) A trustee shall not delegate his powers unless permitted to do so by this Act or by the terms of the trust.

Delegation by trustee.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee -

- (a) may delegate management of trust property to and employ investment managers whom the trustee reasonably considers competent and qualified to manage the investment of trust property; and
- (b) may employ accountants, attorneys, bankers, brokers, custodians, investment advisers, lawyers, 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.

(3) A trustee shall not be liable for any loss to the trust arising from a delegation or appointment under sub-section (2) who, in good faith and without neglect, makes such delegation or appointment or permits the continuation thereof.

(4) A trustee may authorize a person referred to in sub-section (2) to retain any commission or other payment usually payable in relation to any transaction.

37. (1) Unless authorized by -

Remuneration and expenses of trustee.

- (a) the term of the trust; or
- (b) the consent in writing of all of the beneficiaries; or
- (c) any order of the Court;

a trustee shall not be entitled to remuneration for his services.

(2) A trustee may reimburse himself out of the trust for or pay out of the trust all expenses and liabilities reasonably incurred in connexion with the trust.

38. A corporate trustee may -

Corporate trustee acting by resolution.

- (a) act in connexion with a trust by a resolution of such corporate trustee or of its board of directors or other governing body; or
- (b) by such a resolution appoint one or more of its officers or employees to act on its behalf in connexion with the trust.

PART VIII

Liability for Breach of Trust

39. (1) Subject to this Act and the terms of the trust, a trustee shall be liable for a breach of trust committed by him or in which he has concurred.

Liability for breach of trust.

(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.

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(3) Where there are two or more breaches of trust, a trustee shall not set off gain from one breach of trust against a 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;
- (b) indemnify a trustee against liability for a breach of trust.

(7) Sub-section (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 sub-section (6).

(8) Where two 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 to which sub-section (4) relates shall take all reasonable steps to have such breach remedied.

(10) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from his own fraud, wilful misconduct or gross negligence.

40. (1) This Section applies to a corporate trustee which, being constituted or operated for the purpose of acting as a trustee (whether or not it is also constituted or operated for other purposes) -

- (a) is a trustee of a trust; or
- (b) is resident in the Federation; or
- (c) is carrying on business in the Federation or from an address in the Federation.

(2) Where a breach of trust has been committed by a corporate trustee to which this Section applies, every person who at the time of the commission of the breach of trust was a controller, director or manager of such corporate trustee shall be deemed to be a guarantor of such corporate trustee in respect of any pecuniary damages and costs awarded by the Court against such corporate trustee in respect of such breach.

(3) The Court may relieve a controller, director or manager either wholly or partially from personal liability as a guarantor of such corporate trustee where it appears to the Court that he ought fairly to be excused from such liability, because -

- (a) he has proved that he was not aware of such breach of trust being contemplated or committed, and in being not so aware, was not behaving in a reckless or negligent manner; or

Liability of controllers, directors and managers of a corporate trustee.

- (b) he expressly objected, and exercised such rights as he had by way of voting power or otherwise as a controller, director or manager of the corporate trustee so as to try to prevent the commission of such breach of trust.
- (4) For the purpose of this Section -
- (a) “associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a corporate trustee, means -
 - (i) the spouse or children or step-children of that person;
 - (ii) the trustees of any settlement under which that person has a life interest;
 - (iii) any body corporate of which that person is a director;
 - (iv) any person who is an employee or partner of that person;
 - (v) if that person is a body corporate, any director of that body corporate, any subsidiary company of that body corporate and any director or employee of any such subsidiary company; and
 - (vi) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interest in that body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person;
 - (b) “chief executive”, in respect to a corporate trustee, means a person who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporate trustee and in relation to a corporate trustee which has its principal place of business in a place outside the Federation, includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business in the Federation;
 - (c) “controller”, in relation to a corporate trustee, means -
 - (i) a chief executive of the corporate trustee;
 - (ii) a chief executive of any body corporate of which that corporate trustee is a subsidiary company;
 - (iii) a partner in any partnership of which the corporate trustee is also a partner;
 - (iv) a person in accordance with whose directions or instructions any director of that corporate trustee or any other body corporate of which that corporate trustee is a subsidiary company is accustomed to act;
 - (v) a person who, either alone or with any associate or associates, is entitled to exercise or control the exercise of not less than 15 per cent of the voting power in general meeting of that corporate trustee or of any other body corporate of which that corporate trustee is a subsidiary company;
 - (d) “director” includes -
 - (i) a person who occupies the position of a director, by whatever name called;
 - (ii) in the case of a partnership, a partner;
 - (e) “manager” means a person, by whatever name called, other than a director or chief executive, who is responsible for the overall control and administration

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or having effective control of the day to day business of a corporate trustee or an office in the Federation of that corporate trustee;

- (f) “subsidiary company” has the meaning attributed to it under the Companies Act, 1996.

41. (1) A trustee acting for the purposes of more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust if he has obtained notice of it by reason of his acting or having acted for the purposes of another trust.

Trustee acting in respect of more than one trust.

(2) A trustee of a trust shall disclose to his co-trustees any interest which he has as trustee of another trust, if any transaction in relation to the first mentioned trust is to be entered into with the trustee of such other trust.

42. (1) Subject to sub-section (2), where in any transaction or matter affecting a trust a trustee informs another party to the transaction or matter that he is acting as trustee, a claim by such other party in relation to that transaction or matter shall extend only to the trust property.

Dealings by trustee with third parties.

(2) Nothing in sub-section (1) shall affect the liability of a trustee for breach of trust.

(3) Where in any such transaction or matter as is referred to in sub-section (1), a trustee fails to inform such other party that he is acting as trustee and that party is otherwise unaware of it, the trustee shall -

- (a) be personally liable to such other party in respect thereof; and
- (b) have a right of recourse to the trust property by way of indemnity against such personal liability.

43. (1) Subject to paragraph (2) -

- (a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust; and
- (b) such property shall not be deemed to form part of his assets.

Nature of trustee’s estate, following trust property and insolvency of trustee.

(2) Where a trustee is also a beneficiary of the same trust, sub-section (1) shall not apply to his interest in the trust property as a beneficiary.

(3) Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted may be followed and recovered unless -

- (a) it is not identifiable; or
- (b) it is in the hands of a *bona fide* purchaser for value without notice of breach of trust or a person (other than a trustee himself) deriving title through such a person.

(4) Where a trustee becomes insolvent or upon distraint, execution or any similar process of law being made, taken or used against any of his property his creditors shall have no right or claim against the trust property except to the extent that the trustee himself has a claim against the trust or has a beneficial interest in the trust.

44. (1) A *bona fide* purchaser for value without actual notice of any breach of trust -

- (a) may deal with a trustee in relation to trust property as if the trustee was the beneficial owner of the trust property; and
- (b) shall not be affected by the trusts on which such property is held.

Protection to persons dealing with trustee.

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(2) No person paying or advancing money to a trustee shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the propriety of the transaction or the application of the money.

45. (1) Subject to sub-section (2), where a person (in this Section referred to as a constructive trustee) makes or receives any profit, gain or advantage from a breach of trust he shall be deemed to be a trustee of that profit, gain, or advantage.

Constructive trustee.

(2) Sub-section (1) shall not apply to a *bona fide* purchaser of property for value and without notice of a breach of trust.

(3) A person who is or becomes a constructive trustee shall deliver up the property of which he is a constructive trustee to the person properly entitled to it.

(4) This Section shall not be construed as excluding any other circumstances under which a person may be or become a constructive trustee.

46. (1) Subject to sub-section (2), when a trustee resigns, retires or is removed, he shall duly surrender trust property in his possession or under his control.

Position of outgoing trustee.

(2) A trustee who resigns, retires or is removed may require to be provided with reasonable security for liabilities whether existing future contingent or otherwise before surrendering trust property.

(3) A trustee who resigns, retires or is removed and has complied with sub-clause (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 his duty as a trustee except liability -

(a) arising from any breach of trust to which such trustee (or in the case of a corporate trustee any of its officers or employees) was a party or to which he was privy;

(b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees.

47. (1) No period of limitation or prescription shall apply to an action brought against a trustee -

Limitation of actions or prescription.

(a) in respect of any fraud to which the trustee was a party or to which he was privy; or

(b) to recover from the trustee trust property -

(i) in his possession; or

(ii) under his control; or

(iii) previously received by him and converted to his use.

(2) Save as provided in sub-section (1), the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is -

(a) 3 years from the delivery of the final accounts of the trust to the beneficiary; or

(b) 3 years from the date on which the beneficiary first has knowledge of the occurrence of a breach of trust,

whichever period shall first begin to run.

(3) Where the beneficiary is a minor the period referred to in sub-section (2) shall not begin to run before the day on which the beneficiary ceased to be a minor.

PART IX

Provisions in Respect of Certain Powers

48. A trustee may apply to the Court for direction concerning the manner in which he may or should act in connexion with any matter concerning the trust and the Court may make such order, if any, as it thinks fit. Power to make application for directions.

49. (1) Subject to the terms of the trust, a trustee may invest any money requiring investment in any investment or property of whatsoever nature and wheresoever situated and whether producing income or not and whether involving any liability or not and upon such security (if any) as the trustee shall in his absolute discretion think fit as if the trustee were the absolute owner thereof. Power of investment.

(2) A trustee shall not be liable for breach of trust by reason only of continuing to hold any investment which has ceased to be an investment authorized by the terms of the trust.

(3) Subject to the terms of the trust, in selecting investments a trustee or (as the case may be) any investment manager to whom the trustee has delegated the management of the investment of trust property shall have regard -

- (a) to the need for diversification of investments in the trust, in so far as is appropriate to the circumstances of the trust; and
- (b) to the suitability to the trust of the investments proposed.

(4) Subject to the terms of the trust -

- (a) a trustee shall before investing money in any investment consider whether he should obtain appropriate advice as to whether the investment is suitable and satisfactory; and
- (b) a trustee shall determine whether and at what intervals he should obtain appropriate advice as to whether the existing investments of the trust are suitable and satisfactory; and
- (c) if a trustee considers that the obtaining of such advice is necessary, he shall obtain and consider such advice accordingly.

(5) For the purpose of sub-sections (4), advice is appropriate if it is the advice of a person who the trustee reasonably considers competent and qualified to give such advice; and such advice may be given by a person notwithstanding that he gives it in the course of his employment, including employment with a trustee of the trust.

50. (1) Subject to Section 17, the terms of a trust may direct or authorize the accumulation for any period of all or part of the income of the trust. Power of accumulation and advancement.

(2) Subject to sub-section (3), income of the trust which is not accumulated under sub-section (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 his interest -

- (a) is a vested interest; or
- (b) is an interest which will become vested -
 - (i) on attaining the age of majority; or
 - (ii) at any later age; or
 - (iii) upon the happening of any event,

the trustee may -

- (A) 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;
- (B) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary;
- (C) advance or appropriate to or 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 to the trustee for a payment made under sub-section (3).

(5) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, the trustee may advance or apply for the benefit of a beneficiary part of the trust property prior to the date of the happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.

(6) Any part of the trust property advanced or applied under sub-section (5) shall be brought into account in determining from time to time the share of the beneficiary in the trust property.

(7) No part of the trust property advanced or applied under sub-section (5) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

51. The terms of a trust may confer on the trustee power to appoint or assign all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person, whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

Power of appointment.

52. (1) A trust and any exercise of a power under a trust may be expressed to be -
- (a) revocable whether wholly or partly; or
 - (b) capable of variation.

Power of revocation.

(2) No such revocation or variation shall prejudice anything lawfully done by a trustee in relation to a trust before he receives notice of such revocation or variation.

(3) Subject to the terms of the trust, if it is revoked the trustee shall hold the trust property in trust for the settlor absolutely.

(4) Where a trust is partly revoked sub-section (3) shall apply to the property which is the subject of such revocation.

(5) In sub-section (3) "settlor" means the particular person who provided the property which is the subject of revocation.

53. (1) Where a trust has no resident trustee and the terms of the trust contain no provision for the appointment of a resident trustee, then -

Power to appoint resident trustee.

- (a) the protector (if any); or failing him
- (b) the trustees for the time being; or failing them
- (c) the last remaining trustee; or failing him
- (d) the personal representative or the liquidator of the last remaining trustee; or
- (e) if such person does not exist or is unwilling to act, the Court

may appoint a resident trustee.

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(2) The provisions of sub-sections (2), (3) and (4) of Section 27 shall, *mutatis mutandis*, apply to a resident trustee appointed under this Section.

54. (1) The Court may relieve a trustee either wholly or partly from personal liability for a breach of trust where it appears to the Court that -

Power to relieve trustee from personal liability.

- (a) he is or may be personally liable for the breach of trust;
- (b) he has acted honestly and reasonably;
- (c) he ought fairly to be excused
 - (i) for the breach of trust; or
 - (ii) for omitting to obtain the directions of the Court in the matter in which such breach arose.

(2) Sub-section (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act.

55. (1) 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 him.

Power to make beneficiary indemnify for breach of trust.

(2) Sub-section (1) applies whether or not such beneficiary is a minor or an interdict.

56. (1) The terms of a trust may be varied in any manner provided by its terms or by the Court in accordance with the next following provisions of this Section.

Power to provide variation of terms of trust.

(2) Subject to sub-section (3), the Court may, if it thinks fit, by order approve on behalf of -

- (a) a minor or interdict having, directly or indirectly, an interest, whether vested or contingent, under the trust; or
- (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the trust as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of person; or
- (c) any person unborn; or
- (d) any person in respect of any interest of his that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of the trust or enlarging the powers of the trustee of managing or administering any of the trust property.

(3) The Court shall not approve an arrangement on behalf of any person coming within paragraph (a), (b) or (c) of sub-section (2) unless the carrying out thereof appears to be for the benefit of that person.

(4) An application to the Court under this Section may be made by the Attorney General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

57. (1) Where in the management or administration of a trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction 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 terms

Power of approving particular transactions.

of the trust or by law the Court may confer upon the trustee either generally or in any particular circumstances a power for that purpose on such terms and subject to such provisions and conditions, if any, as the Court thinks fit and may direct in what manner and from what property any money authorized to be expended and the costs of any transaction are to be paid or borne.

(2) An application to the Court under this Section may be made by the Attorney General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

58. (1) Subject to the terms of a trust and subject to any order of the Court, where -
- (a) an interest lapses; or
 - (b) a trust terminates; or
 - (c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust; or
 - (d) property is vested in a person which is not for his sole benefit and the trusts upon which he is to hold the property are not declared or communicated to him,

Powers on failure or lapse of interest.

the interest or property affected by such lapse, termination, lack of beneficiary or lack of declaration or communication of trusts shall be held by the trustee or the person referred to in paragraph (d), as the case may be, in trust for the settlor absolutely or if he is dead for his personal representative.

(2) Where an interest or property is held by the trustee for a charitable purpose or, where sub-section (2) of Section 14 applies, for any other purpose which has ceased to exist or is no longer applicable, that interest or property shall be held for such other charitable purpose, or where sub-section (2) of Section 14 applies, for such other purpose, as the Court may declare to be consistent with the original intention of the settlor.

(3) In sub-sections (1) and (2) "settlor" means the particular person who provided the interest or property affected as mentioned in sub-section (1).

(4) An application to the Court under this Section may be made by the Attorney General.

PART X

Administration

59. (1) A trust shall have an office for service in the Federation.

Office for Service.

(2) The trustees of a trust may change the address of its office for service from time to time by giving notice to the Registrar.

(3) The change shall take effect on the notice being registered by the Registrar, but until the end of the period of 14 days beginning on the date on which it is registered, a person may validly serve any document on the trust at its previous office for service.

- (4) The trustees of a trust shall keep at its office for service -
- (a) if it is a unit trust, a register showing in alphabetical order for each beneficiary -
 - (i) the full name and address of each beneficiary who is an individual, or in the case of a body corporate its full name, the place where it is incorporated and the address of its registered or principal office,

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- (ii) where the participation by beneficiaries is defined by percentage interests or by the number of units or other similar rights held by them, the percentage interest or the number and class of units or other rights held,
 - (iii) a statement of the amount of any contributions agreed to be made by the beneficiary and the time at which, or events on the happening of which, the contributions are to be made,
 - (iv) a statement of the amount of money and nature and value of any other property contributed by the beneficiary and the dates thereof,
 - (v) a statement of the amount of contribution returned to the beneficiary and the dates thereof;
- (b) a copy of the attestation and each amendment made to it;
 - (c) a copy of the written terms of the trust (if any) and each amendment made to it;
 - (d) a copy of each annual statement required to be given to the Registrar pursuant to Section 60; and
 - (e) such other particulars as may be prescribed.
- (5) The records kept under sub-section (4) shall be -
- (a) *prima facie* evidence of the particulars which are by that sub-section directed to be contained therein;
 - (b) amended within 21 days of any change in the particulars contained therein;
 - (c) available for inspection and copying without charge during ordinary business hours at the request of a trustee or the protector (if any).

(6) If default is made in compliance with this Section every trustee who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

60. (1) The trustees of every trust shall, in each year before the end of the month next following the month in which the anniversary date of the registration of its attestation falls -

Annual Statement.

- (a) complete an annual statement containing information current as at the anniversary date of the registration of its attestation in that year;
 - (b) deliver to the Registrar a copy of the statement signed by each of the trustees of the trust together with the prescribed filing fee; and
 - (c) file a copy of the statement delivered to the Registrar in a register kept by them for the purpose.
- (2) The trustees of every trust shall state in its annual statement -
- (a) the trust's name and the address of its office for service;
 - (b) whether the trust is a charitable or a unit trust;
 - (c) whether the trust is an ordinary or an exempt trust;
 - (d) the full name and address of each trustee who is an individual, or in the case of a body corporate its full name, the place where it is incorporated and the address of its registered or principal office;
 - (e) in the case of an exempt trust, an undertaking that the trustees of the trust will forthwith notify the Minister by notice in writing if the trust should no longer qualify as an exempt trust; and

- (f) that the information contained in the statement is current as at the anniversary date of the registration of its attestation in the year in which it is required to be delivered.

(3) The Minister may, in his discretion, by written notice to a trustee of any unit trust direct that the trustees of the unit trust shall submit together with its annual statement such information, declaration and verification as are specified in the direction and the Minister may at any time withdraw or amend the terms of any such direction.

(4) If default is made in compliance with sub-section (1) or (2) every trustee who is in default is guilty of an offence and liable to a fine not exceeding four times the prescribed filing fee and in the case of an offence under paragraph (b) of sub-section (1), is liable to a fine not exceeding one half of the prescribed filing fee for each day the offence is permitted to continue.

61. For the purposes of this Act, a document may be served on a trustee in respect of a trust -

Service of documents.

- (a) by leaving it at, or sending it by post to, the office for service of the trust; or
- (b) in accordance with sub-section (3) of Section 59; or
- (c) by delivering it to the trustee.

62. Where a trustee executes a document on behalf of the trust, it shall be conclusively presumed in favour of any person who is not a trustee that -

Authority to sign.

- (a) the trustee has the authority under which he purports to act; and
- (b) the executed document has been validly executed.

63. Except as provided in this Act, legal proceedings by or against a trust shall be instituted by or against any one or more of the trustees only.

Legal proceedings.

64. (1) The trustees of every trust shall keep accounting records which are sufficient to show and explain their transactions in respect of the trust and are such as to disclose with reasonable accuracy at any time the financial position of the trust.

Accounts and audit.

(2) Unless the terms of a trust otherwise provides, it shall not be necessary for the trustees of a trust to appoint an auditor to audit their accounts in respect of the trust.

(3) If default is made in compliance with this Section every trustee who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

PART XI

Termination of Trusts

65. (1) Except as provided in Section 68, a trust shall not be terminated by an act of its trustees until a statement of termination signed by one of its trustees has been delivered by him to the Registrar.

Statement of termination.

(2) When a statement of termination is delivered to the Registrar he shall cancel the registration of the attestation in respect of the trust named in the statement of termination.

(3) If default is made in compliance with this Section every trustee who is in default is guilty of an offence and is liable to a fine not exceeding 2,500 dollars.

66. (1) On the termination of a trust the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.

Distribution of trust property on termination.

(2) Notwithstanding sub-section (1), the trustee may require to be provided with reasonable security for liabilities whether existing future contingent or otherwise before distributing trust property.

(3) In this Section “liabilities” includes contingent liabilities.

67. (1) Without prejudice to any power of the Court and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are interdicts or minors and all beneficiaries are in agreement so to do, they may require the trustee to terminate the trust and distribute the trust property in accordance with the terms of the trust to the persons entitled thereto.

Termination by Beneficiaries.

(2) A beneficiary of an interest under a spendthrift or protective trust may not enter into such an agreement as is referred to in sub-section (1).

68. (1) If default is made by the trustees in compliance with any provision of this Part, the Court may order the termination of the trust.

Termination by the Court.

(2) Where an order is made under sub-section (1) the Court may give such directions as it thinks fit as to the distribution of the trust property.

(3) An application to the Court under this Section may be made by the Attorney General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

(4) When a trust has been terminated under this Section the person making the application shall cause the relevant act of the Court to be delivered to the Registrar within 21 days after the making of the order and the Registrar shall thereupon cancel the registration of the attestation.

PART XII

Prospectuses

69. (1) The Minister may by Order prohibit either of the following, except in circumstances and subject to conditions specified in the Order -

Prospectuses.

- (a) the circulation of a prospectus in the Federation;
- (b) the circulation of a prospectus, in the Federation or elsewhere, in respect of a trust.

(2) Such Order may provide -

- (a) for prospectuses -
 - (i) to be filed with, or filed and approved by, the Minister,
 - (ii) to contain such further information as is necessary to give investors an informed assessment of any investment proposed in the prospectus,
 - (iii) to comply with such other requirements as may be specified in the Order,
- (b) for any other matter required to carry the Order into effect.

(3) Any person who fails to comply with any provision of any such Order and, where the offence is committed by any of the trustees of a trust, every trustee of that trust who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

(4) In this Part -

- (a) “prospectus” means an invitation to the public to acquire or apply for any units; and
- (b) “unit” means any material representation of the rights of investors with regard to the trust property of a trust whether such rights are represented -
 - (i) by securities issued in respect of the trust; or

- (ii) by the entry of names of investors (whether as beneficiaries or otherwise) in a register kept in relation to the trust, or
- (iii) by any other means.

(5) For the purposes of this Section -

- (a) an invitation is made to the public where it is not addressed exclusively to a restricted circle of persons; and
- (b) an invitation shall not be considered to be addressed to a restricted circle of persons unless -
 - (i) the invitation is addressed to an identifiable category of persons to whom it is directly communicated by the inviter or his agent; and
 - (ii) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation; and
 - (iii) the number of persons in the Federation or elsewhere to whom the invitation is so communicated does not exceed 50.

(6) An invitation to the public to acquire or apply for units issued in respect of a trust shall, if the units are not fully paid or if the invitation is first circulated within 6 months after the units were allotted, be deemed to be a prospectus circulated in respect of the trust unless it is shown that the units were not allotted with a view to their being the subject of such an invitation.

70. (1) A person who acquires or agrees to acquire a unit to which a prospectus relates and suffers a loss in respect of the unit as a result of the inclusion in the prospectus of a statement of a material fact which is untrue or misleading, or the omission from it of the statement of a material fact, shall, subject to Section 71, be entitled to damages for loss suffered -

Compensation for misleading statements in prospectus.

- (a) in the case of units offered for subscription, from each person who was a trustee of the trust when the prospectus was circulated;
- (b) in the case of units offered otherwise than for subscription, from the person making the offer and, where that person is a trustee of a trust, from each person who was a trustee of it when the prospectus was circulated;
- (c) from each person who is stated in the prospectus as accepting responsibility for the prospectus, or any part of it, but, in that case, only in respect of a statement made in or omitted from that part; and
- (d) from each person who has authorized the contents of, or any part of, the prospectus.

(2) Nothing in this Section shall make a person responsible by reason only of giving advice as to the contents of a prospectus in a professional capacity.

(3) This Section does not affect any liability which any person may incur apart from this Section.

71. A person shall not be liable under Section 70 if he satisfies the Court -

Exemption from liability to pay compensation.

- (a) that the prospectus was circulated without his consent; or
- (b) that, having made such enquiries (if any) as were reasonable, from the circulation of the prospectus until the units were acquired, he reasonably believed that the statement was true and not misleading or that the matter omitted was properly omitted; or

- (c) that, after the circulation of the prospectus and before the units were acquired he, on becoming aware of the untrue or misleading statement or of the omission of the statement of a material fact, took reasonable steps to secure that a correction was brought to the notice of persons likely to acquire the units; or
- (d) in the case of a loss caused by a statement purporting to be made by a person whose qualifications give authority to a statement made by him which was included in the prospectus with his consent, that when the prospectus was circulated he reasonably believed that the person purporting to make the statement was competent to do so and had consented to its inclusion in the prospectus; or
- (e) that the person suffering the loss acquired or agreed to acquire the units knowing that the statement was untrue or misleading or that the matter in question was omitted.

72. (1) A person is not debarred from obtaining compensation from a trust by reason only of his holding or having held units in the trust or any right to apply or subscribe for units in the trust or to be included in the register of beneficiaries in respect of units.

Recovery of compensation.

(2) A sum due from a trust to a person who has acquired or agreed to acquire units in the trust being a sum due as compensation for loss suffered by him in respect of the units, shall (whether or not the trust is being terminated and whether the sum is due under Section 70 or otherwise) be treated as a sum due to him otherwise than in his character of a beneficiary.

73. If a prospectus is circulated with a material statement in it which is untrue or misleading or with the omission from it of the statement of a material fact, any person who authorized the circulation of the prospectus is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both unless he satisfies the Court that he reasonably believed, when the prospectus was circulated, that the statement was true and not misleading or that the matter omitted was properly omitted.

Criminal liability for misleading statements.

PART XIII

Investigations

74. (1) If the Minister has *prima facie* evidence that -

- (a) a trust was created or is to be terminated for an unlawful or fraudulent purpose; or
- (b) the transactions or affairs of a trust are or have been conducted unlawfully or with intent to defraud any person; or
- (c) persons concerned with the creation, transactions or affairs of a trust have in connexion therewith acted fraudulently or dishonestly; or
- (d) in any case it is in the public interest that an investigation of the trust be made,

Appointment of inspectors by Minister.

he may appoint one or more competent inspectors to investigate the affairs of a trust and to report on them as the Minister may direct.

(2) The appointment may be made on the application of the Registrar, or of any person who is a trustee or the protector or a beneficiary of the trust to be investigated or a creditor of its settlor.

(3) The Minister may, before appointing inspectors, require the applicant, other than the Registrar, to give security, to an amount not exceeding 25,000 dollars or such other sum as may be prescribed for payment of the costs of the investigation.

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(4) This Section applies whether or not the trust is being terminated.

75. (1) If inspectors appointed under Section 74 to investigate the affairs of a trust think it necessary for the purposes of their investigation to investigate also the affairs of another trust which is or at any relevant time was administered by any trustee of the first mentioned trust, they shall have power to do so; and they shall report on the affairs of the other trust so far as they think that the results of their investigation of the affairs of the other trust are relevant to the investigation of the affairs of the first mentioned trust.

Powers of inspectors.

(2) Inspectors so appointed may at any time in the course of their investigation, without the necessity of making an interim report, inform the Minister and the Attorney General of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

76. (1) If inspectors appointed under Section 74 consider that any person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him -

Production of records and evidence to inspectors.

- (a) to produce and make available to them all records in his custody or power relating to that matter;
- (b) at reasonable times and on reasonable notice, to attend before them; and
- (c) otherwise to give them all assistance in connexion with the investigation which he is reasonably able to give,

and it is that person's duty to comply with the requirement.

(2) Inspectors may for the purposes of the investigation examine on oath any such person as is mentioned in sub-section (1), and may administer an oath accordingly.

(3) An answer given by a person to a question put to him in exercise of the powers conferred by this Section may be used in evidence against him.

77. If inspectors appointed under Section 74 have reasonable grounds for believing that a trustee, or past trustee, of the trust or other trust whose affairs they are investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the Federation or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that trustee towards the trust, the inspectors may require the trustee to produce and make available to them all records in the trustee's possession or under his control relating to that bank account.

Power of inspectors to call for trustee's bank accounts.

78. (1) Inspectors appointed under Section 74 may for the purpose of an investigation under that Section apply to the Court for a warrant under this Section in relation to specified premises.

Authority for search.

(2) If the Court is satisfied that the conditions in sub-section (3) are fulfilled it may issue a warrant authorizing a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.

(3) The conditions referred to in sub-section (2) are -

- (a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularised) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
- (b) that the investigation for the purposes of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.

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(4) Where a person has entered premises in the execution of a warrant issued under this Section, he may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(5) In this Section, “premises” includes any place and, in particular, includes -

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure.

79. Any person who wilfully obstructs any person acting in the execution of a warrant issued under Section 78 is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

Obstruction.

80. (1) If any person -

- (a) fails to comply with a requirement under Section 76 or 77; or
- (b) refuses to answer any question put to him by the inspectors for the purpose of the investigation,

Failure to co-operate with inspectors.

the inspectors may certify the refusal in writing to the Court.

(2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if he had been guilty of contempt of the Court.

(3) Notwithstanding the generality of the foregoing, no proceedings for an offence or for the recovery of any penalty shall be instituted under this Section against any person who refuses to answer any question if such refusal is made pursuant to Section 101.

81. (1) The inspectors may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of their investigation shall make a final report to the Minister.

Inspectors' reports.

(2) The Minister may -

- (a) forward a copy of any report made by the inspectors to the office for service of the trust;
- (b) furnish a copy on request and on payment of the prescribed fee to -
 - (i) any trustee of the trust or other trust which is the subject of the report,
 - (ii) any person whose conduct is referred to in the report,
 - (iii) the auditors (if any) of the trust or that other trust,
 - (iv) the applicants for the investigation,
 - (v) any other person whose financial interests appear to the Minister to be affected by the matters dealt with in the report, whether as a creditor of the trust or that other trust, or otherwise; and
- (c) cause the report to be printed and published.

82. (1) If, from any report made or information obtained under this Part, it appears to the Minister that civil proceedings ought in the public interest to be brought by the trustees of a trust, the Minister may himself bring those proceedings in the name and on behalf of the trustees of the trust.

Power to bring civil proceedings on behalf of trustees.

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(2) The Minister shall at the expense of the Government indemnify the trustees against any costs or expenses incurred by them or the trust in or in connexion with proceedings brought under this Section.

83. (1) The expenses of and incidental to an investigation by inspectors shall be defrayed in the first instance by the Minister, but the following are liable to make repayment to the Minister to the extent specified -

Expenses of investigating a trust's affairs.

- (a) a person who -
 - (i) is convicted in proceedings on a prosecution instituted as a result of the investigation, or
 - (ii) is ordered to pay the whole or any part of the proceedings brought under Section 82,may in the same proceedings be ordered to pay those expenses to the extent specified in the order;
- (b) a trust in whose name proceedings are brought under that Section is liable to the amount or value of any sums or property recovered by it as a result of those proceedings;
- (c) a trust which has been the subject of the investigation is liable except so far as the Minister otherwise directs; and
- (d) the applicant or applicants for the investigation (other than the Registrar), is or are liable to the extent (if any) which the Minister may direct.

(2) For the purposes of this Section, costs or expenses incurred by the Minister in or in connexion with proceedings brought under Section 82 (including expenses incurred under sub-section (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(3) A liability to repay the Minister imposed by paragraph (a) or (b) of sub-section (1) is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under paragraph (c) or (d) of that sub-section; and a liability imposed by paragraph (a) is (subject as mentioned above) a liability also to indemnify all persons against liability under paragraph (b).

(4) A person liable under sub-section (1) is entitled to a contribution from any other person liable under the same sub-section according to the amount of their respective liabilities under it.

(5) Expenses to be defrayed by the Minister under this Section shall, so far as not recovered under it, be paid out of money provided by the Government.

(6) There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Minister may determine in respect of general staff costs and overheads.

84. (1) A copy of a report of inspectors certified by the Minister to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspectors in relation to a matter contained in the report.

Inspectors' report to be evidence.

(2) A document purporting to be a certificate mentioned in sub-section (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

85. Nothing in this Part requires the disclosure or production to the Minister or to an inspector appointed by him -

Privileged information.

- (a) by a person of information or records which he would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional

privilege in proceedings in the Court except, if he is a lawyer, the name and address of his client;

- (b) by the bankers (as such) of a trust of information or records relating to the affairs of any of their customers other than the trust or other trust under investigation.

PART XIV

Registrar

86. (1) For the purposes of the registration of attestations under this Act, there shall be appointed a person known as the Registrar of trusts and such other officers as may be necessary to assist the Registrar in the exercise of his functions under this Act.

Registrar and other officers.

(2) Any functions of the Registrar under this Act may, to the extent authorized by him, be exercised by any of his officers.

(3) In this Section, "officer" means a person on the staff of the Registrar.

(4) The Minister may at any time and from time to time by Order require that the Registrar of companies appointed pursuant to the Companies Act 1996 shall also be the Registrar of trusts for such period or periods of time as may then be prescribed.

87. The Minister may direct a seal or seals to be prepared for the authentication of documents required for or in connexion with the establishment of trusts under this Act.

Registrar's seal.

88. (1) The Registrar shall allocate to every attestation a number, which shall be known as the attestation registration number of a trust.

Registration numbers.

(2) The attestation registration numbers of trusts shall be in such form, consisting of one or more sequences of figures or letters as the Registrar may from time to time determine.

(3) The Registrar may upon adopting a new form of registration number make such changes of existing registration numbers as appear to him necessary.

89. (1) For the purpose of securing that documents delivered to the Registrar are of standard size, durable and easily legible, the Minister may prescribe requirements (whether as to size, weight, quality or colour of paper, size, type or colouring of lettering, or otherwise) as the Minister may consider appropriate; and different requirements may be prescribed for different documents or classes of documents.

Size, durability, etc. of documents delivered to the Registrar.

(2) If a document is delivered to the Registrar (whether an original document or a copy) which in the Registrar's opinion does not comply with the prescribed requirements applicable to it, the Registrar may serve on a person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice stating his opinion to that effect and indicating the requirements so prescribed with which in his opinion the document does not comply.

(3) Where the Registrar serves a notice under sub-section (2), then for the purposes of any enactment which enables a penalty to be imposed in respect of an omission to deliver to the Registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such enactment whereby such a penalty may be imposed by reference to each day during which the omission continues) -

- (a) a duty imposed by that provision to deliver a document to the Registrar is to be treated as not having been discharged by the delivery of that document; but
- (b) no account is to be taken of days falling within the period beginning with the day on which the document was delivered to the Registrar and ending with the 14th day after the date of service of the notice under sub-section (2).

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90. (1) Where any Section of this Act requires a document to be delivered to the Registrar, but the form of the document has not been prescribed, it shall be sufficient compliance with that requirement if -

Form of documents to be delivered to the Registrar.

- (a) the document is delivered in a form which is acceptable to the Registrar; or
- (b) the information in question is delivered in material other than a document, being material which is acceptable to the Registrar,

and the document or information, as the case may be, is accompanied by the prescribed fee, if any.

(2) In this Section and Section 91, any reference to delivering a document includes, in the case of a notice, giving it.

91. (1) The Minister may by Order require the payment to the Registrar of such fees as may be prescribed in respect of -

Fees and forms.

- (a) the performance by the Registrar of such functions under this Act as may be specified in the Order, including the receipt by him of any document under this Act which is required to be delivered to him; and
- (b) the inspection of documents or other material held by him under this Act.

(2) Where a fee is provided for or charged under this Section for the performance of an act or duty by the Registrar, no action need be taken by him until the fee is paid, and where the fee is payable on the receipt by him of a document required to be delivered to him he shall be deemed not to have received it until the fee is paid.

(3) The Minister may prescribe forms to be used for any of the purposes of this Act and the manner in which any document to be delivered to the Registrar is to be authenticated.

(4) Unless otherwise provided by or under this Act, any document delivered to the Registrar on behalf of a trust pursuant to this Act shall be signed by one trustee.

(5) Fees paid to the Registrar shall form part of the Consolidated Fund except that for a trust brought under this Act by virtue of Section 108(4) hereof in which case the fees payable in relation to such trust shall be paid into the Nevis Island Consolidated Fund.

92. (1) Subject to the provisions of this Section, no inspection and production of documents kept by the Registrar under this Act shall be permitted except that any of the trustees of a trust may by notice in writing to the Registrar authorize the person named therein -

Inspection and production of documents kept by the Registrar.

- (a) to inspect a document of the trust delivered to the Registrar under this Act or, if the Registrar thinks fit, obtain a copy thereof;
- (b) to require a certificate of registration in respect of the attestation of the trust or a copy, certified or otherwise, of any other document or part of any other document referred to in paragraph (a);

and a certificate given under paragraph (b) shall be signed by the Registrar and sealed with his seal.

(2) A copy of or extract from a record kept by the Registrar, certified in writing by him (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to him under this Act shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated therein of which direct oral evidence would be admissible.

93. (1) If a trustee, having failed to comply with a provision of this Act which requires him to deliver to the Registrar any document, or to give notice to the Registrar of any matter, does not make good the failure within 14 days after the service of a notice on the trustee requiring him to do so, the Court may, on an application made to it by another trustee or the protector (if any) or a

Enforcement of duty to deliver documents and notices to the Registrar.

beneficiary of the trust or by the Registrar, make an order directing the trustee to make good the failure within a time specified in the order.

(2) The Court's order may provide that all costs of and incidental to the application shall be borne by the trustee responsible for the failure.

(3) Nothing in this Section prejudices the operation of any Section imposing penalties on each of the trustees in respect of a failure mentioned above.

94. (1) The Registrar may destroy any records delivered under this Act which have been kept for over 30 years and which were, or were comprised in or annexed or attached to, the annual statements of a trust.

Destruction of old records.

(2) Where a trust has been terminated, whether under this Act or otherwise, the Registrar may, at any time after 30 years from the date of the termination, destroy any records relating to that trust in his possession or under his control.

PART XV

Taxes and Stamp Duties

95. (1) Notwithstanding any provision to the contrary in any enactment, a trust is not itself a subject for assessment to any tax in the Federation and the beneficiaries of a trust are exempt from all income, capital gains and withholding taxes which may arise out of their interest in the trust if the trustees of the trust are in respect of it effecting transactions exclusively with persons who are not resident in the Federation.

Exemption from taxes.

(2) The beneficiaries of an exempt trust shall not lose their exemption under sub-section (1) by reason only that the trustees of the trust are in respect of it -

- (a) effecting transactions with, or buying or selling or otherwise dealing in any securities issued or created by, any person resident in the Federation who is exempt from all income, capital gains and withholding taxes under any law of the Federation;
- (b) effecting or concluding in the Federation contracts or arrangements (including contracts or arrangements with any person resident in the Federation for employment with or the supply of goods and services to them in respect of the trust) and exercising in the Federation all other powers, so far as may be necessary for its proper performance;
- (c) carrying on any part of its administration within the Federation and holding meetings in the Federation;
- (d) owning or leasing property in the Federation for the carrying on of any part of its administration or as residence for its beneficiaries;
- (e) transacting banking business with any person resident in the Federation who is authorized to carry on banking business under any law of the Federation.

(3) Notwithstanding any provision to the contrary in any enactment, no estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by any person with regard to any property held in, or securities issued or created in respect of, an exempt trust.

(4) In this Section -

- (a) "person" includes an individual and any body corporate; and

- (b) “resident in the Federation” means a person who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation but does not include the beneficiaries of an exempt trust and “not resident in the Federation” shall be construed accordingly.

96. Notwithstanding any provision to the contrary in any enactment, no stamp duties are payable by any person with regard to any transaction in securities issued or created in respect of an exempt trust.

Exemption from stamp duties.

PART XVI

Miscellaneous and Final Provisions

97. (1) The records, which the trustees of a trust are required by this Act to keep, may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Form of trust’s records.

(2) The trustees of a trust shall take reasonable precautions -

- (a) to prevent loss or destruction of;
- (b) to prevent falsification of entries in; and
- (c) to facilitate detection and correction of inaccuracies in,

the records required by this Act to be kept, and if default is made in compliance with this sub-section every trustee who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

98. (1) If any record referred to in sub-section (4) of Section 59 is kept otherwise than in intelligible written form, any duty imposed on the trustees of a trust by this Act to allow examination of, or to furnish extracts from, such record shall be treated as a duty to allow examination of, or to furnish a copy of the extract from, the record in intelligible written form.

Examination of records and admissibility of evidence.

(2) The records kept by the trustees of a trust in compliance with this Act shall be admissible in the form in which they are made intelligible under sub-section (1) as *prima facie* evidence, before and after the termination of the trust, of all facts stated therein.

99. If, on an application by the Attorney General, there is shown to be reasonable cause to believe that a person has, while a trustee of a trust, committed an offence in connexion with the management of the trust’s affairs and that evidence of the commission of the offence is to be found in any records of or under the control of the trustee, the Court may make an order -

Production and inspection of records where offence suspected.

- (a) authorizing a person named in it to inspect the records in question, or any of them, for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring any trustee of the trust named in the order to produce and make available the records (or any of them) to a person named in the order at a place so named.

100. Where any proceedings are instituted under this Act against any person, nothing in this Act is to be taken to require any person to disclose any information which he is entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the Court.

Legal professional privilege.

101. A person may refuse to answer any question put to him pursuant to any provision of this Act if his answer would tend to expose that person, or the spouse of that person, to proceedings under the law of the Federation for an offence or for the recovery of any penalty.

Right to refuse to answer questions.

The Trusts Act, 1996 - 23.

102. (1) Any person who makes a statement in any document, material, evidence or information which is required to be kept under sub-section (4) of Section 59 or which is required to be delivered to the Registrar under this Act that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or that omits to state any material fact, the omission of which makes the statement false or misleading, shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

Punishment of offences.

(2) A person shall not be guilty of an offence under paragraph (1) if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

103. Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence punishable by this Act shall be liable to be dealt with, tried and punished as a principal offender.

Accessories and abettors.

104. (1) The Court may, if it thinks fit -

General powers of the Court.

(a) make an order concerning -

- (i) the execution or the administration of a trust,
- (ii) a resident trustee or any other trustee of a trust, including an order relating to the exercise of any power, discretion or duty of a trustee, the appointment or removal of a trustee, the remuneration of any trustee, the keeping or submission of accounts, the conduct of a trustee and payments, whether payments into Court or otherwise,
- (iii) a protector, including an order appointing a protector;
- (iv) a beneficiary or any person having a connexion with 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 Act, or make any new or further order or declaration.

(2) An application to the Court under this Section may be made by the Attorney General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

(3) Where the Court makes an order for the appointment of a trustee it may impose such conditions as it thinks fit, including conditions as to the vesting of trust property.

(4) Subject to any order of the Court, a trustee appointed under this Section shall have the same powers, discretions and duties and may act as if he had been originally appointed as a trustee.

(5) Where any person neglects or refuses to comply with an order of the Court directing him to execute or make any conveyance, assignment, or other document or instrument or indorsement, for giving effect to any order of the Court under this Act, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, assignment, or other document or instrument or indorsement, shall be executed, made or done by such person as the Court nominates for the purpose, at the cost of the person in default, or otherwise, as the Court directs, and a conveyance, assignment, document, instrument or indorsement so executed, made or done shall operate and be for all purposes available as if it had been executed, made or done by the person originally directed to execute, make or do it.

(6) The Court may order the costs and expenses of and incidental to an application to the Court under this Act to be raised and paid out of the trust property or to be borne and paid in such manner and by such persons as it thinks fit.

The Trusts Act, 1996 - 23.

105. (1) The Minister may by Order make provision for the purpose of carrying this Act into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which may be prescribed by this Act. Orders.

(2) Except insofar as this Act otherwise provides, any power conferred thereby to make any Order may be exercised -

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
- (b) so as to make in relation to the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise), or
 - (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes of this Act, or
 - (iii) any such provision either unconditionally or subject to any specified conditions.

(3) Without prejudice to any specific provision of this Act, any Order under this Act may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

106. (1) The following Acts are repealed - Repeals and saving.

- (a) The Trustee Act (Cap. 355); and
- (b) The Trustees' Relief Act (Cap. 357).

(2) The trustees of every existing trust shall in respect of it register an attestation under this Act within 18 months from the day sub-section (1) comes into force and, subject to paragraph (c) of sub-section (3), the provision of this Act shall apply to such trust accordingly except that no registration fee shall be payable by the trustees of such trust for the registration of its attestation under this Act.

(3) Nothing in this Act shall -

- (a) abridge or affect the powers, responsibilities or duties under any provision of law of any curator, guardian, or special and general attorney;
- (b) affect a personal representative where he is acting as such;
- (c) affect the legality or validity of -
 - (i) anything done before the commencement of this Act in relation to an existing trust; or
 - (ii) any trust arising from a document or disposition executed or taking effect before the commencement of this Act;
- (d) derogate from the powers of the Court which exist independently of this Act -
 - (i) to set aside or reduce any transfer or other disposition of property; or
 - (ii) to vary any trust; or
 - (iii) to reduce or vary any testamentary or other disposition; or
 - (iv) to make an order relating to matrimonial proceedings.

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(4) The Minister may, by Order, make provision for any other transitional matter connected with the coming into force of this Act.

107. (1) The Minister may by Order provide that the trustees of a trust shall be subject to such regulations as he may prescribe if they are in respect of the trust intending to carry on or are carrying on any business specified in the Order as being finance business.

Regulation of
finance business.

(2) An Order under this Section may provide for the payment of annual and other fees and for the imposition of fines and daily default fines for breaches of the matters specified in the Order.

108. (1) Subject as otherwise provided in sub-sections (2) and (4), the provisions of this Act shall not extend or apply to trusts registered under the Nevis International Exempt Trust Ordinance 1994.

Application of this
Act.

(2) Any trust falling within sub-section (1) shall be subject to and comply with all requirements of this Act in the same manner as a trust established hereunder where -

- (a) a trustee of the trust is resident in the Federation; or
- (b) a settlor or beneficiary of the trust is resident in the Federation; or
- (c) the trust property comprises any land situated in the Federation.

(3) For the purposes of sub-section (2) only -

- (a) a company formed under or subject to the Nevis Business Corporation Ordinance 1984 or the Nevis Limited Liability Company Ordinance 1995;
- (b) any other body corporate which carries on business in Nevis or which has an address in Nevis which is used regularly for the purpose of its business; and
- (c) an individual who is domiciled or ordinarily resident in Nevis,

shall not be considered resident in the Federation unless in the case of persons mentioned in paragraph (b) or (c) such person is a settlor or beneficiary of a trust falling within sub-section (1).

(4) The Minister may determine and by Order proclaim that the provisions of this Act shall as from the date specified in the Order extend and apply to any trust or trusts falling within sub-section (1).

(5) In the exercise of his power under sub-section (4), the Minister shall take into account any matter which he may have discussed with the person who is responsible for the Ministry of Finance within the Nevis Island Administration and such other matters as he considers appropriate, but shall in particular have regard to -

- (a) the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons carrying on business in or from within the Federation; or
- (b) the protection of the reputation of the Federation as a financial centre.

WALFORD V. GUMBS
Speaker.

Passed the National Assembly this 3rd day of December, 1996.

F. ALPHONSO LEWIS
Clerk of the National Assembly.