



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 5.19

### TRUSTS ACT and Subsidiary Legislation

Revised Edition  
showing the law as at 31 December 2020

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This edition contains a consolidation of the following laws—

	Page
<b>TRUSTS ACT</b>	3
Act 23 of 1996 ... in force 2nd April 1997	
Amended by: Act 6 of 2011	
Act 4 of 2017	
Act 15 of 2018	
Act 8 of 2019	
Amended by: S.R.O. 5/2019	
Amended by: Act 11 of 2020	
<b>FINANCIAL SERVICES (BUSINESS NAMES) ORDER - Sections 105</b>	55
S.R.O. 27/1997	
<b>FINANCIAL SERVICES (PROSPECTUSES) ORDER - Sections 69 and 105</b>	58
S.R.O. 28/1997	
<b>FINANCIAL SERVICES (PROFESSIONAL BODIES)</b>	
ORDER - Sections 105	63
S.R.O. 29/1997	
Amended by: S.R.O. 15/2005	
S.R.O. 18/2009	

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**CHAPTER 5.19**

**TRUSTS ACT**

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Meaning of “trust”

PART II

CREATION AND ESTABLISHMENT OF TRUSTS

4. Creation of a trust
5. Attestation of existence of a trust
6. Documents to be delivered to the Registrar
7. Registration of attestation
8. Amendment of attestation
9. Names

PART III

TYPES OF TRUSTS

10. Charitable trusts
11. Spendthrift or protective trusts
12. Unit trusts
13. Common trusts

PART IV

PROPER LAW, JURISDICTION OF THE COURT, VALIDITY  
AND DURATION OF TRUSTS

14. Proper law
15. Jurisdiction of the Court
16. Validity
17. Duration

PART V

SETTLOR

18. Capacity of settlor
19. Retention of control and benefits by settlor
20. Bankruptcy of settlor
21. Fraud on settlor’s creditors

## PART VI

## BENEFICIARIES AND PROTECTOR

22. Beneficiaries
23. Disclaimer of a beneficial interest
24. Class interests
25. Protector

## PART VII

## TRUSTEES

26. Number of trustees
27. New or additional trustee
28. Prohibition of renunciation after acceptance
29. Resignation or removal of trustee
30. Position of continuing trustee on reduction in number of trustees
31. Duties of trustee
32. Duty of co-trustees to act together
33. Duty of confidentiality
34. Impartiality of trustee
35. General powers of trustee
36. Delegation by trustee
37. Remuneration and expenses of trustee
38. Corporate trustee acting by resolution

## PART VIII

## LIABILITY FOR BREACH OF TRUST

39. Liability for breach of trust
40. Liability of controllers, directors and managers of a corporate trustee
41. Trustee acting in respect of more than one trust
42. Dealings by trustee with third parties
43. Nature of trustee's estate, following trust property and insolvency of trustee
44. Protection to persons dealing with trustee
45. Constructive trustee
46. Position of outgoing trustee
47. Limitation of actions or prescription

## PART IX

## PROVISIONS IN RESPECT OF CERTAIN POWERS

48. Power to make application for directions
49. Power of investment
50. Power of accumulation and advancement
51. Power of appointment
52. Power of revocation
53. Power to appoint resident trustee
54. Power to relieve trustee from personal liability
55. Power to make beneficiary indemnify for breach of trust

56. Power to provide variation of terms of trust
57. Power of approving particular transactions
58. Powers on failure or lapse of interest

#### PART X

##### ADMINISTRATION

59. Office for Service
60. Annual Statement
61. Service of documents
62. Authority to sign
63. Legal proceedings
64. Accounts and audit

#### PART XI

##### TERMINATION OF TRUSTS

65. Statement of termination
66. Distribution of trust property on termination
67. Termination by Beneficiaries
68. Termination by the Court

#### PART XII

##### PROSPECTUSES

69. Prospectuses
70. Compensation for misleading statements in prospectus
71. Exemption from liability to pay compensation
72. Recovery of compensation
73. Criminal liability for misleading statements

#### PART XIII

##### INVESTIGATIONS

74. Appointment of inspectors by Minister
75. Powers of inspectors
76. Production of records and evidence to inspectors
77. Power of inspectors to call for trustee's bank accounts
78. Authority for search
79. Obstruction
80. Failure to co-operate with inspectors
81. Inspectors' reports
82. Power to bring civil proceedings on behalf of trustees
83. Expenses of investigating a trust's affairs
84. Inspectors' report to be evidence
85. Privileged information

## PART XIV

## REGISTRAR

86. Registrar and other officers
87. Registrar's seal
88. Registration numbers
89. Size, durability, etc. of documents delivered to the Registrar
90. Form of documents to be delivered to the Registrar
91. Fees and forms
92. Inspection and production of documents kept by the Registrar
93. Enforcement of duty to deliver documents and notices to the Registrar
94. Destruction of old records

## PART XV

## TAXES AND STAMP DUTIES

95. Exemption from taxes
96. Exemption from stamp duties

## PART XVI

## MISCELLANEOUS AND FINAL PROVISIONS

97. Form of trust's records
  98. Examination of records and admissibility of evidence
  99. Production and inspection of records where offence suspected
  100. Legal professional privilege
  101. Right to refuse to answer questions
  102. Punishment of offences
  103. Accessories and abettors
  104. General powers of the Court
  105. Orders
  106. Saving
  107. Application of this Act
- FIRST SCHEDULE: Financial Services (Business Names) Order
- SECOND SCHEDULE: Financial Services (Prospectuses) Order
- THIRD SCHEDULE: Financial Services (Professional Bodies) Order

**CHAPTER 5.19**  
**TRUSTS ACT**

AN ACT TO MAKE PROVISIONS WITH REGARD TO TRUSTS, TRUSTEES AND PERSONS INTERESTED UNDER TRUSTS AND GENERALLY TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I  
PRELIMINARY

**Short title.**

1. This Act may be cited as the Trusts Act.

**Interpretation.**

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;  
“exempt trust” means a trust the beneficiary of which are exempt from taxes under 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 or her 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 subsection (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 or her 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;
- “unit” has the meaning assigned to it by paragraph (b) of subsection (4) of section 69;
- “unit trust” has the meaning assigned to it by subsection (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 subsection or paragraph or sub-paragraph by number or letter only, and without further identification, is a reference to the subsection 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.

### **Meaning of “trust”.**

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

- (a) for the benefit of any person (known as a beneficiary) whether or not yet ascertained or in existence;
- (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

#### **Creation of a trust.**

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 subsection (2) of section 16—

- (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 subsection (2) has been satisfied and the Registrar has issued a certificate under subsection (2) of section 7.

#### **Attestation of existence of a trust.**

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.

(2) An attestation delivered to the Registrar under subsection (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;
- (c) the full name, address, contact information and any identifying particulars of the trustee, settlor, protector and beneficiary and any other natural person exercising ultimate, effective control over the trust; and

*(Substituted by Act 11 of 2020)*

- (d) in the case where the trustee is a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office, as well as the identifying particulars of its beneficial owners, shareholders, Directors and any person with a controlling interest;

*(Inserted by Act 11 of 2020)*

- (e) where it is not possible to obtain relevant information on the beneficiaries of the trust, then the trustee shall provide a written undertaking that the identifying particulars of the beneficiary would be provided to the Regulator at the time of the distribution of the assets of the trust.

*(Inserted by Act 11 of 2020)*

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

#### **Documents to be delivered to the Registrar.**

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—

- (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.

#### **Registration of attestation.**

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 or she shall register the attestation delivered to him or her under section 5.

(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 or her 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.

**Amendment of attestation.**

**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.

(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 or her seal.

(4) If default is made in compliance with subsection (1) of this section every trustee who is in default commits an offence and is liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

**Names.**

**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.

(2) The Registrar may refuse to register—

(a) an attestation; or

(b) a statement under subsection (1) of section 8 changing the name of a trust,

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

PART III

TYPES OF TRUSTS

**Charitable 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.

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

(3) The Minister may prescribe alterations to the list mentioned in subsection (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.

### **Spendthrift or protective trusts.**

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

(2) Without prejudice to the generality of subsection (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 or her property becoming liable to sequestration for the benefit of his or her 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 subsection (2).

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

### **Unit trusts.**

**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.

(2) A unit trust may be created only by an instrument in writing.

### **Common trusts.**

**13.** (1) A trust which is not—

- (a) a charitable trust;
- (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 subsection (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 or her 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

###### **Proper law.**

**14.** (1) Subject to subsection (4), the proper law of a trust shall be the law of the 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 connection.

(2) The references in subsection (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 subsection; 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 subsection (1), the law with which a trust had the closest connection, 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;
- (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.

### **Jurisdiction of the Court.**

**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;
- (b) a trustee of the trust is resident in the Federation;
- (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.

(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 connection 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) Subsection (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 subsection (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;

- (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) Subsection (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 subsection 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 regards 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 subsections (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.

### **Validity.**

**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.

(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;
  - (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
  - (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;
  - (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 or she is dead for his or her personal representative.
- (6) In subsection (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.

### **Duration.**

- 17.** (1) Subject to subsection (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.
- (2) Subsection (1) shall not apply to a trust established as a charitable trust.

## PART V

### SETTLOR

### **Capacity of settlor.**

- 18.** (1) If a person transfers or disposes of property during his or her lifetime to a trust—
- (a) he or she shall be deemed to have had capacity to do so if he or she is at the time of such transfer or disposition not a minor or interdict under the law of his or her 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 or her 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.

(3) Nothing contained in subsection (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 subsection.

(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 or her property during his or her lifetime so as to preserve such property for distribution at his or her death, or having similar effect.

#### **Retention of control and benefits by settlor.**

**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—

- (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.

#### **Bankruptcy of settlor.**

**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 Act, Cap. 21:03, 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.

**Fraud on settlor's creditors.**

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

- (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 subsection (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—

- (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 or her 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 subsection (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 twenty-five thousand 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

#### **Beneficiaries.**

22. (1) A beneficiary shall be—

(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 or her interest in any manner.

(6) The settlor or a trustee of a trust may also be a beneficiary of the trust.

#### **Disclaimer of a beneficial interest.**

**23.** (1) Subject to the terms of the trust, a beneficiary may disclaim his or her interest or any part of it, whether or not the beneficiary has received some benefit from his or her 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.

#### **Class interests.**

**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—

- (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.

#### **Protector.**

**25.** (1) The terms of a trust may provide for the appointment of a person to the office of protector of the trust.

(2) No person is qualified for appointment as protector of a trust if he or she is a person who is—

- (a) a trustee of the trust;
- (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, no person shall be appointed as protector of the trust unless he or she is—

- (a) a lawyer;
- (b) an auditor; or

- (c) 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 subsection (2).

- (4) Notwithstanding subsection (3)—

- (a) a body corporate; or
- (b) 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 subsection (3).

(5) Subject to subsections (2), (3) and (4), a person who is the settlor or a beneficiary of a trust may be the protector of the trust.

(6) No person shall act as protector of a trust at a time when he or she knows that he or she is disqualified for appointment to that office, and if a protector of a trust to his or her knowledge becomes so disqualified during his or her term of office he or she shall thereupon vacate his or her office and give notice in writing to the trustees that he or she has vacated it by reason of that disqualification.

(7) A person who acts as protector in contravention of subsection (6), or fails without reasonable excuse to give notice of vacating his or her office as required by that subsection, commits an offence and is liable to imprisonment for a term not exceeding 2 years or a fine or both.

- (8) 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.

- (9) A protector, in the exercise of his or her 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.

(10) Subject to the terms of the trust, a protector shall be entitled to remuneration for his or her services and to reimbursement out of the trust of all expenses and liabilities reasonably incurred in connection with the exercise of his or her office.

(11) 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 or her;
- (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.

(12) 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

#### **Number of 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.

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

#### **New or additional trustee.**

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

- (a) the protector (if any); or failing him or her,
- (b) the trustees for the time being; or failing them,
- (c) the last remaining trustee; or failing him or her,
- (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 or she 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.

#### **Prohibition of renunciation after acceptance.**

**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.

(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).

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

#### **Resignation or removal of trustee.**

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

(2) A resignation takes effect on the delivery of notice in accordance with subsection (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 subsection (1) of section 26,

shall have no effect.

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

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

#### **Position of continuing trustee on reduction in number of trustees.**

**30.** Subject to the terms of the trust, where the number of trustees falls below the minimum number required under subsection (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.

#### **Duties of trustee.**

**31.** (1) A trustee shall, in the execution of his or her duties and in the exercise of his or her powers and discretion—

- (a) act—
  - (i) with due diligence;
  - (ii) as would a prudent person;
  - (iii) to the best of his or her 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 directly or indirectly profit from his or her trusteeship, or cause or permit any other person to profit directly or indirectly from such trusteeship, or on his or her 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 or her personal property and separately identifiable from any other property of which he or she is a trustee.

#### **Duty of co-trustees to act together.**

**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.

(2) Subject to subsection (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 or her dissent to be recorded in writing.

#### **Duty of confidentiality.**

**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.

(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 or her deliberation as to the manner in which he or she has exercised a power or discretion or performed a duty conferred or imposed upon him or her; 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.

**Impartiality of trustee.**

**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.

**General powers of trustee.**

**35.** (1) Subject to the terms of the trust and subject to his or her 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.

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

(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 or she thinks fit.

**Delegation by trustee.**

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

(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 subsection (2) who, in good faith and without neglect, makes such delegation or appointment or permits the continuation thereof.

(4) A trustee may authorise a person referred to in subsection (2) to retain any commission or other payment usually payable in relation to any transaction.

**Remuneration and expenses of trustee.**

37. (1) Unless authorised by—
- (a) the term of the trust;
  - (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 or her services.

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

**Corporate trustee acting by resolution.**

38. A corporate trustee may—
- (a) act in connection 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 connection with the trust.

## PART VIII

## LIABILITY FOR BREACH OF TRUST

**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 her or in which he or she has concurred.

(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.

(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 or her 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 or she becomes aware or ought to have become aware of the commission of such breach or of the intention of his or her co-trustee to commit a breach of trust; and
  - (b) he or she 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 or her for a breach of trust;

- (b) indemnify a trustee against liability for a breach of trust.
- (7) Subsection (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 subsection (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 subsection (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 or her own fraud, wilful misconduct or gross negligence.

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

**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;
- (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 or she ought fairly to be excused from such liability, because—

- (a) he or she has proved that he or she 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
- (b) he or she expressly objected, and exercised such rights as he or she 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 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.

**Trustee acting in respect of more than one trust.**

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 or she has obtained notice of it by reason of his or her acting or having acted for the purposes of another trust.

(2) A trustee of a trust shall disclose to his or her co-trustees any interest which he or she 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.

**Dealings by trustee with third parties.**

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

(2) Nothing in subsection (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 subsection (1), a trustee fails to inform such other party that he or she 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.

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

43. (1) Subject to subsection (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 or her assets.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1) shall not apply to his or her 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 or herself) 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 or her property his or her creditors shall have no right or claim against the trust property except to the extent that the trustee himself or herself has a claim against the trust or has a beneficial interest in the trust.

**Protection to persons dealing with trustee.**

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.

(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.

#### **Constructive trustee.**

**45.** (1) Subject to subsection (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 or she shall be deemed to be a trustee of that profit, gain, or advantage.

(2) Subsection (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 or she 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.

#### **Position of outgoing trustee.**

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

(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 subsection (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 or her 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 or she 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.

#### **Limitation of actions or prescription.**

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

- (a) in respect of any fraud to which the trustee was a party or to which he or she was privy; or
- (b) to recover from the trustee trust property—
  - (i) in his or her possession;
  - (ii) under his or her control; or

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

(2) Save as provided in subsection (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 subsection (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

#### **Power to make application for directions.**

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

#### **Power of investment.**

**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 or her absolute discretion think fit as if the trustee were the absolute owner thereof.

(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 authorised 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 or she should obtain appropriate advice as to whether the investment is suitable and satisfactory;
- (b) a trustee shall determine whether and at what intervals he or she 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 or she shall obtain and consider such advice accordingly.

(5) For the purpose of subsection (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 or she gives it in the course of his or her employment, including employment with a trustee of the trust.

**Power of accumulation and advancement.**

**50.** (1) Subject to section 17, the terms of a trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

(2) Subject to subsection (3), income of the trust which is not accumulated under subsection (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 or her interest—

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

the trustee may do any of the things specified in subsection (4).

(4) 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.

(5) 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 subsection (4).

(6) 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.

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

(8) No part of the trust property advanced or applied under subsection (6) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.



**Power of appointment.**

**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 revocation.**

**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.

(2) No such revocation or variation shall prejudice anything lawfully done by a trustee in relation to a trust before he or she 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 subsection (3) shall apply to the property which is the subject of such revocation.

(5) In subsection (3), “settlor” means the particular person who provided the property which is the subject of revocation.

**Power to appoint resident trustee.**

**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—

- (a) the protector (if any); or failing him or her;
- (b) the trustees for the time being; or failing them;
- (c) the last remaining trustee; or failing him or her;
- (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.

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

**Power to relieve trustee from personal liability.**

**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—

- (a) he or she is or may be personally liable for the breach of trust;
- (b) he or she has acted honestly and reasonably;
- (c) he or she 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) Subsection (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act.

**Power to make beneficiary indemnify for breach of trust.**

**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 or her.

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

**Power to provide variation of terms of trust.**

**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.

(2) Subject to subsection (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;
- (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;
- (c) any person unborn; or
- (d) any person in respect of any interest of his or hers 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 subsection (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.

**Power of approving particular transactions.**

**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 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 authorised 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.

**Powers on failure or lapse of interest.**

**58.** (1) Subject to the terms of a trust and subject to any order of the Court, where—

- (a) an interest lapses;
- (b) a trust terminates;
- (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 or her sole benefit and the trusts upon which he or she is to hold the property are not declared or communicated to him or her,

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 or she is dead for his or her personal representative.

(2) Where an interest or property is held by the trustee for a charitable purpose or, where subsection (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 subsection (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 subsections (1) and (2), “settlor” means the particular person who provided the interest or property affected as mentioned in subsection (1).

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

PART X

ADMINISTRATION

**Office for Service.**

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

(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 fourteen 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;
  - (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 subsection (4) shall be—
- (a) *prima facie* evidence of the particulars which are by that subsection directed to be contained therein;
  - (b) amended within twenty-one 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 commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

#### **Annual Statement.**

- 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—
- (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;

*(Amended by Act 8 of 2019)*

- (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; and

*(Amended by Act 8 of 2019)*

- (g) prior to the transfer or payment of assets, the particulars with respect to any trustee who is an individual and who has beneficial ownership interest.

*(Inserted by Act 8 of 2019)*

(3) The Minister may, in his or her 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 subsection (1) or (2) every trustee who is in default commits 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 subsection (1), is liable to a fine not exceeding one half of the prescribed filing fee for each day the offence is permitted to continue.

(5) Where the trustees of a trust—

- (a) fail to submit annual statements pursuant to subsections (1) and (2); and
- (b) have been delinquent in such filing in excess of 3 years,

the Registrar shall strike the name of the Trust from the Register of Trusts.

*(Inserted by Act 4 of 2017)*

#### **Service of documents.**

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

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

**Authority to sign.**

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—

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

**Legal proceedings.**

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.

**Accounts and audit.**

64. (1) The trustees of every trust shall keep accounting records for a period of at least five years which—

- (a) are sufficient to show and explain their transactions with respect to the trust;
- (b) are such as to disclose with reasonable accuracy at any time the financial position of the trust;
- (c) are sufficient as to allow for financial statements to be prepared;
- (d) include underlying documentation and must be kept to reflect details of—
  - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
  - (ii) all sales and purchases and other transactions; and
  - (iii) the assets and liabilities of the relevant entity or arrangements.

*(Substituted by Act 6 of 2011)*

(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 commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

**PART XI****TERMINATION OF TRUSTS****Statement of termination.**

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 or her to the Registrar.

(2) When a statement of termination is delivered to the Registrar he or she 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 commits an offence and is liable to a fine not exceeding two thousand five hundred dollars.

#### **Distribution of trust property on termination.**

**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.

(2) Notwithstanding subsection (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.

#### **Termination by Beneficiaries.**

**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.

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

#### **Termination by the Court.**

**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.

(2) Where an order is made under subsection (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

#### **Prospectuses.**

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

(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 commits an offence and liable to a fine not exceeding two thousand five hundred 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 or her agent;
  - (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.

#### **Compensation for misleading statements in prospectus.**

**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—

- (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 authorised 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.

#### **Exemption from liability to pay compensation.**

71. A person shall not be liable under section 70 if he or she satisfies the Court—

- (a) that the prospectus was circulated without his or her consent;
- (b) that, having made such inquiries (if any) as were reasonable, from the circulation of the prospectus until the units were acquired, he or she reasonably believed that the statement was true and not misleading or that the matter omitted was properly omitted;
- (c) that, after the circulation of the prospectus and before the units were acquired he, or she 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;
- (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 or her which was included in the prospectus with his or her consent, that when the prospectus was circulated he or she 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.

#### **Recovery of compensation.**

72. (1) A person is not debarred from obtaining compensation from a trust by reason only of his or her 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.

(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 or her 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 or her otherwise than in his or her character of a beneficiary.

#### **Criminal liability for misleading statements.**

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 authorised the circulation of the prospectus commits an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both unless he or she satisfies the Court that he or she reasonably believed, when the prospectus was circulated, that the statement was true and not misleading or that the matter omitted was properly omitted.

### PART XIII

#### INVESTIGATIONS

#### **Appointment of inspectors by Minister.**

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

he or she 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 twenty-five thousand dollars or such other sum as may be prescribed for payment of the costs of the investigation.

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

#### **Powers of inspectors.**

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.

(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.

#### **Production of records and evidence to inspectors.**

**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 or her—

- (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 connection with the investigation which he or she 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 subsection (1), and may administer an oath accordingly.

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

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

**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.

#### **Authority for search.**

**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.

(2) If the Court is satisfied that the conditions set out in subsection (3) are fulfilled, it may issue a warrant authorising 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 subsection (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.

(4) Where a person has entered premises in the execution of a warrant issued under this section, he or she 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.

### **Obstruction.**

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

### **Failure to co-operate with inspectors.**

**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 or her by the inspectors for the purpose of the investigation,

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 or she 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.

### **Inspectors’ reports.**

**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.

(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.

**Power to bring civil proceedings on behalf of trustees.**

**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 or herself bring those proceedings in the name and on behalf of the trustees of the trust.

(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 connection with proceedings brought under this section.

**Expenses of investigating a trust's affairs.**

**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—

- (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 connection with proceedings brought under section 82 (including expenses incurred under subsection (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 subsection (1) is (subject to satisfaction of his or her right to repayment) a liability also to indemnify all persons against liability under paragraph (c) or (d) of that subsection; 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 subsection (1) is entitled to a contribution from any other person liable under the same subsection 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.

#### **Inspectors' report to be evidence.**

**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.

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

#### **Privileged information.**

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

- (a) by a person of information or records which he or she 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 or she is a lawyer, the name and address of his or her 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

#### **Registrar and other officers.**

**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 or her functions under this Act.

(2) Any functions of the Registrar under this Act may, to the extent authorised by him or her, be exercised by any of his or her 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 shall also be the Registrar of Trusts for such period or periods of time as may then be prescribed.

**Registrar's seal.**

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

**Registration numbers.**

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

(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 or her necessary.

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

**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.

(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 or her opinion to that effect and indicating the requirements so prescribed with which in his or her opinion the document does not comply.

(3) Where the Registrar serves a notice under subsection (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 subsection (2).

**Form of documents to be delivered to the Registrar.**

**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—

- (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.

#### **Fees and forms.**

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

- (a) the performance by the Registrar of such functions under this Act as may be specified in the Order, including the receipt by him or her of any document under this Act which is required to be delivered to him or her; and
- (b) the inspection of documents or other material held by him or her 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 or her until the fee is paid, and where the fee is payable on the receipt by him or her of a document required to be delivered to him or her, he or she 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 107(4) hereof in which case the fees payable in relation to such trust shall be paid into the Nevis Island Consolidated Fund.

#### **Inspection and production of documents kept by the Registrar.**

**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 authorise the person named therein—

- (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 or her seal.

(2) A copy of or extract from a record kept by the Registrar, certified in writing by him or her (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to him or her 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.

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

**93.** (1) If a trustee, having failed to comply with a provision of this Act which requires him or her 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 or her to do so, the Court may, on an application made to it by another trustee or the protector (if any) or a 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.

**Destruction of old records.**

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

(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 or her possession or under his or her control.

PART XV

TAXES AND STAMP DUTIES

**Exemption from taxes.**

**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.

(2) The beneficiaries of an exempt trust shall not lose their exemption under subsection (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 authorised 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.

#### **Exemption from stamp duties.**

**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.

## PART XVI

### MISCELLANEOUS AND FINAL PROVISIONS

#### **Form of trust’s records.**

**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.

(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 subsection every trustee who is in default commits an offence and is liable to a fine not exceeding two thousand five hundred dollars.

#### **Examination of records and admissibility of evidence.**

**98.** (1) If any record referred to in subsection (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.

(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 subsection (1) as *prima facie* evidence, before and after the termination of the trust, of all facts stated therein.

#### **Production and inspection of records where offence suspected.**

**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 connection 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—

- (a) authorising 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.

#### **Legal professional privilege.**

**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 or she is entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the Court.

#### **Right to refuse to answer questions.**

**101.** A person may refuse to answer any question put to him or her pursuant to any provision of this Act if his or her 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.

#### **Punishment of offences.**

**102.** (1) Any person who makes a statement in any document, material, evidence or information which is required to be kept under subsection (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, commits an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

(2) A person shall not be found guilty of an offence under subsection (1) if he or she 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.

#### **Accessories and abettors.**

**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.

**General powers of the Court.**

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

- (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 connection 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 or she had been originally appointed as a trustee.

(5) Where any person neglects or refuses to comply with an order of the Court directing him or her to execute or make any conveyance, assignment, or other document or instrument or endorsement, 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 endorsement, 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 endorsement 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.

**Orders.**

**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.

(2) Except in so far 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);
  - (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.

#### **Saving.**

**106.** (1) 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 or she 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;
  - (ii) to vary any trust;
  - (iii) to reduce or vary any testamentary or other disposition; or
  - (iv) to make an order relating to matrimonial proceedings.

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

#### **†Application of this Act.**

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

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† Section 107 repealed by Act 15 of 2018 and section 108 renumbered as section 107

(2) Any trust falling within subsection (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;
- (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 subsection (2) only—

- (a) a company formed under or subject to the Nevis Business Corporation Ordinance or the Nevis Limited Liability Company Ordinance;
- (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 subsection (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 subsection (1).

(5) In the exercise of his or her power under subsection (4), the Minister shall take into account any matter which he or she 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 or she 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.
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**‡FIRST SCHEDULE**

*(Section 105)*

**FINANCIAL SERVICES (BUSINESS NAMES) ORDER**

**Citation.**

1. This Order may be cited as Financial Services (Business Names) Order.

**Interpretation.**

2. (1) In this Order, unless the context otherwise requires—

“Act” means the Act under which this Order is made;

“existing institution” means an institution incorporated or established before the date on which this Order comes into force;

“institution” means any—

- (a) company;
- (b) partnership; or
- (c) trust,

incorporated or established under the laws of the Federation or, if incorporated or established under the law of any other country or territory, carrying on business in the Federation or having an address in the Federation which is used regularly for the purpose of its business;

“Order” means this Order as amended, or is extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order, as amended, or as extended or applied, by or under any other Order made under the Act.

(2) Subject to subsection (1), any words defined in the Act and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order 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.

**Restriction on use of certain words in Business Names.**

3. (1) The words specified in the Schedule hereto or any word, however spelt and whether in the singular or plural form or in the masculine, feminine or neutral gender, or any abbreviation thereof, which may reasonably be understood to convey a similar meaning whether in English or any other language are hereby specified as words for the use of which as, or as part of, an institution’s name the permission of the Minister shall be obtained.

- (2) Any word in a language other than English (“foreign word”) is a word for the use of which as, or as part of, an institution’s name the permission of the Minister shall be obtained.

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‡ First Schedule repealed by S.R.O. 5/2019 and all subsequent schedules renumbered accordingly

(3) Words in English or in any other language which are used as, or from part of, an institution's name shall be in Roman characters when reproduced in writing or in any substitute for writing.

#### **Restrictions on the use of initials in Business Names.**

4. (1) Any initial is an initial for the use of which as, or as part of, an institution's name the permission of the Minister shall be obtained.

(2) Initials which are used as, or form part of, an institution's name shall be in Roman characters or numerals or in Arabic numerals (as may be desired) when reproduced in writing or in any substitute for writing.

(3) References to "initial" in this Order are references to any character or numeral, whether or not preceded or followed by a space or punctuation mark, which can neither by itself nor in combination with any adjacent characters or numerals be reasonably understood to form a word which conveys any meaning in English.

#### **Application for Permission.**

5. Any institution desirous of obtaining the permission of the Minister under this Order may make application in that behalf by delivering to the Director-General a statement signed by or on behalf of a director of the institution setting out—

- (a) any name currently used by it;
- (b) the name for which the permission of the Minister is being sought together with—
  - (i) a certified translation of any foreign word; and
  - (ii) a statement explaining the meaning of any initial used as, or forming part of, its name;
- (c) the intended or, in the case of an existing institution, the current address of its registered office or office for service (as the case may be);
- (d) a summary description of the nature of each business intended to be carried out by it or, in the case of an existing institution, currently being carried out by it; and
- (e) where a statement is delivered by a person as agent for any director of the institution, the statement shall specify that fact and the person's name and address.

#### **Grant of Permission.**

6. Subject to section 7, the Minister shall grant permission under this Order and whenever the Minister grants such permission he or she shall by Notice in writing inform the applicant accordingly.

#### **Refusal to grant Permission.**

7. (1) The Minister may refuse to grant permission under this Order—
- (a) if the applicant has not provided information required under section 5;
  - (b) if it appears to him or her, as a result of information provided in pursuance of the requirements of section 6 or information otherwise



obtained, that the name of the institution for which the application is made would be misleading or otherwise undesirable;

- (c) if in connection with any application made under this Order, the applicant has provided information which is untrue or misleading in any material particular; or
- (d) if the name of the institution—
  - (i) contains one or more initials that have no meaning; or
  - (ii) consists of solely one or more initials.

(2) Whenever the Minister refuses to grant permission under this Order he or she shall by notice in writing inform the applicant accordingly.

### Procedure and Rights of Appeal.

8. (1) Where the Minister, acting under section 7, refuses to grant permission under this Order to an institution, the applicant may require the Minister to furnish him or her with a statement in writing of the Minister's reasons for that decision.

(2) Any person aggrieved by such refusal may appeal to the Court, either in term or in vacation, on the ground that the decision of the Minister was unreasonable having regard to all the circumstances of the case.

### Punishment of Offences.

9. An institution which fails to comply with any provision of this Order which applies to it commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

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## SCHEDULE TO THE ORDER

(Section 3)

### SPECIFICATION OF RESTRICTED WORDS

<b>A</b> Agency	<b>D</b> Deposit	Insurance	Registrar
Association	Divine	Insurer	Reinsurance
Assurance	Divinity	Investigation	Reinsurer
Assurer	Duchess	<b>K</b> King	Resident
Authority	Duke	Kittitian(5)	Royal
<b>B</b> Bank	<b>E</b> Exchange	<b>L</b> Licensed	Royale
Banker	<b>F</b> Federation	Licensee	Royalty
Banking	Finance	Licentiate	<b>S</b> Saint Christopher (5)
Beneficial	Financial	Limited (1) (2)	Saint Kitts (5)
Benevolent	Firm(2) (3)	<b>M</b> Majesty	Scheme
Board	Foundation	Municipal	School
Broker	Fund	Mutual	Secured

Brokerage	<b>G</b>	Gambling	<b>N</b>	National	Security
<b>C</b> Casino		Gaming		Nevis (5)	Society
Casualty		Giro		Nevisian (5)	Sovereign
Chamber		God		Nursing	State
Charitable		Government	<b>O</b>	Offshore	Stockbroker
Charity		Governor		Onshore	Subsidiary
Charter		Group	<b>P</b>	Parliament	Surety
Chartered		Guarantee		Partnership (2) (3)	<b>T</b> Trust (4)
Clinic		Guaranteed		Patent	Trustee
Club	<b>H</b>	Health		Patentee	<b>U</b> Underwriter
Collective		Highness		Police	Union
College		Holding		Polytechnic	Unit
Commission		Holiness		Prince	University
Committee		Holy		Princess	Unlimited
Company (1) (2) (3)		Hospital		Protection	
Consolidated	<b>I</b>	Imperial	<b>Q</b>	Queen	
Co-operative		Incorporated(1)	<b>R</b>	Reassurance	
Corporate (1)		Indemnity		Reassurer	
Corporation (1)		Institute		Register	
Council		Institution		Registered	

**Notes:**

Restricted only if the institution (1) is not a company; (2) is not a limited partnership; (3) is not a partnership; (4) is not a trust; or (5) has not majority or principal shareholder controller or no indirect controller who is resident in the Federation.

**SECOND SCHEDULE**

*(Sections 69 and 105)*

**FINANCIAL SERVICES (PROSPECTUSES) ORDER****Citation.**

1. This Order may be cited as the Financial Services (Prospectuses) Order.

**Interpretation.**

2. (1) In this Order, unless the context otherwise requires—  
“Act” means the Trusts Act under which this Order is made;

“institution” means any—

- (a) company;
- (b) partnership; or
- (c) trust,

incorporated or established under the law of the Federation or, if incorporated or established under the law of any other country or territory, carrying on business in the Federation or having an address in the Federation which is used regularly for the purpose of its business;

“Order” means this Order as amended, or as extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order, as amended, or as extended or applied, by or under any other Order made under the Act.

(2) Subject to subsection (1), any words defined in the Act and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order 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.

#### **Circulation of Prospectus.**

3. (1) Subject to subsection (2), no prospectus offering securities in an institution shall be circulated in the Federation or elsewhere unless—

- (a) it contains the information specified in Part I of the Schedule to this Order;
- (b) it includes the statements specified in Part II of that Schedule;
- (c) there has been delivered to the Director-General—
  - (i) a copy of the prospectus, signed by or on behalf of all the directors of the institution;
  - (ii) a signed copy of any report included in, or attached to, the prospectus; and
  - (iii) such other particulars as the Director-General may require; and
- (d) the Minister has given his or her consent to the circulation of the prospectus.

(2) The Minister may give his or her consent to the circulation of a prospectus which does not comply in every respect with the requirements of subsection (1) if he or she is satisfied that the deviation from those requirements does not affect the substance of the prospectus or is not calculated to mislead.

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**SCHEDULE TO THE ORDER***(Section 3)***PART I****INFORMATION TO BE SPECIFIED IN PROSPECTUSES****Details relating to the Offer.**

1. The following shall be stated—
  - (a) the names, occupations and addresses of—
    - (i) the offerors or vendors; and
    - (ii) any promoter, of the securities;
  - (b) the offer price for the securities, including the method, time and place of payment;
  - (c) the opening and closing dates and times of the offer;
  - (d) the minimum amount required to be raised by the offer;
  - (e) when and how moneys will be returned in the event of the offer not being completed or any securities applied for not being allotted;
  - (f) general particulars of any property which is to be acquired with the proceeds of the offer;
  - (g) in the case of any business which is to be acquired with the proceeds of the offer, the length of time during which that business has been carried on;
  - (h) if dividends or interests are payable on the securities, then the terms and conditions under which such dividends or interests are to be paid;
  - (i) if the securities are redeemable, then the terms and conditions under which they are to be redeemed.

**Capital.**

2. There shall be stated particulars of—
  - (a) the paid-in capital of the institution; and
  - (b) the securities which are the subject of the offer, together with details of any existing issued securities which are not part of the offer.

**Goodwill, Preliminary Expenses etc.**

3. There shall be stated particulars of any amounts to be written off or provided for in respect of goodwill or preliminary expenses, or of any benefit given to a promoter.

**Contracts.**

4. There shall be stated the dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on, or intended to be carried on, by the institution or a contract entered into more than two years before the date of issue of the prospectus.

**Interest of Directors.**

5. There shall be stated—

- (a) full particulars of the nature and extent of the interest, if any, of every director in the promotion of or in the property proposed to be acquired by, the institution, or where the interest of such a director consists of being a partner in a partnership or a trustee of a trust, the nature and extent of the interest of the partnership or trust (as the case may be); and
- (b) details of all sums paid or agreed to be paid to him or her or to the partnership or trust (as the case may be) in cash or shares or otherwise by any person to induce him or her to become, or to qualify him or her as, a director, or otherwise for services rendered by him or her or by the partnership or trust (as the case may be) in connection with the promotion or formation of the institution.

**Debentures and Loans.**

6. There shall be stated details of any subscriptions, allotments or options to be given, or already existing, in respect of any other securities of the institution, including any which have a prior right over the securities covered by the offer to a distribution of the institution's profits.

**Accounts and Reports.**

7. The following shall be included in the prospectus—

- (a) a copy of the institution's latest accounts accompanied by a report thereon by the institution's auditors;
- (b) any other reports of a specialist nature by any person who could be described as an expert on any aspect of the institution's business, identifying any unusual element of risk to the investor.

**Registered Office or Office for Service.**

8. There shall be stated the address of the institution's registered office or office for service (as the case may be) and if the institution is not keeping its register of members at that office, the address of the office at which such register is kept.

**Principal Establishments.**

9. The location and nature of the institution's principal operating establishments shall be stated.

**Directors and other Officers.**

10. The following shall be stated in respect of each director, chief executive and manager of the institution—

- (a) his or her forenames and surname;
- (b) his or her business or usual residential address;
- (c) his or her business occupation (if any); and
- (d) his or her qualifications (if any).

**Advisers.**

11. The following shall be stated—
- (a) the name and address of the institution's auditors;
  - (b) the name and address of the institution's legal advisers;
  - (c) the name and address of the institution's principal bankers.

**Additional Information.**

12. There shall be included any other material information which an investor (including a person who cannot be expected to have any special knowledge of investments of the nature being offered) would reasonably require to enable him or her to make an informed judgment about the merits of investing in the securities offered in the prospectus.

**Date of Issue.**

13. The date of issue of the prospectus shall be stated.

**PART II****STATEMENTS TO BE INCLUDED IN THE PROSPECTUS**

The following statements shall be included—

- (a) "A copy of this document has been delivered to the Minister of Finance of the Federation of Saint Christopher and Nevis in accordance with section 3 of the Financial Services (Prospectus) Order and he or she has given, and has not withdrawn, his or her consent to its circulation.";
- (b) "It must be distinctly understood that, in giving these consents, the Minister of Finance of the Federation of Saint Christopher and Nevis takes no responsibility whatsoever for the financial soundness of the institution or for the correctness of any statements made, or opinions expressed, with regard to it.";
- (c) "The persons responsible for this document have taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of facts or of opinion. All these persons accept responsibility accordingly.";
- (d) "If you are in any doubt about the contents of this document you should consult your stockbroker, bank manager, solicitor, accountant or other financial adviser.";
- (e) "It should be remembered that the price of securities and the income from them can go down as well as up."

## THIRD SCHEDULE

(Section 105)

### FINANCIAL SERVICES (PROFESSIONAL BODIES) ORDER

#### Citation.

1. This Order may be cited as the Financial Services (Professional Bodies) Order.

#### Interpretation.

2. (1) In this Order, unless the context otherwise requires—

“Act” means the Trusts Act under which this Order is made;

“authorised person” means a person authorised to carry on finance business under the principal Order;

“Order” means this Order as amended, or as extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order, as amended, or as extended or applied, by or under any other Order made under the Act.

(2) Subject to subsection (1), any words defined in the Act and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order 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.

#### Authorisation by Certification.

3. (1) Notwithstanding any provision to the contrary in the principal Order, a person holding an authorisation certificate issued for the purpose of this Order by a recognised professional body is an authorised person and the provisions of the principal Order shall, *mutatis mutandis*, apply to such person as if he or she is an authorised person otherwise than by virtue of the certification.

(2) An authorisation certificate may be issued by a recognised professional body to an individual, a company or a partnership.

(3) An authorisation certificate issued to a partnership—

(a) shall be issued in the name of the partnership; and

(b) shall authorise the carrying on of finance business in that name by the partnership to which the authorisation certificate is issued, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership,

and, in relation to an authorisation certificate issued to a partnership constituted under the law of any country or territory under which a partnership is not a legal person, references in this Order to the person who holds the authorisation certificate or is certified shall be construed as references to the persons or person for the time being authorised by the authorisation certificate to carry on finance business as mentioned in paragraph (b).

**Professional Bodies.**

4. (1) In this Order, a “professional body” means a body which regulates the practice of a profession and references to the practise of a profession do not include references to carrying on a business consisting wholly or mainly of finance business.

(2) In this Order, references to the members of a professional body are references to the individuals who, whether or not members of the body, are entitled to practice the profession in question and, in practising it, are subject to the rules of that body.

(3) In this Order, references to the rules of a professional body are references to the rules (whether or not laid down by the body itself) which the body has power to enforce in relation to the practice of the profession in question and the carrying on of finance business by persons practising that profession or which relate to the grant, suspension or withdrawal of authorisation certificates under section 3, the admission and expulsion of members or otherwise to the constitution of the body.

(4) In this Order, references to guidance issued by a professional body are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members, or to persons or any class of persons who are or are seeking to be certified by the body, and which would, if it were a rule, fall within subsection (3).

**Application for Recognition.**

5. (1) A professional body may apply to the Financial Secretary for an order declaring it to be a recognised professional body for the purpose of this Order.

(2) Any such application—

(a) shall be delivered to the Director-General;

(b) shall be in such form as the Financial Secretary may direct; and

(c) shall be accompanied by such information as the Financial Secretary may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it the Financial Secretary may require that applicant to provide additional information.

(4) The directions and requirements given or imposed under subsections (2) and (3) may differ as between different applications.

(5) Any information to be provided under this section shall, if the Financial Secretary so requires, be in such form or verified in such manner as he or she may specify.

(6) Every application shall be accompanied by a copy of the applicant’s rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

**Grant and Refusal of Recognition.**

6. (1) The Financial Secretary may, on an application duly made in accordance with section 5 and after being furnished with all such information as he or she may require under that section, make or refuse to make an order (“a recognition order”) declaring the applicant to be a recognised professional body.

(2) The Financial Secretary may make a recognition order if it appears to him or her from the information furnished by the body making the application and having



regard to any other information in his or her possession that the requirements of subsection (3) and of the Schedule to this Order are satisfied as respects that body.

(3) The body must have rules which impose acceptable limits on the kinds of finance business which may be carried on by persons certified by it and the circumstances in which they may carry on such business and which preclude a person certified by that body from carrying on any finance business outside those limits unless that person is an authorised person otherwise than by virtue of the certification.

(4) Where the Financial Secretary refuses an application for a recognition order he or she shall give the applicant a written notice to that effect, stating the reasons for the refusal.

(5) A recognition order shall state the date on which it takes effect.

#### **Revocation of Recognition.**

7. (1) A recognition order under section 6 may be revoked by a further order made by the Financial Secretary if at any time it appears to him or her—

- (a) that subsection (3) of section 6 or any requirements of the Schedule to this Order is not satisfied in the case of the body to which the recognition order relates; or
- (b) that the body has failed to comply with any obligation to which it is subject by virtue of this Order.

(2) An Order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than 3 months after the day on which the revocation order is made.

(3) Before revoking a recognition order the Financial Secretary shall give written notice of his or her intention to do so to the recognised professional body, take such steps as he or she considers reasonably practicable for bringing the notice to the attention of members of the body and publish it in such manner as he or she thinks appropriate for bringing it to the attention of any other persons who are in his or her opinion likely to be affected.

(4) A notice under subsection (3) shall state the reasons for which the Financial Secretary proposes to act and give particulars of the rights conferred by subsection (5).

(5) A body on which a notice is served under subsection (3), any member of the body and any other person who appears to the Financial Secretary to be affected may, within 3 months after the date of service or publication, or within such longer time as the Financial Secretary may allow, make written representations to the Financial Secretary and, if desired, oral representations to a person appointed for that purpose by the Financial Secretary, and the Financial Secretary shall have regard to any representations made in accordance with this subsection in determining whether to revoke the recognition order.

(6) If in any case the Financial Secretary considers it essential to do so in the interest of the public, he or she may revoke a recognition order without regard to the restrictions imposed by subsection (2) and notwithstanding that no notice has been given or published under subsection (3) or that the time for making representations in pursuance of such a notice has not expired.

(7) An order revoking a recognition order may contain such transitional provisions as the Financial Secretary thinks necessary or expedient.

(8) A recognition order may be revoked at the request or with the consent of the recognised professional body and any such revocation shall not be subject to the restrictions imposed by subsections (1) and (2) or the requirements of subsections (3) to (5).

(9) On making an order revoking a recognition order the Financial Secretary shall give the body written notice of the making of the order, take such steps as he or she considers reasonably practicable for bringing the making of the order to the attention of members of the body and publish a notice of the making of the order in such manner as he or she thinks appropriate for bringing it to the attention of any other persons who are in his or her opinion likely to be affected.

### **Compliance Order.**

8. (1) If at any time it appears to the Financial Secretary—
- (a) that subsection (3) of section 6 or any requirements of the Schedule to this Order is not satisfied in the case of a recognised professional body; or
  - (b) that such body has failed to comply with any obligation to which it is subject by virtue of this Order, he or she may, instead of revoking the recognition order under section 7, make an application to the Court under this section.

(2) If on any such application the Court decides that subsection (3) of section 6 or the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question it may order the body to take such steps as it directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.

### **Notification Requirements.**

9. (1) The Financial Secretary may make regulations requiring a recognised professional body to give forthwith notice to the Director-General of the occurrence of such events relating to the body, its members or persons certified by it as are specified in the regulations and such information in respect of those events as is so specified.

(2) The Financial Secretary may make regulations requiring a recognised professional body to furnish to the Director-General at such times or in respect of such periods as are specified in the regulations with such information relating to the body, its members and persons certified by it as is so specified.

(3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Financial Secretary may reasonably require for the exercise of the functions of the Director-General under this Order.

(4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.

(5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Financial Secretary may approve.

(6) Where a recognised professional body amends, revokes or adds to its rules or guidance it shall, within 7 days, give written notice to the Director-General of the amendment, revocation or addition but—

- (a) notice need not be given of the revocation of guidance other than such as is mentioned in subsection (6) of section 5 or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned; and
- (b) notice need not be given in respect of any rule or guidance, or rules or guidance of any description, in the case of which the Financial Secretary has waived compliance with this subsection by notice in writing to the body concerned,

and any such waiver may be varied or revoked by a further notice in writing.

(7) Contravention of, or of regulations under, this section shall not be an offence.

#### **Temporary Recognition Order.**

**10.** (1) The St. Kitts and Nevis Bar Association and the St. Kitts-Nevis Association of Chartered Accountants shall be granted a temporary recognition order under this section.

(2) An order issued under subsection (1) shall expire on the earlier of the day on which it is replaced by a recognition order made under section 6 or on which the period of 12 months from the day on which this Order takes effect expires.

(3) An order issued under subsection (1) which is not replaced by a recognition order made under section 6 shall for the purpose of this Order be deemed to have been revoked by an order made under subsection (6) of section 7 on the relevant expiration day referred to in subsection (2).

#### **Functions of the Director General.**

**11.** In addition to his or her functions under the principal Order, the Director-General shall also examine and make recommendations to the Financial Secretary with respect to all applications for recognition, revocations of recognition and compliance orders made under this Order.

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## **SCHEDULE TO THE ORDER**

### **REQUIREMENTS FOR RECOGNITION OF PROFESSIONAL BODIES**

#### **Statutory Status.**

1. The body must—
  - (a) regulate the practice of a profession in the exercise of statutory powers;
  - (b) be recognised (otherwise than under this Order) for a statutory purpose by a Minister of the Federal Government; or
  - (c) be specified in a provision contained in or made under an enactment as a body whose members are qualified to exercise functions or hold offices specified in that provision.

**Certification.**

2. (1) The body must have rules, practices and arrangements for securing that no person can be certified by the body for the purpose of this Order unless the conditions set out in subsections (2) and (3) are satisfied.

(2) The certified person must be either—

(a) an individual who is a member of the body; or

(b) a person managed and controlled by one or more individuals each of whom is a member of a recognised professional body and at least one of whom is a member of the certifying body.

(3) Where the certified person is an individual his or her main business must be the practise of the profession regulated by the certifying body and he or she must be practising that profession otherwise than in partnership, and where the certified person is not an individual that person's main business must be the practice of the profession or professions regulated by the recognised professional body or bodies of which the individual or individuals mentioned in paragraph (b) of subsection (2) are members.

(4) In the application of subsections (2) and (3) to an authorisation certificate which is to be or has been issued to a partnership constituted under the law of any country or territory under which a partnership is not a legal person, references to the certified person shall be construed as references to the partnership.

**Safeguards for Clients.**

3. (1) The body must have rules regulating the carrying on of finance business by persons certified by it which, together with the statements of principle, rules, regulations and codes of practice to which those persons are subject afford an adequate level of protection for clients.

(2) In determining in any case whether an adequate level of protection is afforded for clients of any description, regard shall be had to the nature of the finance business carried on by persons certified by the body, the kinds of clients involved and the effectiveness of the body's arrangement for enforcing compliance.

**Taking Account of Costs of Compliance.**

4. The body must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

**Monitoring and Enforcement.**

5. (1) The body must have adequate arrangements and resources for the effective monitoring of the continued compliance by persons certified by it with the conditions mentioned in section 2 and rules, practices and arrangements for the withdrawal or suspension of certification (subject to appropriate transitional provisions) in the event of any of those conditions ceasing to be satisfied.

(2) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance by persons certified by it with the rules of the body relating to the carrying on of finance business and with any statements of principles, rules, regulations or codes of practice to which those persons are subject in respect of business of a kind regulated by the body.

(3) The arrangements for enforcement must include provision for the withdrawal or suspension of certification and may include provision for disciplining members of the body who manage or control a certified person.

(4) The arrangements for enforcement may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the professional body.

(5) The arrangements for enforcement must be such as to secure a proper balance between the interests of persons certified by the body and the interest of the public, and the arrangements shall not be regarded as satisfying that requirement unless the persons responsible for enforcement include a sufficient number of persons who are independent of the body and its members and of persons certified by it.

(6) The arrangements for monitoring may make provision for that function to be performed on behalf of the body (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

#### **Investigation of Complaints.**

6. (1) The body must have effective arrangements for the investigation of complaints relating to—

- (a) the carrying on by persons certified by it of finance business in respect of which they are subject to its rules; and
- (b) its regulation of investment business.

(2) Subsection (4) of section 4 applies also to arrangements made pursuant to this section.

#### **Promotion and Maintenance of Standards.**

7. The body must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of finance business and to co-operate, by the sharing of information and otherwise, with the Director-General and any other authority, body or person having responsibility for the supervision or regulation of finance business.

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