

## INTERNATIONAL TRUSTS ACT, 1996

### Arrangement of Sections

PART I	Short Title and Interpretation
PART II	Creation of International Trusts
PART III	Spendthrift Trusts
PART IV	Charitable Trusts
PART V	Purpose Trusts
PART VI	Protector and Similar Appointments
PART VII	Termination or failure of International Trust
PART VIII	Breach of Trust
PART IX	Proper Law and Effect of Foreign Law
PART X	Powers of the Court; Proceedings and Limitations
PART XI	Dispositions into or by an International Trust
PART XII	Registration of International Trusts
PART XIII	Exemptions from Taxes and Duties for International Trusts
PART XIV	Miscellaneous

## INTERNATIONAL TRUSTS ACT, 1996

### Arrangement of Sections

PART I	<b>Short Title and Interpretation</b>
	1. Short title
	2. Commencement
	3. Definitions and interpretation
	4. Trusts generally
	5. Application of Act
PART II	<b>Creation of International Trusts</b>
	6. Creation of international trusts; validity
	7. Presumption of irrevocability
	8. Duration of trust and accumulation of income
	9. Retention of control by settlor
PART III	<b>Spendthrift Trusts</b>
	10. Spendthrift Trusts
PART IV	<b>Charitable Trusts</b>
	11. Charitable Trusts
PART V	<b>Purpose Trusts</b>
	12. Trusts for non-charitable purposes

13. Protector may be trustee
14. Appointment of protector by Offshore Finance Inspector
15. Extension of *cy-pres*

PART VI                    **Protector and Similar Appointments**

16. Protector of a trust
17. Other advisors and agents

PART VII                   **Termination or failure of International Trust**

18. Failure or lapse of interest
19. Failure of charitable trust
20. Termination of International Trust
21. Termination by beneficiaries

PART VIII                **Breach of Trust**

22. Liability for breach of trust
23. Constructive trust
24. Tracing trust property
25. Beneficiary may relieve or indemnify trustee
26. Power to relieve trustee from personal liability
27. Powers to make beneficiaries indemnify

PART IX                   **Proper Law and Effect of Foreign Law**

28. Proper law of trust
29. Change of proper law
30. Capacity of settlor
31. Law of Saint Vincent and the Grenadines
32. Effect of section
33. Exclusion of foreign laws
34. Community property

PART X                    **Powers of the Court; Proceedings and Limitations**

35. Jurisdiction of the court
36. Court's determination of validity
37. Saving of certain rights
38. Extent of validity for creditors
39. Foreign judgments not enforceable
40. Application for directions
41. Payment of costs
42. Limitation on commencement of proceedings
43. Security for costs

PART XI                  **Dispositions into or by an International Trust**

44. Scope
45. Avoidance of fraud
46. Limitations
47. Application
48. Certain rights
49. Extent of avoidance of relevant dispositions
50. Statute of Elizabeth not applicable

51. Heirship rights not applicable

PART XII

**Registration of International Trusts**

- 52. International trusts registerable; benefits of registration
- 53. Appointment of Registrar of Trusts
- 54. Appointment of Deputy Registrar
- 55. Duties of the Registrar of Trusts
- 56. Qualifications for trust to be registered
- 57. Powers to Comptroller to require information
- 58. Language and translation
- 59. Fees payable to Registrar of Trusts
- 60. Refusal or cancellation of registration
- 61. Appeals against cancellation

PART XIII

**Exemptions from Taxes and Duties for International Trusts**

- 62. Exemption of registered trust from income tax

PART XIV

**Miscellaneous**

- 63. Custody of copy of instrument
- 64. Confidentiality
- 65. Bankruptcy
- 66. Regulations
- 67. Savings

**SAINT VINCENT AND THE GRENADINES**

ACT NO. 20 1996, ACT NO. 39 OF 1996

I ASSENT CHARLES J. ANTROBUS

[L.S.] Ag. Governor-General

7th October 1996 - 31st December 1996

**An Act** to provide for the registration and regulation of international trusts in Saint Vincent and the Grenadines and for related matters.  
[By Proclamation]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines, and by the authority of the same, as follows:

**Part I**

**Short Title and Interpretation**

**Short title.**

- 1. This Act may be cited as the *International Trusts Act, 1996*.

**Commencement.**

- 2. This Act comes into operation on such date as the Governor-General may by Proclamation appoint.

**Definitions and interpretation.**

- 3. (1) In this Act, unless the context otherwise requires

*"Authority"* means the Saint Vincent Offshore Finance Authority created pursuant to the Offshore Finance Authority Act;

"*beneficiary*" means a person entitled to benefit under a trust, or in whose favor a power to distribute trust property may be exercised, and includes a body corporate;

"*charitable purpose*" shall be construed in accordance with the provisions of Part IV of this Act;

"*creditor*" means a person to whom an obligation is owed, whether or not such obligation came into existence before or after a relevant disposition;

"*Confidential Relationships Preservation Act*" means the Confidential Relationships Preservation (International Finance) Act, 1996, as the same may be amended from time to time;

"*Comptroller*" means the Comptroller of Inland Revenue appointed under section 3 of the Income Tax Act Cap. 312 and includes any person to whom the Comptroller may lawfully delegate his responsibilities;

"*court*" means the High Court of the State or a judge thereof;

"*disposition*" means any disposition or series thereof, however effected, and (without prejudice to the generality of thereof) includes any sale, transaction, grant, contribution, gift or transfer of property of any nature whatsoever;

"*Gazette*" means the Official Gazette of the State;

"*heirship rights*" means any right claim or interest in, against or to property of a person arising or accruing in consequence of that person's death, other than any such right claim or interest created by will or other voluntary *inter vivos* or testamentary disposition or resulting from an express limitation in, or failure of, the disposition of the property of such person;

"*insolvent*" means, in respect of a settlor of an international trust, any settlor whose financial liabilities, actual contingent or prospective, exceed the value of his assets;

"*intent to defraud*" means an intention of a transferor willfully to defeat an obligation owed to a creditor;

"*international trust*" or "*trust*" means a trust in respect of which

(i) the settlor is not a Resident at the time of the creation of the trust and at such times as the settlor adds new property to the trust,

(ii) the trust is evidenced by a writing signed by the settlor or his nominee and by a Registered Trustee,

(iii) at all times at least one of the trustees is licensed under the Registered Agent and Trustee Licensing Act,

(iv) no beneficiary is a Resident at the time of the creation or settlement of the trust or at such times as the settlor adds new property to the trust, and

(v) the trust property does not include any [*and*] real property situate in the State or an interest in any property so situate;

"*International Banks Act*" means the International Banks Act, 1996, as the same may be amended from time to time;

"*International Business Companies Act*" means the International Business Companies Act, 1996, as the same may be amended from time to time;

"*International Business Company*" means a company incorporated or continued under the International Business Companies Act, and each reference to an "international company" in this Act shall be a reference to an International Business Company;

"*International Insurance Company*" means an International Business Company which carries on the business of insurance entirely or in common with any other business;

"*International Shipping Company*" means an International Business Company which carries on the business of shipping entirely or in common with any other business;

"*minor*" means a person who has not attained full age under the law of his domicile;

"*Minister*" means the Minister for Finance of the State;

"*obligation*" means an obligation or liability that existed on or before the date of a relevant disposition and of which the transferor had actual notice, and includes a liability contingent upon such an obligation or liability;

"*Offshore Finance Inspector*" means the person appointed pursuant to section 8(2) of the Offshore Finance Authority Act;

"*Offshore Finance Authority Act*" means the Saint Vincent and the Grenadines Offshore Finance Authority Act, 1996, as the same may be amended from time to time after the date hereof;

"*person*" means a natural person or a company, partnership, limited partnership or other body corporate;

"*personal representative*" means the executor or administrator of the estate of a deceased person;

"*property*"-

(a) means property of any description, wherever situated, including any share or interest therein, but excluding any real property with its *situs* in the State,

(b) in relation to rights and interests, includes rights and interests whether vested, contingent, defeasible or future;

"*Protector*" has the meaning ascribed to it in Part VI of this Act;

"*Purpose Trust*" has the meaning ascribed to it in Part V of this Act;

"*Registered Trustee*" means a person holding a valid and subsisting license to engage in the business of trustee for international trusts in connection with its business of Offshore Representation pursuant to the Registered Agent and Trustee Licensing Act;

"*Registered Agent and Trustee Licensing Act*" means the Registered Agent and Trustee Licensing Act, 1996, as the same may be amended from time to time;

"*Registrar of International Companies*" means the Registrar of International Business Companies appointed pursuant to the International Business Companies Act;

"*Registrar of Trusts*" means the Registrar of International Trusts appointed under this Act;

"*relatives*" in relation to an individual means his father and mother, his spouse, the father and mother of his spouse, his brothers and sisters, the brothers and sisters of his spouse, his children and remoter issue and the spouses of such children and issue;

"*relevant disposition*" means a disposition to which Parts X or XI apply;

"*Resident*" means, for purposes of this Act,

- (1) a natural person who is ordinarily resident in the State under general principles of State income taxation,
- (2) any trust, company, partnership, limited partnership or other body, incorporated, established, formed or organized in the State under the laws of the State, the majority of shares, beneficial interests or other indicia of ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of subparagraphs (1) or (3) hereof, or by the State, or
- (3) any other trust, company, partnership, limited partnership, or other entity which is a resident of, or ordinarily resident or domiciled in, the State under the Income Tax Act Cap 312;

provided, for purposes hereof the term "*Resident*" shall not include (i) any charity under the Charities Act Cap \_\_, (ii) any International Trust that complies with the tax exemption provisions of this Act, or if registered under the Trust Authority Act, the tax exemption provisions of that act; (iii) any International Business Company that complies with the tax exemption provisions of the International Business Companies Act; or (iv) any International Banking Company that complies with the tax exemption provisions of the International Banks Act; so long as and to the extent that such compliance continues by such entity under the provisions of the applicable act;

"*Settlor*" means a person who makes a disposition [*deposition*] of property on or to a trust;

"*State*" means the State of Saint Vincent and the Grenadines;

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

"*transferee*" means the person to whom a relevant disposition is made and includes any successor in title through any disposition;

"*trust*" and "*international trust*" shall be construed to include reference to the deed or other instrument governing the trust relationship;

"*Trust Authority Act*" means the Saint Vincent and the Grenadines Trust Authority Act, Cap 114; and

"Trust Property" means property held on trust, directly or indirectly;

(2) In this Act all pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, singular or plural as the context may require.

**Trusts generally.**

4. (1) In this Act the expression "trust" means the legal relationship created under principles of equity and common law when property has been placed under the control of a trustee for the benefit of one or more beneficiaries or for a charitable or other specified purpose.

(2) A trust shall be regarded as created at the time when property is first received by or vested in the trustee to be held by him in accordance with the terms of the trust.

(3) Without limiting those provisions of this Act having specific application to international trusts, for purposes of this Act a trust has the following general characteristics:

(a) the property of the trust constitutes a separate fund and is not a part of the trustee's own estate or taxable to the trustee;

(b) title to the property of the trust is held in the trustee or in the name of another person on behalf of the trustee for benefit of the trust or beneficiaries, while the beneficial enjoyment of the property is vested in others, called "beneficiaries;"

(c) the trustee has the power and the duty to manage, employ or dispose of the property in the trust in accordance with the terms of the trust instrument and the special duties imposed upon him by law; and

(d) the trustee is a fiduciary, and thereby accountable for the management and administration of the property in the trust.

**Application of Act.**

5. This Act applies only to trusts, whether created before or after the commencement of this Act, which

(a) meet the definition of "international trust" contained in Section 3 hereof, and

(b) are registered in accordance with the provisions of Part XII hereof;

provided, that the provisions of this Act other than those contained in Part XIII shall continue to apply to a trust which is duly established as an international trust hereunder but which ceases to qualify as such due to circumstances beyond the control of the settlor, whether such lapse is temporary or permanent.

**PART II**

**Creation of International Trusts and Presumptions**

**Creation of international trusts; validity.**

6. (1) An international trust may only be created by instrument in writing that satisfies the formal requirements for a deed or settlement under the proper law of the trust.

(2) An international trust registered under this Act shall be valid and enforceable so long as it meets the requirements of this Act and notwithstanding that it may be invalid according to the law of the settlor's domicile, residence or place of incorporation.

(3) An international trust shall be invalid and unenforceable to the extent that-

(a) it purports to do anything contrary to the laws of the State; or

(b) it purports to confer any right or power or to impose any obligation the exercise effect or carrying out of which is contrary to the laws of the State.

**Presumption of irrevocability.**

7. An international trust that does not contain a power of revocation shall be presumed to be irrevocable by the settlor or his legal personal representative notwithstanding that the trust is created *inter vivos* or voluntarily by the settlor or his nominee.

**Duration of trust and accumulation of income.**

8. (1) The terms of a trust instrument may provide for the duration or date of termination of the trust but, subject to subsection (2), the maximum duration of an international trust shall be one hundred and twenty (120) years after the date of its creation when such trust will terminate if not sooner terminated in accordance with the terms of the trust instrument.

(2) Subsection (1) does not apply to a purpose trust or a trust established exclusively for one or more charitable purposes, and such a trust may continue in force without any limit as to time.

(3) The rules of law and equity known as the "rule against perpetuities" and the "rule against accumulations" shall not apply to an international trust governed by this Act.

(4) The terms of an international trust instrument may direct or authorize the accumulation of all or part of the income of the trust for a period not exceeding one hundred twenty (120) years from the date of the creation of the trust.

**Retention of control by settlor.**

9. An international trust shall not be declared invalid or be affected in any way if the settlor, and if more than one settlor, if any one or more of them:

(1) retains, possesses or acquires a power to revoke the trust;

(2) retains, possesses or acquires a power to amend the trust;

(3) retains, possesses or acquires any benefit, interest or property from the trust;

(4) retains, possesses or acquires the power to remove or appoint a trustee, protector or advisor;

(5) retains, possesses or acquires the power to direct a trustee or protector on any matter;

(6) retains, possesses or acquires any specific power to appoint the capital or income from the trust to persons other than himself;

(7) is a beneficiary of the trust solely or together with others; or

(8) purports to direct the activities of a trustee through a letter of wishes or similar statement or document made or delivered to that trustee in connection with and at the time of creation of an international trust.

**PART III**

### **Spendthrift Trusts**

#### **Spendthrift Trusts.**

10. (1) The terms of an international trust may make the interest of any beneficiary

(a) subject to termination upon the happening of a specified event;

(b) subject to diminution, suspension or termination in the event of the beneficiary becoming insolvent or any of his property becoming liable to seizure or sequestration for the benefit of his creditors; or

(c) subject to a restriction on, alienation of or dealing in that interest;

and such a trust shall be known for purposes of this Act as a protective or spendthrift trust.

(2) Where any property is directed to be held on protective or spendthrift trust for the benefit of a beneficiary, the trustee shall hold the property attributable to the interest of such beneficiary

(a) in a trust to pay the income to the beneficiary until the interest terminates in accordance with the terms of the trust or when a determining event occurs; and

(b) if a determining event occurs, and while the interest of the beneficiary continues, in trust to pay the income to such of the following (and if more than one, then in such shares) as the trustee in his absolute discretion shall appoint:

(i) the beneficiary or any spouse or child of the beneficiary; or

(ii) if there is no such spouse or child, the beneficiary and the persons who would be entitled to the estate of the beneficiary if he had then died intestate and domiciled in the State.

(3) In subsection (2) above, a "determining event" shall mean the occurrence of any event or any act or omission on the part of the beneficiary (other than the giving of consent to an advancement of trust property) which would result in the capital or any income of the trust becoming payable to any person other than the beneficiary or except as provided in the preceding subsection.

(4) Any rule of law or public policy in the State which prevents a settlor from establishing a protective or a spendthrift trust of which he is a beneficiary shall have no application to an international trust created under section 6 hereof.

### **PART IV Charitable Trusts**

#### **Charitable Trusts.**

11. (1) An international trust may be created for a charitable purpose.

(2) Subject to subsections (3) and (4) below, the following purposes shall be regarded as charitable:

(a) the relief of poverty;

(b) the advancement of education;

(c) the advancement of religion;

- (d) the protection of the environment;
- (e) the advancement or protection of human rights and fundamental freedoms; or
- (f) any other purposes which are beneficial to the community.

(3) A purpose shall not be regarded as charitable unless the fulfillment of the purpose is for the benefit of the community or a substantial section of the community having regard to the type and nature of the purpose.

(4) A purpose may be regarded as charitable whether it is to be carried out in the State or elsewhere and whether it is beneficial to a community in the State or elsewhere.

(5) A Registered Trustee of an international trust may apply in writing to the Authority for a written ruling, in advance of registration of the trust hereunder, as to whether a purpose qualifies as a charitable purpose for purposes of this Act. Any applicant under this section shall comply with rules issued by the Authority for the issuance of any such ruling and shall pay the prescribed fee.

## **PART V**

### **Purpose Trusts**

#### **Trusts for non-charitable purposes.**

12. (1) An international trust which meets the requirements for an international trust under this Act may be created for a purpose which is non-charitable provided that:

- (a) the purpose is specific, reasonable, and capable of fulfillment;
- (b) the purpose is not immoral, unlawful or contrary to the public policy of the State as described in the stated purposes of the trust and;
- (c) the terms of the trust provide for (i) the appointment of a protector who may have one or more of the duties specified in Part VI hereof, but who in any event is capable of enforcing the trust and (ii) the appointment of a successor to any such protector; and
- (d) the terms of the trust specify the event upon the happening of which the trust shall terminate and provide for the disposition of surplus assets of the trust upon its termination.

#### **Protector may be trustee.**

13. The protector of an international trust which is a non-charitable purpose *trust* may be a trustee thereof.

#### **Appointment of protector by Offshore Finance Inspector.**

14. Where the Offshore Finance Inspector has reason to believe that

- (a) the protector of a trust created under this Part is dead, or is unwilling, or refuses or is unfit to act, or is incapable of acting;

(b) there is no other protector of the trust; or

(c) no one has been appointed as successor to the protector in accordance with the terms of the trust or of this Act,

he may, with the advice of the Authority appoint a person to be protector of the trust and such person shall from the date of appointment exercise the functions of protector.

**Extension of *cy-pres*.** 15. (1) Without limiting the provisions of section 19 hereof, where a trust is created for a non-charitable purpose, the terms of the trust may provide that the doctrine of *cy-pres* is, *mutatis mutandis*, applicable thereto.

(2) For the purpose of subsection (1), where a purpose that is reasonably similar to the original purpose cannot be found a purpose that is not contrary to the spirit and meaning of the settlement may be substituted for the original purpose.

## **PART VI Protector and Similar Appointments**

**Protector of a trust.** 16. (1) The terms of an international trust may provide, or in the case of a trust created under Part V shall provide, for the position of protector of the trust.

(2) The protector shall have the following powers, unless the terms of the trust shall otherwise provide,

(a) the power to remove a trustee and appoint a new or additional trustee;

(b) the power to change the proper law of the trust;

(c) the right to receive notice in advance of specified actions of the trustee;

(d) the right to receive information relating to or forming part of the accounts of the trust; and

(b) such further powers as are conferred on the protector by the terms of the trust or by this Act.

(3) The protector of an international trust may also be a settlor, a trustee or a beneficiary of the trust or any other person.

(4) In the exercise of his office, the protector shall not be accounted or regarded as a trustee.

(5) Subject to the terms of the international trust which may provide to the contrary, in the exercise of his office a protector shall owe a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust is created.

(6) Where there is more than one protector of a trust then, subject to the terms of the international trust, any functions conferred on the protectors may be exercised if a majority of the protectors for the time being agree on its exercise.

(7) A protector who dissents from a decision of the majority of protectors may require his dissent to be recorded in writing.

(8) If an international trust provides for the appointment of a protector but no person is so appointed or in existence at a given time, such trust shall not fail but shall be interpreted as though references to the protector had been excluded.

**Other advisors and agents.**

17. (1) A trust instrument may also provide for the appointment of one or more trust advisors who, acting alone or in concert, may offer advice to a trustee or a protector but who shall not be deemed to be bound by the duties of either.

(2) The duties, responsibilities and rights of a trust advisor or other agent appointed pursuant to subsection (1) shall be as set forth in applicable law or in the trust

instrument, but there shall be no presumption that any such person shall have the capacity of settlor, beneficiary or protector unless otherwise provided in the trust instrument.

## **PART VII**

### **Termination or Failure of International Trusts**

#### **Failure or lapse of interest.**

18. (1) Subject to the terms of the international trust and to any order of the court, where

- (a) an interest of a beneficiary of the trust lapses;
- (b) a trust terminates; or
- (c) there is no beneficiary and no person (whether or not then living) who can become a beneficiary in accordance with the terms of the trust,

the interest or property concerned shall be held by the trustee in trust for the settlor absolutely or, if he is dead, as if it had formed part of his estate at death.

(2) Subsection (1) shall not apply to an international trust established for a charitable purpose to which section 19 applies.

#### **Failure of charitable trusts.**

19. (1) Where property is held in an international trust for a charitable purpose and

- (a) the purpose has been, as far as may be, fulfilled;
- (b) the purpose cannot be carried out at all, or not according to the specification of the purpose in the trust;
- (c) the purpose provides a use for only part of the trust property;
- (d) the purpose was laid down by reference to an area which was then, but has since ceased to be, a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason ceased to be suitable or to be practicable in administering the trust;
- (e) the purpose has been adequately provided for by other means; or
- (f) the purpose has ceased to be charitable (by being useless or harmful to the community or otherwise);

the trust property or the remainder of such property, as the case may be, shall be held for such other charitable purpose as the court upon the application of the trustee may declare to be consistent with the original intention of the settlor.

(2) Where trust property is held for a charitable purpose, the court on the application of the trustee may approve any arrangement which varies or revokes the purpose or terms of the trust or enlarges or modifies the powers of management or administration of the trustee if it is satisfied that the arrangement

- (a) is then suitable or expedient; and
- (b) is consistent with the original intention of the settlor.

(3) Without limiting the provisions of Part XI hereof, the court shall not make a

declaration under subsection (1) of this section or approve an arrangement under subsection (2) of this section unless satisfied that any person with a material interest in the trust has had an opportunity to be heard.

**Termination of international trust.**

20. (1) On the termination of an international trust the trust property shall, subject to subsection (2) of this section, be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.

(2) The trustee may retain sufficient assets to make a reasonable provision for trust liabilities, whether existing, future, contingent or otherwise, and for the costs of administering the trust.

**Termination by beneficiaries.**

21. (1) Without prejudice to any power of the court and except as may be provided to the contrary in the terms of the international trust, where all the beneficiaries of the trust are in the existence and have been ascertained and none is a person under legal disability or a minor and all beneficiaries are in agreement so to do, they may require in a writing signed by all of them direct the trustee to terminate the trust and distribute the trust property as the beneficiaries direct, so long as such distribution is not inconsistent with the terms of the trust.

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

**PART VIII  
Breach of Trust**

**Liability for breach of trust.**

22. (1) Subject to the provisions of this Act and to the terms of the trust, a trustee who commits or concurs in a breach of trust is liable for

(a) any loss or depreciation in value of the trust property resulting from the breach; and

(b) any profit which would have accrued to the trust had there been no breach.

(2) A trustee may not set-off a profit accruing from one breach of trust against a loss or depreciation in value resulting from another breach of trust.

(3) A trustee is not liable for a breach of trust committed by another person prior to his appointment or for a breach of trust committed by a co-trustee unless

(a) he becomes or ought to have become aware of the breach; and

(b) he actively conceals the breach, or fails within a reasonable time to take proper steps to protect or restore the trust property or to prevent the breach.

(4) Where the trustees are liable for a breach of trust, they are liable jointly and severally.

(5) A trustee who becomes aware of a breach of trust shall take all reasonable steps to have the breach remedied.

(6) Nothing in the terms of a trust shall relieve a trustee of liability for a breach of trust arising from his own fraud, self-dealing or willful misconduct.

**Constructive trusts.**

23. (1) A person who derives a profit from a breach of trust shall be deemed to be a trustee of the profit or property unless he derives or obtains it in good faith and without

actual, constructive or implied notice of the breach of trust.

(2) A person who becomes a trustee by virtue of subsection (1) shall deliver up the profit or property to the person properly entitled to it.

(3) This section does not exclude any other circumstance in which a constructive trust may arise.

**Tracing trust property.** 24. Without prejudice to the personal liability of a trustee, trust property which has been changed or dealt with through a breach of trust or any property into which such trust property has been converted may be traced, followed and recovered unless

(a) it is no longer identifiable; or

(b) it is in the hands of a good faith purchaser for value without actual, constructive or implied notice of the breach of trust.

**Beneficiary may relieve or indemnify trustee.** 25. (1) A beneficiary may relieve a trustee of liability to him for a breach of trust or may indemnify a trustee against liability for a breach of trust.

(2) Subsection (1) of this section does not apply if the beneficiary

(a) is a minor or a person under legal disability;

(b) does not have full knowledge of all material facts; or

(c) is improperly induced by the trustee to act under subsection (1).

**Power to relieve trustee from personal liability.** 26. The court may relieve a trustee wholly or partly of liability for a breach of trust where it appears to the court that the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust or for omitting to obtain the direction of the court in the matter in which the breach arose.

**Power to make beneficiaries indemnify.** 27. Where a trustee commits a breach of trust at the instigation of a beneficiary, the court at the request or with the concurrence of any other beneficiary (whether or not the beneficiary is a minor or a person under legal disability) may impound all or part of the instigating beneficiary's interest by way of indemnity to the trustee or any person claiming through him.

## PART IX

### Proper Law and Effect of Foreign Law

**Proper law of trust.** 28. (1) Subject to subsections (3) and (4), the proper law of an international trust is the law of

(a) the jurisdiction expressed by the terms of the trust as the proper law, or if not so expressed

(b) the jurisdiction intended by the settlor to be the proper law, or if not so expressed or there is no clear evidence of such intention

(c) the jurisdiction with which the trust had the closest connection at the time it was created; provided, in cases where it is unclear with which jurisdiction the trust had its closest connection at the time it was created, this Act and the other laws of the State shall apply.

(2) In ascertaining the law with which a trust has its closest connection, reference shall be had in particular to

- (a) the place of residence or business of the trustee(s);
- (b) the place of administration of the trust designated by the settlor;
- (c) the *situs* of the assets of the trust;
- (d) the objects and purposes of the trust and the places where they are to be fulfilled or met; and
- (e) whether the trust has been registered under this Act.

(3) Where the proper law of a trust changes from the law of another jurisdiction to the law of the State, the change shall be valid and effective regardless of whether it is recognized by the law of the other jurisdiction.

(4) Where the terms of an international trust provide for the proper law of the trust to be changed from the law of the State to the law of another jurisdiction, unless provided to the contrary in the trust the change is valid and effective only if the new proper law recognizes the validity of the trust and the respective interests of the beneficiaries to the extent provided in this Act.

(5) The terms of a trust may provide

- (a) for the severable aspects of the trust, particularly aspects relating to the administration of the trust, to be governed by a different law from the proper law of the trust; and
- (b) for the law governing a severable aspect of the trust to be changed from the law of the State to the law of another jurisdiction and *vice versa*.

(6) A change in the proper law of a trust shall not affect the legality or validity of the trust or render any person liable for anything done before the change unless such liability would result under both the old and the new proper law of the trust.

(7) Subject to subsection (5)(a), the proper law of the trust shall govern the validity of the trust, its nature and construction, its effects and its administration.

(8) The proper law of the State applicable to an international trust shall be as set forth in this Act and, to the extent not inconsistent with the provisions of this Act, as set forth in other laws of the State

**Change of proper law.** 29. (1) When the proper law of a trust or the law governing the severable aspects of a trust is changed from the law of the State to the law of another jurisdiction (herein called the "new law"), no provision of the law of the State shall operate to render void, invalid or unlawful any function conferred on the trustee under the new law.

(2) Where the proper law of a trust or the law governing the severable aspects of a trust is changed from the law of another jurisdiction (herein called the "old law") to the law of the State, no provision of the old law shall operate to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the law of the State.

30. A person may create an international trust hereunder that is

**Capacity of settlor.**

- (a) an *inter vivos* trust if the trust property is movable and the person has the legal capacity to create a trust of movable property under the law of the State;
- (b) a testamentary trust, if the trust property is movable and the person has the capacity to create a trust of movable property under the law of his domicile and the trust is created with the requisite formalities under such law;
- (c) a trust of immovable property if he has the capacity to create a trust of immovable property under the law of the jurisdiction in which the immovable property has its *situs*.

**Law of Saint Vincent and the Grenadines.**

31. (1) Any question arising with regard to

- (a) a trust that is governed by the law of the State, or
- (b) any disposition of property upon the trust thereof shall be determined by the Court according to the law of the State without reference to the law of any other jurisdiction with which the trust or the disposition may be connected.

**Effect of section 31.**

32. (1) Section 31

- (a) does not validate any disposition of property that was not
  - (i) legally owned by the settlor at the time of the disposition, or
  - (ii) the subject of a power to make such disposition and vested in the settlor;
- (b) takes effect subject to any express contrary term of the trust or disposition;
- (c) does not with regard to the capacity of a body corporate affect the recognition of the laws of its place of incorporation;
- (d) does not 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;
- (e) does not validate any trust or disposition of immovable property situate in a jurisdiction other than the State that is invalid under the law of that jurisdiction; and
- (f) does not validate any testamentary trust or testamentary disposition that is invalid under the law of the testator's [*testor's*] domicile.

(2) The recognition of any foreign law in determining whether the settlor was the owner of property referred to in this Part or the holder of a power so referred to before or at the time of disposition is not affected by this Part.

**Exclusion of foreign laws.**

33. No international trust governed by this Act and no disposition of property to be held upon the trust shall be varied, declared void, voidable, liable to be set-aside or defective in any fashion, nor is the capacity or any settlor to be questioned by reason that

- (a) the laws of any foreign jurisdiction prohibit or do not recognize the concept of a trust either in part or in whole;
- (b) the international trust or disposition avoids or defeats rights, claims or interests conferred by the law of foreign jurisdiction upon any person, or contravenes any rule,

law, judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests;

(c) the international trust creates rights in property that are contrary to other laws relating to the personal or proprietary effects of marriage or the succession rights testate and intestate, of any person, especially the legal right of surviving spouses and the shares of relatives; or

(d) the laws of the State or the provisions of this Act are inconsistent with any foreign law.

**Community property.**

34. (1) Where a husband and wife make a disposition of property to an international trust or to a trust that subsequently becomes an international trust and, immediately before such disposition, such property or any part thereof or any accumulation thereto is or was, pursuant to the law of its *situs* or the law either of the transferors' domicile or residence, determined to be community property, then, notwithstanding such transfer and except where the provisions of the trust deed may expressly 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.

(2) Notwithstanding anything to the contrary herein contained, nothing herein shall be construed so as to cause the trust, the trust fund, the trustees, the protectors or any of them, to be liable or obligated for any debt or responsibility of the settlor merely by reason of this section.

**PART X  
Powers of the Court;  
Proceedings and Limitations**

**Jurisdiction of the court.** 35. The court has jurisdiction in respect of any matters concerning an international trust where

(a) the proper law of the trust, as determined by this Act, is the law of State;

(b) a trustee of the trust is a Resident;

(c) any part of the administration of the trust is carried on in the State, or

(d) the trust is registered under this Act.

**Court's determination of validity.** 36. (1) The court may declare an international trust to be invalid if

(a) the trust was established under duress or undue influence, or by mistake or misrepresentation;

(b) the trust is immoral or contrary to the public policy of the State;

(c) the terms of the trust are so uncertain that performance of such terms is rendered impossible or impractical (provided that, subject to the provisions of section 19, a charitable purpose shall be deemed always to be capable of performance); or

(d) subject to the provisions of section 28 the settlor was, at the time of the

disposition leading to the creation of the trust, incapable under the laws then in force in the State of creating such a trust.

(2) Where an international trust is created for two or more purposes of which some are lawful and others are not, or where some of the terms of the trust are lawful and others are not,

(a) if those purposes cannot be separated or the terms cannot be separated, the trust is invalid; or

(b) if those purposes or the terms can be separated, the court may declare that the trust is valid as to the terms which are valid and the purposes which are lawful.

(3) Where an international trust is partially invalid, the court may declare what property is to be held subject to the trust.

(4) Property transferred by a settlor to an international trust and as to which such trust is invalid shall, subject to any order of the court, be held by the trustee in trust for the settlor absolutely or, if the settlor is dead, as if the property had formed part of his estate at death.

(5) Notwithstanding the terms of section 28, in determining the existence and validity of an international trust registered under this Act, the court shall apply-

(a) the provisions of this Act;

(b) any other law of the State; and

(c) any other law which may be applied;

if to do so would validate the trust as an international trust.

**Savings of certain rights.**

37. In the event that a trust shall be declared invalid pursuant to this Act, if the court is satisfied that a beneficiary has not acted in bad faith,

(a) such beneficiary shall have a first and paramount charge over the trust property in an amount equal to the entire costs properly incurred by him in the defense of the action or proceedings (and not merely such costs as might otherwise be allowed by the court); and

(b) the trust shall be declared invalid subject to the payment of proper fees, costs, pre-existing rights, claims and interests of such beneficiary.

**Extent of invalidity for creditors.**

38. If an international trust is declared invalid under the provisions of this Part or of Part XI, such trust shall be invalid only to the extent necessary to satisfy the obligation of the creditor at whose instance the trust was declared invalid together with such costs as the court may allow pursuant to either such Part.

**Foreign judgments not enforceable.**

39. Notwithstanding the provisions of any treaty, convention, statute, or rule of law or of equity to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgment or order obtained in a jurisdiction other than the State against

(a) an international trust;

(b) a settlor, trustee, protector or beneficiary of an international trust;

(c) 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 connection with an international trust or the property of such trust; or

(d) the property of either an international trust or of a trustee, or of a protector or a beneficiary thereof;

shall be entertained by any court if that judgment or order

(a) is based in whole or in part, upon the application of any law or interpretation of law that is inconsistent with the provisions of this Act.

(b) relates to a matter that is governed by the laws of the State.

**Application for directions.**

40. A trustee may apply to the court for directions as to how he should or might act in any of the affairs of the trust, and the court may make such order as it thinks fit.

**Payment of costs.**

41. The court may order the costs and expenses of and incidental to an application to the court under this Act to be paid from the trust property or in such manner and by such persons as it thinks fit.

**Limitation on commencement of proceedings.**

42. (1) No action or proceeding pursuant to this Act or at common law or in equity

(a) to set aside the creation or settlement of an international trust;

(b) to set aside any disposition to or by any international trust; or

(c) against a trustee or trustees for breach of trust;

shall be commenced, unless such action or proceeding is commenced in the court before the expiration of two (2) years from

(d) the date of the creation of the international trust that is sought to be set aside;

(e) the date of the disposition to or by the international trust that is sought to be set aside; or

(f) the date of breach of trust by the trustee or trustees; as the case may be.

(2) No action or proceeding at common law or in equity shall be commenced by any person

(a) claiming to have or to have had an interest in property before that property was settled upon or disposed to or by an international trust; and

(b) seeking to derive a legal or equitable interest in that property;

unless such person can establish

(c) the nature and extent of such interest and that such interest existed at the time of the relevant disposition or of the creation of the international trust; and

(d) such action or proceeding is commenced in the court before the expiration of two (2) years from the date that the property referred to in paragraphs (a) and (b) of subsection (2) was settled upon or disposed to or by an international trust.

(3) No action or proceeding to which subsections (1) or (2) of this section or to which Part XI of this Act shall apply, whether substantive or interlocutory in nature, shall be determined, and no order shall be made or granted by the court (including any injunction that shall have the effect of preventing the exercise of or restoring to a person any rights, duties, obligations or powers, or preserving, granting custody of, detaining or inspecting any property), unless the applicant shall first satisfy the court by affidavit that

(a) the action or proceeding has been commenced in accordance with subsections (1) or (2) of this section;

(b) where the action or proceeding shall allege fraud or be founded upon some other action or proceeding alleging fraud, that the determination or order sought would not be contrary to the provisions of Part XI of this Act; and

(c) that the requirements of section 43 of this Part have been fulfilled.

(4) Every affidavit required to be filed pursuant to subsection (3) shall be made by the person on whose behalf the action or proceeding is brought or, in the case of a body corporate, an officer thereof, and every person or officer as the case may be shall depose as to

(a) the circumstances of the cause of action in respect of which the action or proceedings are brought;

(b) the date upon which the cause of action shall have accrued;

(c) the date upon which the property, in respect of which the action or proceeding is brought, was settled on or disposed to or by the international trust; and

(d) whether an action or proceeding has been commenced in any jurisdiction in the world in respect of the cause of action or the trust generally and if so, the date upon which that action or those proceedings were commenced, the nature of the proceedings and in which jurisdiction they are pending.

(5) The provisions of this section shall apply to every international trust registered under the provisions of this Act.

**Security for costs.**

43. Every creditor before bringing any action or proceeding against any international trust or trust property or with respect to any disposition to a trust or any other matter governed by this Act shall first deposit with the court a cash sum of US \$25,000.00, or such greater amount as may be ordered by the Court, securing the payment of all costs as may become payable by the creditor in the event of his not succeeding in such action or proceeding against the trust property, the international trust or the relevant disposition.

**PART XI**

**Dispositions into or by an International Trust**

**Scope.**

44. This Part applies to any action or proceeding relating to the disposition of property into or by an international trust or into or by an entity owned or controlled by an

international trust, whether the property has or had its *situs* within or outside the State at the time of the disposition or of the commencement of such proceedings, if

(a) the relevant disposition takes place after the commencement of this Act; or

(b) the relevant disposition took place before the commencement of this Act but proceedings were not commenced by the issuance of a writ within twelve (12) months after the commencement of this Act.

**Avoidance of fraud.**

45. (1) Where it is proven by a creditor in proceedings that are final and not subject to further appeal that (i) an international trust was settled or established, or (ii) a disposition of property was made to or by an international trust, which property after such disposition constituted trust property, and that

(a) such trust was settled, created, migrated, continued, established or property was disposed of by or on behalf of the settlor or his nominee with his principal intent being to defraud that creditor of the settlor; and

(b) the disposition did, at the time such settlement, creation, migration, continuation, establishment or disposition took place, render the settlor insolvent,

then

(i) such settlement, creation, migration, continuation, establishment or disposition shall not be void or voidable, but

(ii) the international trust shall be liable to satisfy the creditor's claim out of trust property; provided that the amount of such liability shall only be to the extent of the (A) interest that the settlor had in the property disposed to the trust prior to its settlement, creation, migration, continuation, establishment or disposition, and (B) any accumulation to that property (if any) subsequent thereto.

(2) Unless it is proven, in accordance with the provisions of subsection (1), that a trust was settled or created, or a disposition of property was made to or by a trust, with the principal intent being to defraud the creditor and with the result of the settlement, establishment or disposition being the insolvency of the settlor, then the court shall not find that the trust is liable to satisfy the creditor's claim out of trust property or that any disposition of property to the trust is void or voidable.

(3) In determining whether the creation of a trust or a disposition to or by a trust has rendered the settlor insolvent, regard shall be had 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, establishment or disposition and, in the event that the fair market value of such property exceeded the value of the creditor's claim at that time, then the trust so settled or established or the disposition made shall for the purposes of this Act be deemed and presumed not have been so settled or established or the property disposed of with intent to defraud the creditor.

(4) Where a trust is liable to satisfy a creditor's claim in the manner provided for in subsection (1) of this section 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.

(5) For the purpose of this section, the onus of proof of the settlor's intent to defraud the creditor lies on the creditor, and the required standard of proof is to demonstrate the settlor's intent beyond a reasonable doubt.

**Limitations.**

46. (1) Neither a trust settled, created, migrated, continued, or established nor a disposition to or by such trust shall be fraudulent as against, or void or voidable by, a creditor of a settlor

(a) if the settlement or establishment of the trust or the disposition of property takes place after the expiration of two (2) years from the date that such creditor's cause of action accrued;

(b) if such creditor fails to commence an action before the expiration of one (1) year from the date such settlement, creation, migration, continuation, establishment or disposition took place; or

(c) if the settlement, creation, migration, continuation, establishment or disposition of property took place before the creditor's cause of action against the settlor accrued.

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

(a) settled, created, migrated, continued, or established a trust or disposed of property to such trust within two (2) years from the date that creditor's cause of action accrued;

(b) retained, possesses or acquires any of the powers or benefits referred to in section 9 of this Act; or

(c) is a beneficiary or a trustee of the trust.

(3) For the purpose of this Part

(a) the date the cause of action accrued shall be the date of the act or omission which shall be relied upon to either partly or wholly establish the cause of action and, if there is more than one act or omission or the same shall be continuing, the date such act or omission shall have first occurred, as the case may be, shall be the date the cause of action shall have accrued; and

(b) in the case of an action upon a judgment, the date the cause of action accrued shall be the date of the act or omission upon which the judgment was based and, where there is more than one act or omission or the same shall be continuing, the date of the first act or the date the omission shall have first occurred, as the case may be, upon which the judgment was based shall be the date the cause of action accrued.

**Application.**

47. (1) The provisions of this section shall apply to all proceedings by every creditor alleging fraud or a cause of action sounding in fraud against a settlor, a trust or an entity owned by a trust established hereunder, or against any person who shall settle property upon, dispose of property to, or establish a trust on behalf of a settlor, to the exclusion of any other remedy, principle or rule of law whether provided by statute or founded in equity or common law.

(2) In this section the term "creditor" includes any person who alleges a cause of action in behalf of or in the name of a creditor.

**Certain rights.**

48. In the event that any disposition, conveyance or transfer of property to a trust established under this Act is set aside by a court, then

(1) if the court is satisfied that the transferee of such property has not acted in bad

faith,

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

(b) the relevant disposition shall be set aside subject to the payment by creditor of the proper fees, costs, pre-existing rights, claims and interests of the transferee (and of any predecessor transferee who has not acted in bad faith); and

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

**Extent of avoidance of relevant dispositions.**

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

**Statute of Elizabeth not applicable.**

50. The Fraudulent Conveyance Act, 13 Elizabeth 1 Ch 5 (1571), shall have no application to international trusts or to transfers to or by international trusts.

**Heirship rights not applicable.**

51. No international trust or any aspect of such trust governed by this Act and no disposition of property to be held upon the trusts thereof shall be declared void, voidable or defective in any manner nor shall the capacity of any settlor be questioned by reason that such trust may avoid or defeat the right, claim or interest of a person held by reason of a personal relationship to the settlor or by way of heirship rights.

## **PART XII Registration of International Trusts**

**International trusts registerable; benefits of registration.**

52. An international trust may be registered as provided in this Part, and if it is so registered then the following benefits shall inure to the trust and to the settlor thereof:

(1) So long as the settlor was not insolvent at the date of creation or establishment of an international trust or of a disposition of property to or by an international trust, and the settlor did not become insolvent in consequence of such creation or settlement, and so long as the settlor did not make a disposition of property into the trust with the principal intent to defraud his creditors, neither the trust nor any disposition of property to it by the settlor shall be voidable at the instance of or upon application of any creditor of the settlor, except as may be provided in Part XI; and

(2) There shall be created a rebuttable presumption that the trust, its income, and its beneficiaries are entitled to the exemptions from tax and duties set forth in Part XIII hereof.

**Appointment of Registrar of Trusts.**

53. The Authority shall, by notice in the Gazette, appoint a fit and proper person to be the Registrar of Trusts for the purposes of this Act. The Registrar of Trusts and the Registrar of International Business Companies may be the same person, but in any event each shall be a Resident.

**Appointment of Deputy Registrar.**

54. The Authority may appoint one or more Deputy Registrars of Trusts to operate Branch Registers of Trusts outside of the State, alone or in conjunction with Branch Registries of International Companies created under the International Business

Companies Act. Any such branch Register of Trusts shall operate under terms and conditions designed to ensure confidentiality to the contents of such register.

**Duties of the Registrar of Trusts.**

55. (1) Subject to subsection (3) of this section, upon receipt of an application and all relevant trust documents together with a copy thereof, from a Registered Trustee, and after the receipt of the appropriate fees payable under this Act, the Registrar of Trusts shall

(a) register the trust in respect of which application is made by entering particulars of the trust in a register to be kept by him;

(b) open and maintain a file containing all the documents relevant to that trust (except the copy of the trust document) and all other documents received relating to that trust; and

(c) transmit to the Registered Trustee the copy of the trust document stamped and certified by him to be a true copy of the original, together with a Certificate of Registration showing that the trust has been duly registered and specifying the date upon which it was so registered under this Act.

(2) Every Certificate of Registration shall be in the form set out in regulations promulgated under this Act.

(3) If for any reason the Registrar of Trusts is of the opinion that a trust should not be registered, he shall so inform the Registered Trustee submitting the trust for registration in writing, giving the reasons for such refusal and requiring such Registered Trustee within four weeks or such longer period as the Registrar of Trusts may in any particular case allow to satisfy him that registration may properly be effected.

(4) The Registrar of Trusts shall at all times during normal office hours permit a trustee or other person authorized in writing by a registered trustee of a trust registered hereunder to inspect the entry in the Register and the documents in the file relating to that trust, and shall permit the making of copies thereof by any such person.

(5) A Registered Trustee seeking to register a trust under the provisions of this Act may appeal to the Authority a decision of the Registrar of Trusts that a trust may not be registered hereunder. Any such appeal shall be made in the form of a written petition directed to the Offshore Finance Inspector and shall contain the legal and factual basis for the request that the decision of the Registrar of Trusts be set aside. The Authority shall render its decision as to the registration of the trust that is the subject of the appeal within four weeks following the date on which the written notice of appeal is received by the Offshore Finance Inspector. Such decision shall be made in a writing sent to the Authority and to the Registrar of Trusts and shall not be subject to further appeal except as provided in Section 61 hereof.

**Qualifications for trust to be registered.**

56. (1) No Registered Trustee shall apply for the registration of a trust under the provisions of this Act unless such trust meets each of the requirements of an international trust under this Act and the Registered Trustee is satisfied by representations made to him in writing by the settlor that the settlor is solvent at the time of settlement of the trust, that neither the settlement nor any subsequent transfer or disposition to the trust will render the settlor insolvent, and that no such transfer or disposition is made with principal intent to defraud his creditors.

(2) A trust registered and in good standing under the provisions of this Act shall

not be struck from the Register if one or more of its direct or indirect beneficiaries become Resident after the date such trust is registered, but

(a) neither such trust nor its beneficiaries shall be entitled to the exemptions from taxation contained in Part XIII for any calendar year during which such trust had one or more Resident beneficiaries, and

(b) such trust may be struck from the Register if it has one or more Resident beneficiaries during any two consecutive calendar years.

(3) A trust may be registered under this Act only if it has at least one trustee that is a Registered Trustee who holds a valid license under the Registered Agent and Trustee Licensing Act. If, during the period in which a trust is registered hereunder, it fails to have at least one trustee who is a licensed Registered Trustee in good standing, the co-trustees or the beneficiaries, as the case may be, shall have a reasonable time to appoint a replacement trustee who is a duly licensed Registered Trustee and, failing such appointment, the trust may be struck from the Register.

(4) The Register of Trusts shall not be open for inspection by members of the public, except that

(a) a trustee of such a trust who is listed as such on the Register may in writing authorize a person to inspect the entry of that trust on the Register; and

(b) the Registrar of Trusts shall promptly respond to inquiries made to him in writing to the questions whether a trust under a given name is duly registered on the Register and whether a certificate of registration is genuine, but he shall disclose no other information regarding that trust unless authorized in writing by a trustee named in the Register of Trusts as a trustee for such trust.

**Powers of Comptroller to require information.**

57. (1) Subject to the presumption created by registration as set forth in section 52 (2) hereof, the Comptroller may require the Registered Trustee serving as trustee of a registered trust to furnish him with such information as he deems necessary to enable him to determine whether or not the exemption afforded by Part XIII should be granted or continued.

(2) If within twenty-eight (28) days or such longer period as the Comptroller may in any particular case allow, after service of a notice in writing for the purposes of subsection (1), served personally on or sent by registered post to the Registered Trustee serving as trustee of a registered trust, the Comptroller

(a) is not satisfied that the information required to be given and specified in the notice is sufficient, or

(b) has not received that information, the provisions of Part XIII shall cease to be applicable in relation to the trust concerned until such time, if any, as the information has been given to the satisfaction of the Comptroller, or the Comptroller is otherwise satisfied.

**Language and Translations.**

58. (1) Every document filed with the Registrar of Trusts and not in the English language shall be accompanied by a certified translation into the English Language.

(2) A document not in the English language and not accompanied by a certified translation at the time of application for registration shall not be accepted for registration by the Registrar of Trusts.

(3) For the purpose of this section, a certified translation is a translation in the English language, certified as a correct translation by a translator satisfactory to the Registrar of Trusts.

**Fees payable to Registrar of Trusts.**

59. There shall be paid to the Registrar of Trusts by or on behalf of a trust registered or to be registered hereunder the fees specified in Regulations issued by the Minister which fees may be varied by regulations published in the Gazette.

**Refusal or cancellation of registration.**

60. (1) The Registrar of Trusts may refuse the registration of a trust if he is not satisfied

(a) that an application is in conformity with the provisions of this Act;

(b) after the expiry of a period of notice given in accordance with section 55 (3), that registration may properly be effected; or

(c) that a trust is qualified to exist as an international trust under the terms of this Act.

(2) The Registrar of Trusts shall cancel the registration of a trust

(a) upon the written request of all the trustees for such trust as the same are named in the Register of Trusts;

(b) if the trust has ceased to exist;

(c) if he is satisfied that a certificate of registration issued by him in respect of the trust has been obtained by, or on account of, any fraud or mistake;

(d) if the trust ceases to be qualified as an international trust under the requirements of this Act; or

(e) in the event that he has not, within (60) sixty days or such longer period as he may in any particular case allow, received the annual fee payable under regulations promulgated hereunder.

**Appeals against cancellation.**

61. (1) The following procedure applies to appeals from decisions of the Registrar of Trusts to cancel a registration of a trust:

(a) the appellant within twenty-one (21) days after the day on which the Authority has given its decision shall serve a notice in writing, signed by the appellant or his solicitor, on the Registrar of Trusts and the Attorney-General of his intention to appeal and of the general grounds of his appeal, and may apply to the court within fourteen (14) days after the day on which the Registrar of Trusts has given its decision for leave to extend the time within which notice of appeal prescribed by this section may be served, and the court upon hearing of the application may extend the time prescribed by this section as it deems fit;

(b) the Registrar of Trusts shall, within fourteen (14) days of receiving the notice of appeal, transmit a copy of its decision to the registrar of the court and to the Attorney-General together with all papers relating to the appeal, except that the Registrar of Trusts shall not be obliged to disclose any information if the Minister considers that the public interest would suffer by such disclosure;

(c) the registrar of the court shall set down the appeal for hearing on such day as is convenient and shall cause notice of the hearing to be published in such manner as the court may direct; and

(d) the court may, upon the hearing of the appeal, confirm, reverse, vary, or modify the decision of the Registrar of Trusts or remit the matter with the opinion and directions of the court thereon to the Registrar of Trusts.

(2) An appeal against a decision of the Registrar of Trusts shall not operate as a suspension of the decision of the Registrar of Trusts.

(3) The burden of proving that a trust is qualified for registration under this Act, or that a refusal or cancellation of registration was not justified, shall lie on the Registered Trustee for the trust who shall be the appellant in the name of the trust.

### **PART XIII**

#### **Exemption from Taxes and Duties for International Trusts**

#### **Exemption of registered trust from income tax.**

62. (1) Notwithstanding any provision to the contrary contained in the Income Tax Act Cap 312, all income, profit or gain realized or received by a trust or any beneficiary of a trust shall not be subject to income tax by the State, directly or indirectly, so long as

(a) the trust is created neither by or on behalf of nor for the benefit of a person who is a Resident; and

(b) all of the income of such trust (other than interest from regular bank accounts or portfolio investments of securities held by the trust in the State) either accrues or is derived outside the State or, in the case of income received by a trust, would not, if it had been received directly by the beneficiary of the trust, be liable to tax under the said Income Tax Act; and

(c) the terms of the trust expressly

(i) prohibit the ownership of real property having its *situs* in the State by the trust, directly or indirectly, or an interest in such property, and

(ii) exclude Residents as persons who either are or may be, under any discretionary power of the trustee or of the settlor under the terms of such trust, beneficiaries or any class or classes of beneficiary of the trust.

(2) No estate, inheritance, succession, gift, excise or capital appreciation tax, rate, duty, levy or other charge is payable by non-Resident beneficiaries of the trust with respect to any income or assets of a trust registered under this Act.

(3) Notwithstanding any provision of any act relating to the payment of Stamp Duty or similar transfer or excise tax,

(a) all instruments relating to transfers of property to or by a trust registered under this Act, and

(b) all instruments relating to transactions in respect of the income or trust capital under this Act, are exempt from the payment of any such duty.

(4) Any trust which is duly registered as of the effective date of this Act shall be deemed to be exempt from tax as provided under subsection (1) so long as it shall remain registered as provided in this Act and so long as it complies with paragraphs (b) and (c) of subsection (1).

(5) The exemptions from tax and duties provided in this section shall be available to any trust which complies with subsection (1) regardless of whether it is registered,

but registration of the trust as provided in this Act shall create a rebuttable presumption and *prima facie* evidence of such exemption.

(6) Any registered trust may transfer its funds or other assets to an International Business Company registered under the International Business Companies Act.

(7) Notwithstanding anything contained in any other law, every transfer which falls under subsection (6) shall be exempt from the payment of any tax, duty or other impost.

#### **PART XIV Miscellaneous**

- Custody of copy of instrument.** 63. (1) The Registered Trustee of an international trust created under this Act shall keep as confidential information in the territory of the State
- (a) a copy of the instrument creating the trust and copies of any other instrument amending or supplementing such instrument;
  - (b) a register in which the following information is set out
    - (i) the name of the settlor,
    - (ii) if a purpose or charitable trust, a summary of the purposes of the trust and the name of the protector(s) of the trust, and
    - (iii) such documents as are necessary to show the true financial position of the trust, which shall be current as of one month following the close of each fiscal quarter.
- (2) The instrument, register and documents referred to in subsection (1) shall not be available to the public and shall be protected by the Confidential Relationships Preservation Act, but the Registered Trustee shall allow the protector or a person authorized in writing by the protector to inspect the instrument, register and the documents described in the register, but no others.
- (3) Except where prohibited or required by applicable law, a Registered Trustee of an international trust under this Act who
- (a) fails to comply with subsection (1);
  - (b) refuses to allow a person referred to in subsection (2) to inspect the instrument, register or documents referred to in that subsection; or
  - (c) makes or authorizes the making in any deed, register or document referred to in subsection (2) any statement that he knows to be false or does not believe to be true,
- is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and in addition to such fine the court may order the trustee to cease to be a trustee of international non-charitable purpose trusts for two years or the suspension of the trustee's license to serve as such.

- Confidentiality.** 64. (1) Without affecting the rights of protectors under Part VI, but subject to the terms of the instrument creating an international trust and to the terms of the Confidential Relationships Preservation Act and subsection (2) of this section, no trustee, protector or other person shall disclose to any other person not

legally entitled to any information or documents respecting an international trust, including without limitation:

- (a) the name of the settlor or any beneficiary;
- (b) the trustees' deliberations as to the manner in which a power or discretion was exercised or a duty conferred by the terms of the trust or by law was performed;
- (c) the reason for the exercise of the power or discretion or the performance of the duty or any evidence upon which such reason might have been based;
- (d) any information relating to or forming part of the accounts of an international trust; or
- (e) any other matter or thing respecting an international trust.

(2) Notwithstanding subsection (1) but subject to any other more specific terms of the trust instrument, the Registered Trustee shall, at the written request of a beneficiary named in the trust, disclose any document or information relating to or forming part of the accounts of the international trust as described in subsection (d) in the preceding paragraph to that beneficiary, provided that the beneficiary (i) shall be bound by the restrictions on further disclosure of such information set forth in the Confidential Relationships Preservation Act, and (ii) shall not be entitled to any other trust documents listed or described in the foregoing paragraph, including without limitation, letters of wishes or like expressions of the settlor's intent.

**Bankruptcy.**

65. 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 an international trust is voluntary and without valuable consideration being given for the same or is made for the benefit of the settlor's spouse or children, an international trust shall not be void or voidable in the event of the settlor's bankruptcy, insolvency or liquidation (other than in the case of an international company registered pursuant to the International Business Companies Act, that is, in liquidation) or in any action or proceeding instituted by [*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 this Act.

**Regulations.**

66. The Minister, after consultation with the Authority, may make regulations for the better carrying into effect of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing power, such regulations may provide the procedure for appeals under section 61 and establish the information to be included in the Trust Register, the fees for registration of trusts thereunder and the fees and requirements for renewal of registrations of trusts thereunder.

**Savings.**

67. (1) Any trust registered under the Trust Authority Act on the effective date of this Act shall continue to be so registered so long as it continues to comply with the other provisions of this Act relating to international trusts; provided that each such trust shall appoint at least one Registered Trustee to serve as trustee within two (2) years following the commencement of this Act.

(2) The beneficiaries of record of trusts registered under the Trust Authority Act as are validity subsisting under the register created under that act on the

date this Act enters into force may be sent notice of the terms of this act and of their duty to comply with the terms of this Act within two years following the commencement of this Act.

(3) Any trust referred to in subsection (1) that does not comply with the terms of this Act within two (2) years from the date of commencement hereof shall be struck from the Register of Trusts.

**Passed in the House of Assembly this 27th day of June, 1996**

**J. THERESA ADAMS**  
**Clerk of the House of Assembly.**