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No. [] of 2020

**Nevis International Exempt Trust
Ordinance 2020**

Island of Nevis

I assent,

Hyleta Liburd, MH

Deputy Governor-General

Dated this day of , 2020

ISLAND OF NEVIS

No. [] of 2020

A BILL FOR

A BILL to repeal and replace the Nevis International Exempt Trust Ordinance with the Nevis International Exempt Trust Ordinance 2020, to make provisions for the law relating to international trusts and for matters incidental thereto or connected therewith.

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

PART 1 – PRELIMINARY MATTERS

1. Short title and commencement

- (1) This Ordinance may be cited as the Nevis International Exempt Trust Ordinance, 2020.
- (2) This Ordinance shall come into force on a date to be appointed by the Minister by Order published in the Gazette.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires,
“Administration” means the Nevis Island Administration;
“Advisory Committee” means the Advisory Committee established under section 76;
“ascertainable standard” means a standard which restricts the power of a trustee to make distributions to a beneficiary to an extent measurable by the beneficiary’s accustomed manner of living which includes reference to his health, education or support or any combination of these;

“*attorney-at-law*” means a person whose name has been entered on the Roll of attorneys at law and holds a valid practicing certificate issued pursuant to the Legal Profession Act, 2008, as amended or superseded and a valid business licence issued by the Administration;

“*authenticated translation*” means a translation into the English language of an instrument which was drafted in a language other than the English language or a language which does not use the characters of the Latin alphabet and was prepared by a professional translator;

“*bankrupt*” means a situation where a person, known as a “*debtor*”, has been adjudicated insolvent by a court of law or an administrative body, located in Nevis or elsewhere in the world, and whose property is administered and divided between such debtor’s creditors, and the term “*bankruptcy*” shall be construed accordingly;

“*breach of trust*” means a breach of duty imposed on a trustee by the terms of the trust, this Ordinance or the general law;

“*cause of action*” means the facts and circumstances which entitle a person to bring legal action against another person;

“*charitable purpose*” shall be construed in accordance with the provisions of section 7 of this Ordinance;

“*charitable remainder annuity trust*” means a trust:

- (a) from which a sum certain is to be paid, not less often than annually,
- (b) to one or more persons (at least one of which is not a charity and, in the case of natural persons, only to a natural person who is living at the creation of the trust),
- (c) for a term of years or for the life or lives of such natural persons or natural persons (herein called the “*lead term*”),
- (d) from which no amount other than the payments described herein and other than qualified gratuitous transfers described herein may be paid to or for the use of any person other than a charity following the termination of the lead term,
- (e) the remainder interest in the trust is to be transferred to, or for the use of, a charity or is to be retained by the trust for such a use, and
- (f) the value of such remainder interest (determined by applying generally accepted actuarial principles) is at least one percent of the initial net fair market value of all property transferred to the trust;

“*charitable remainder unitrust*” means a trust:

- (a) from which a fixed percentage of the net fair market value of its assets, valued annually, is to be paid, not less often than annually (herein called the “*lead payment*”),
- (b) to one or more persons (known as an “*income beneficiary*”) (at least one of which is not a charity and, in the case of natural persons, only to a natural person who is living at the creation of the trust),
- (c) for a term of years or for the life or lives of such natural person or natural persons (herein called the “*lead term*”),

(d) from which no amount other than the payments described herein and other than qualified gratuitous transfers described herein may be paid to or for the use of any person other than a charity following the termination of the lead term;

(e) the remainder interest in the trust is to be transferred to, or for the use of, a charity or is to be retained by the trust for such a use, and

(f) the value of such remainder interest (determined by applying generally accepted actuarial principles) is at least one percent of the initial net fair market value of all property transferred to the trust;

Notwithstanding the foregoing, the trust instrument may provide that the trustee shall pay the income beneficiary for any year the amount of the net trust income, if such amount is less than the amount required to be distributed as the lead payment and any amount of the trust income which is in excess of the amount required to be distributed as the lead payment, to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts;

“claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, un-matured, disputed, undisputed, legal, equitable, secured, or unsecured;

“convey” and *“conveyance”* as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for the conveying, assigning, appointing, surrendering or otherwise transferring or disposing of land of which he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance.

“creditor” means a person to whom an obligation or debt is owed, and includes a creditor of the settlor, a judgment creditor and the assignee of such person;

“Deputy Registrar of Trusts” means the person or persons appointed by the Minister to assist the Registrar of Trusts in performing the duties of registrar under this Ordinance;

“determining event” means the occurrence of any event, act or omission on the part of a beneficiary that would result in a trust property or its income becoming payable to any person other than the beneficiary;

“discretionary interest” means a beneficiary’s interest in a trust if the beneficiary’s entitlement to a distribution is within the discretion of the trustee or the protector or any other person designated by the trust instrument;

“disposition” means any conveyance, transfer or assignment by a settlor of property to a trust;

“Dollars” or *“\$”* means Eastern Caribbean Dollars unless expressly stated otherwise in this Ordinance;

“endorsement” means the seal, stamp or handwritten signature of the Registrar of Trusts, or any other method, known or hereinafter invented or adopted which may be used to indicate the approval of the Registrar of Trusts;

“Federation” means the Federation of Saint Christopher and Nevis;

“*foreign court*” means any court which is located outside of Saint Christopher and Nevis, any court other than the High Court, or any court which assumes jurisdiction over any person or property which is governed by this Ordinance without the consent of the High Court;

“*foreign law*” means the law of any jurisdiction other than the Federation;

“*functions*” includes rights, powers, obligations, liabilities, duties and discretion;

“*general law*” includes any rule of law or equity;

“*general power of appointment*” means a power given by a donor to a donee to appoint property in favour of whomever the donee wishes, including the donee himself, the donee’s estate or the creditors of the donee’s estate;

“*governing law*” means the law controlling or directing a trust registered in Nevis or elsewhere;

“*grantor retained annuity trust*” means a trust:

- (a) from which a sum certain is to be paid, not less often than annually;
- (b) to one or more persons (and, in the case of natural persons, only to a natural person who is living at the creation of the trust); and
- (c) for a term of years or for the life or lives of such natural person or natural persons;

“*grantor retained unitrust*” means a trust:

- (a) from which a fixed percentage of the net fair market value of its assets, valued annually, is to be paid, not less often than annually,
- (b) to one or more persons (and, in the case of natural persons, only to a natural person who is living at the creation of the trust), and
- (c) for a term of years or for the life or lives of such natural person or natural persons;

“*heirship rights*” means any right, claim or interest in, against or to property of a person arising, accruing or existing as a consequence of that person’s death, other than any such right, claim or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property to such person;

“*High Court*” means the High Court of the Federation;

“*income*” means any monetary payment which is received from the sale of goods or provision services and includes rents and profit;

“*insolvency*” means a condition when a person, known as a debtor, is unable to pay his debts as such debts become due, and the term “*insolvency*” shall be construed accordingly;

“*intent to defraud*” means an intention of a settlor willfully to defeat an obligation owed to a known creditor;

“*international trust*” means a trust registered under this Ordinance and in respect of which:

- (a) at least one of the trustees is either:

- (i) a corporation incorporated under the Nevis Business Corporation Ordinance or a registered agent;

(ii) a limited liability company formed under the Nevis Limited Liability Company Ordinance;

(iii) a multiform foundation established and registered under the Multiform Foundations Ordinance

(b) the beneficiaries are resident outside of Nevis at the time of the creation of the trust; and

(c) the trust property does not include any real property situated in the Federation or an interest in any real property so situate;

“*lease*” means an agreement to rent real property or an interest therein between a lessor and lessee for a fixed period or a period terminable at the will of the lessor or lessee and includes an underlease;

“*mandatory right*” means a beneficiary’s share in a trust if the beneficiary’s entitlement to a distribution is not within the discretion of the trustee or any other person;

“*Minister*” means the Minister for the time being charged with the responsibility of finance in the Nevis Island Administration;

“*minor*” means a person who has not attained age of majority under the law of that person’s domicile;

“*personal representative*” means the executor or administrator for the time being of the estate of a deceased person;

“*power of withdrawal*” means a presently exercisable general power of appointment other than a power exercisable by: (a) a trustee and limited by an ascertainable standard; or (b) another person only upon consent of the trustee;

“*property*” means

(a) property of any description, wherever situated, including any shares or interest therein, but excluding any immovable property situated in Saint Christopher and Nevis, and

(b) any rights whether vested, contingent, defeasible or future;

“*protector*” means a person described in section 11 of this Ordinance;

“*purpose*” means an aim, goal or objective, charitable or non-charitable, which is sought to be achieved under a trust, and in furtherance of which, a power to distribute, apply or use trust property may be exercised by the trustee;

“*qualified foreign trust*” means a trust described in section 63(3) of this Ordinance;

“*registered agent*” means any person who or which has been duly licensed by the Nevis Island Administration to carry on the business of serving as a registered agent.

“*registered office*” means the location described in section 70(2) of this Ordinance;

“*Registrar of Trusts*” means the person appointed by the Minister to perform the duties of Registrar under this Ordinance;

“*settlor*” means one or more persons who gratuitously make an *inter vivos* contribution or testamentary disposition to a trustee in order to establish a trust;

“*spendthrift trust*” means any trust which is described in section 6(1) of this Ordinance;

“*spouses*” mean two natural persons who are lawfully wedded together in a union recognized under the laws of the jurisdiction where the marriage took place or where the marriage licence was issued;

“*trust*” means a legal relationship which is created either *inter vivos* or via a testamentary disposition when a settlor transfers property, which no longer forms part of the settlor’s estate, to a trustee, and is held:

- (a) to aid, assist or support persons who are known as “*beneficiaries*”, whether or not such persons are yet ascertained or in existence;
- (b) to fulfil a valid charitable or non-charitable purpose;
- (c) simultaneously for the benefit of beneficiaries or to fulfil a purpose.

“*trustee*” means

- (a) a person appointed by the trust instrument to act as trustee of the trust;
- (b) a corporation incorporated and registered under the Nevis Business Corporations Ordinance;
- (c) a limited liability company formed and registered under the Nevis Limited Liability Company Ordinance; and
- (d) a multiform foundation established and registered under the Multiform Foundations Ordinance and whose multiform is a company foundation;

“*undervalue*” in relation to a disposition of property means:

- (a) the provision of no consideration for the disposition; or
- (b) a consideration for the disposition the value of which in money or money’s worth is significantly less than the value of the property the subject of the disposition.

(2) A reference in this Ordinance to the masculine shall include the feminine and neuter.

PART II – NATURE OF AN INTERNATIONAL TRUST

3. Validity of international trusts

(1) An international trust registered under this Ordinance shall be valid and enforceable notwithstanding that it may be invalid or not enforceable in whole or in part according to the law of the settlor’s domicile or residence or place of current incorporation, formation or establishment.

(2) An international trust shall be invalid and unenforceable to the extent that:

- (a) it purports to do anything contrary to this Ordinance or any other Ordinance of Nevis or the Acts of the Federation;

- (b) it purports to confer any right or power or impose any obligation the exercise of which or the carrying out of which is contrary to this Ordinance or any other Ordinance of Nevis or the Federation; or
- (c) the trust property contains the proceeds of a crime for which the settlor has been convicted.

4. Governing law of international trusts

- (1) The governing law of an international trust shall be:
 - (a) the law of the jurisdiction expressed by the terms of the trust to be the governing law; or
 - (b) if no such law is expressed by the terms of the trust, the governing law shall be this Ordinance provided that the requirements of this Ordinance have been complied with.
- (2) The terms of an international trust may provide for a severable aspect of the trust to be governed by a law other than this Ordinance.
- (3) The terms of an international trust may provide for the governing law of the trust or the law governing a severable aspect of the trust to be changed from the law of one jurisdiction to the law of another jurisdiction.
- (4) Where the governing law of an international trust or the law governing a severable aspect of an international trust is changed from the law of Nevis or this Ordinance to the law of another jurisdiction (referred to as the “*new law*”) no provision of the law of Nevis shall operate to render the trust or any part of such trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the new law.
- (5) A change in the governing law of a trust shall not affect the legality or validity of or render any person liable for anything done before the change.
- (6) If the governing law of an international trust cannot be established expressly or impliedly from the trust instrument, then the applicable law will be that with which the trust is most closely connected.
- (7) In ascertaining the law with which a trust is most closely connected reference shall be made in particular to:
 - (a) the place of administration of the trust designated by the settlor;
 - (b) the place of residence or business of the trustee;
 - (c) the situs of the assets of the trust; and
 - (d) the purposes of the trust and the places where those purposes can be fulfilled.

5. Unlimited duration of international trusts and accumulation of income

- (1) Under this Ordinance no rule of law against perpetuities, or suspension of the power of alienation of the title to property or other existing law against perpetuities, or law restricting or limiting the duration of an international trust, shall apply with respect to any interest in real or personal property held in trust if the terms of an international trust specifically state that the trustee

of the trust has the unlimited power to sell all trust assets or if one or more persons, one of whom may be the trustee, has the unlimited power to terminate the entire trust.

(2) The rule of law known as the rule against perpetuities shall not apply to an international trust and unless otherwise provided in its terms, an international trust shall have an unlimited duration.

(3) Notwithstanding any rule of law or equity to the contrary, where a trust instrument empowers a trustee to accumulate income, or to refrain from making any distribution of capital or income until a specified date or event, or where any provision of the instrument otherwise prevents any distribution of capital or income, notwithstanding that a beneficiary may, but for this section, otherwise be entitled to that accumulation or distribution, the trustee may, in its absolute discretion, subject to any other terms of the instrument, give effect to that direction as such trustee thinks fit notwithstanding that a beneficiary shall request the trustee to immediately distribute the accumulation or distribution and will give a valid discharge to the trustee for such distribution.

(4) The income arising from any international trust may be accumulated in accordance with the terms of the trust for as long a time as is necessary to accomplish the purposes for which the trust was created, notwithstanding any law limiting the period during which trust income may be accumulated.

PART III - SPENDTHRIFT, CHARITABLE, NON-CHARITABLE PURPOSE AND INTERNATIONAL TRUSTS

6. Spendthrift trusts

(1) The terms of an international trust may make the interest of a beneficiary, including a beneficiary who is also a settlor, subject to:

- (a) termination;
- (b) diminution or termination if the beneficiary becomes insolvent or any of the property becomes liable to seizure or sequestration for the benefit of the beneficiary's creditors; or
- (c) restriction on alienation of or dealing in the interest or any part of that interest,

and such a trust shall be known as a spendthrift trust.

(2) Where any income, including an annuity or other periodical income payment is directed to be held on a protective trust for the benefit of any person (in this section called the "*principal beneficiary*") for the period of his life or for any less period, then, during that period (in this section called the "*trust period*") the said income shall, without prejudice to any prior interest, be held on the following trusts namely:

- (a) upon trust for the principal beneficiary during the trust period until he, whether before or after the termination of any prior interests, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any

of which cases, as well as on the termination of the *trust period*, whichever occurs first, this trust of the said income shall fail or determine;

(b) if the aforesaid trust fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the following persons:

(i) the principal beneficiary and any spouse and children or more remote issue of that beneficiary; or

(ii) if there is no spouse or child or issue of that principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the movable property comprised in his estate or the income thereof or to the annuity fund, if any, or arrears of annuity as the case may be,

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(3) Subsection (2) has effect subject to any variation of the implied trusts aforesaid in the trust instrument.

(4) Nothing in this section operates to validate any trusts which would, if contained in the instrument creating the trust, be liable to be set aside.

(5) Any rule of law or public policy which prevents a settlor from establishing a protective or a spendthrift trust of which the settlor is a beneficiary is abolished.

7. Charitable trusts

(1) Subject to subsections (2) and (3), a trust under this Ordinance is charitable if:

(a) all its purposes fall exclusively within one or more of the categories of charitable purposes listed below;

(i) the relief of poverty;

(ii) the advancement of education;

(iii) the advancement of religion;

(iv) other purposes beneficial to the community at large; and

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

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

8. Purpose trusts

(1) A valid international trust known as a purpose trust may be created for a purpose provided that:

- (a) the purpose is specific, reasonable and capable of fulfilment;
- (b) the purpose is not immoral, unlawful or contrary to public policy of the Federation; and
- (c) the trust instrument provides for the appointment of an enforcer who is capable of enforcing the trust and for the appointment of another enforcer on any occasion on which there is no enforcer, or no enforcer able or willing to act;

(2) A purpose trust shall provide for the appointment of a person other than the trustee to act as the protector as well as the appointment of a successor protector and the protector shall have the duty to ensure that the trustee fulfils the trust's purposes and any other duties provided in the trust instrument.

(3) The High Court may, on the application of a trustee, whenever it is expedient to do so make an order to appoint a protector of a purpose trust either to fill a vacancy or in substitution for the existing protector.

(4) A trustee of a purpose trust shall provide the protector of the trust with:

- (a) an accounting for the assets;
- (b) copies of the trust instrument and of deeds and other written instruments executed pursuant to the trust instrument; and
- (c) any other documents and information as the trust instrument requires to be provided.

(5) The instrument declaring or evidencing a purpose trust may, do any of the following:

- (a) specify an event or date upon the happening or occurrence of which the trust ceases to be a purpose trust;
- (b) provide for the disposition of assets of the trust when the trust ceases to be a purpose trust; or
- (c) provide that, for so long as the trust is a purpose trust, the trustees owe no duty
 - (i) to any persons entitled to such assets when the trust ceases to be a purpose trust; or
 - (ii) in relation to any purposes for which such assets are then to be applied.

(6) A protector of a trust appointed in accordance with the provisions of this section shall have both the power and duty of enforcing it.

(7) A person may not be or become a trustee of a purpose trust while he is the protector of that trust.

(8) On an application in relation to a purpose trust by:

- (a) any person appointed by the trust instrument;
- (b) the settlor, unless the trust instrument provides otherwise;
- (c) a trustee of the trust; or
- (d) the protector of the trust

the High Court may in such manner as it thinks fit vary any of the purposes of the trust or enlarge or otherwise vary any of the powers of the trustees or other provisions of the trust.

(9) In exercising the powers conferred upon it by subsection (8), the High Court shall have regard to such factors as the High Court thinks material which may include:

- (a) such changes in circumstances since the trust was created as are in the opinion of the High Court relevant; and
- (b) such factors and proposals as are set out in the application.

(10) The changes in circumstances referred to in subsection (9)(a) may include the fact that the execution of the trust in accordance with its terms has become in whole or in part:

- (a) impossible or impracticable;
- (b) unlawful or contrary to public policy; or
- (c) obsolete in that, by reason of changed circumstances, it fails to achieve the intention of the settlor and the spirit of the gift.

(11) Where any costs are incurred in connection with an application under subsection (8), the High Court may make such order as it considers just as to payment of those costs, including payment out of the property of the trust.

(12) Where any costs are incurred by the person who has been appointed to enforce the trust, in connection with enforcement, the High Court may make such order as it considers just as to the payment of those costs, including payment out of the property of the trust.

(13) Nothing in this section affects the law with respect to charitable trusts.

(14) Nothing in this section shall operate to invalidate a trust which, apart from this section, would be a valid trust.

(15) No rule against trusts or powers of excessive duration applies to a purpose trust and in this section “*rule against trusts or powers of excessive duration*” includes, but without limitation:

- (a) the rule known as the rule against inalienability sometimes referred to as the rule against perpetual trusts; and
- (b) so far as not embraced within paragraph (a),
 - (i) any rule prohibiting a trust under which trust property would, apart from the rule, be alienable beyond a permissible period, and
 - (ii) any rule prohibiting a trust or power under which trust property would, apart from the rule, be capable of application for a purpose beyond a permissible period.

9. Discretionary interests in international trusts

(1) This section:

- (a) applies to a creditor’s claim with respect to a discretionary interest of any beneficiary in an international trust unless the trust instrument expressly provides otherwise;
- (b) shall not prevent a creditor from obtaining relief under section 28 of this Ordinance; and
- (c) shall not be construed to limit the application of section 6 of this Ordinance in any manner.

(2) A discretionary interest in an international trust is not a property interest or an enforceable right but, rather, it is a mere expectancy that a creditor of a beneficiary (including the settlor) may not attach, garnish or otherwise reach.

(3) A creditor of a beneficiary may not:

- (a) compel or force a distribution with regard to a discretionary interest in an international trust; or
- (b) compel or force a trustee to exercise the trustee’s discretion to make a distribution with regard to a discretionary interest in an international trust.

(4) A creditor of a beneficiary may not compel or force a protector to exercise a power to direct a trustee to make a distribution to any beneficiary of an international trust.

(5) In the case of a discretionary interest in an international trust, a trustee who has the power to pay income or principal to a beneficiary may pay it to a third party if the payment is for the benefit of the beneficiary, and the trustee of that international trust shall not be liable to any creditor of a beneficiary for paying income or principal on behalf of that beneficiary.

(6) A creditor of a beneficiary may not maintain an action or a proceeding in the High Court that interferes with the trustee's discretion to apply income or principal on behalf of the beneficiary of an international trust.

(7) A creditor of a beneficiary may not obtain an order of attachment, garnishment or similar relief that would prevent a trustee from making a discretionary payment to a third party on behalf of the beneficiary of an international trust.

(8) In this section, a beneficiary's entitlement (or lack thereof) to a distribution is within the discretion of a trustee whether or not the trust instrument states the purposes for the distribution is expressed in the form of a standard of distribution or uses the terms "may", "shall", "sole", "absolute", "sole and absolute", "uncontrolled", "unfettered", or similar words and whether or not the trustee has abused the discretion.

(9) A trustee of an international trust that includes a discretionary interest may directly pay any expense on behalf of a beneficiary and may exhaust the income and principal of the trust for the benefit of that beneficiary regardless of whether the beneficiary has any outstanding creditors.

(10) A trustee shall not be liable to any creditor for paying the expenses of a beneficiary who holds a discretionary interest in an international trust.

(11) For the avoidance of doubt, references in this section to beneficiaries includes settlors in circumstances in which settlors are also beneficiaries.

10. Mandatory rights in international trusts

(1) A creditor of a beneficiary may not attach, garnish or otherwise reach a mandatory right under any circumstance unless that right to attach, garnish or otherwise reach a fixed interest or mandatory right is expressly stated in the trust instrument.

(2) In the case of a fixed interest or mandatory right in an international trust, unless the trust instrument provides expressly otherwise a trustee who is directed to pay income or principal to a beneficiary may pay it to a third party if the payment is for the benefit of the beneficiary, and the trustee of an international trust shall not be liable to any creditor of a beneficiary for paying income or principal on behalf of such beneficiary.

(3) A creditor of a beneficiary may not maintain an action or a proceeding in the High Court that interferes with the trustee's power to apply income or principal on behalf of the beneficiary of an international trust.

(4) A creditor of a beneficiary may not obtain an order of attachment, garnishment or similar relief that would prevent a trustee from making a fixed or mandatory payment to a third party on behalf of the beneficiary of an international trust.

(5) A trustee of an international trust that includes a fixed interest or mandatory right may directly pay any expense on behalf of the beneficiary of that trust regardless of whether the beneficiary has any outstanding creditors.

(6) Subject to any express provision in the trust instrument, a trustee shall not be liable to any creditor for paying the expenses of a beneficiary who holds a fixed interest or mandatory right.

(7) This section shall not prevent a creditor from obtaining relief under section 28 and shall not be construed to limit the application of section 6 in any manner.

11. Protector of a trust

(1) The terms of an international trust may provide for the office of protector of the trust.

(2) Where a person is given authority by the terms of an international trust to exercise certain powers in accordance with the trust instrument, that person, other than a Trustee, shall be considered to be a protector when exercising such powers, unless the terms of the trust provide otherwise.

(3) The protector of an international trust may also be a settlor or a beneficiary of a trust, unless the terms of the trust provide otherwise.

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

12. General power of appointment granted to beneficiary

A creditor shall have no right against the interest of a beneficiary of an international trust or against the beneficiary or trustee of the trust with respect to such interest unless:

(a) the beneficiary has the power to appoint all or part of the trust property to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate by will or other instrument such that the appointment would take effect only upon the beneficiary's death and the beneficiary actually exercises such power in favour of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate, however, only to the extent of such exercise.

(b) the beneficiary has the power, including a power of withdrawal, to appoint all or part of the trust property to the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate during the beneficiary's lifetime and the beneficiary actually exercises such power in favour of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate, but only to the extent of such exercise.

(2) For the avoidance of doubt, references in this section to beneficiaries exclude settlors in circumstances in which settlors are also beneficiaries.

(3) This section shall not prevent a creditor from obtaining relief under section 28 and shall not be construed to limit the application of section 6 in any manner.

13. Right of revocation retained by settlor

(1) A creditor shall have no right against the interest of a beneficiary of an international trust who is the settlor or against the settlor or trustee of the trust with respect to such interest unless the settlor has a power to revoke the trust and appoint all or part of the trust property to the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate during the settlor's lifetime and the settlor actually exercises such power in favour of the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate, but only to the extent of such exercise.

(2) This section shall not prevent a creditor from obtaining relief under section 28 and shall not be construed to limit the application of section 6 in any manner.

PART IV – FAILURE, TERMINATION AND REDOMICILATION OF INTERNATIONAL TRUST

14. Failure or lapse of interest

(1) Subject to the terms of the international trust and to any Order of the High Court, where an interest lapses or a trust terminates and where there is no beneficiary and no person (whether or not then living) who has become a beneficiary in accordance with the terms of the trust, then the interest in the property concerned shall be held by the trustee in trust for the settlor absolutely or if the settlor is dead, then the interest shall be held by the trustee as if it formed part of the settlor's estate.

(2) Subsection (1) shall not apply to an international trust established for a charitable purpose to which section 15 applies or to one established for a non-charitable purpose to which section 8 applies.

15. Failure of charitable trusts

(1) Where property under an international trust is held for a charitable purpose and:

- (a) the purpose has been, as far as it may be, fulfilled;
- (b) the purpose cannot be carried out according to the directions of and in the spirit of the gift;
- (c) the purpose provides a use for part of the property;
- (d) the purpose was laid down by reference to an area which was then, but has since ceased to be, a unit for some other purpose, or by reference to a class of persons or to an area which has for a reason ceased to be suitable or to be practicable in administering the gift;
- (e) the purpose has been adequately provided for by other means;
- (f) the purpose has ceased to be charitable (by reason of being useless or harmful to the community or otherwise);
- (g) the property and other property applicable for a similar purpose can be effectively used in conjunction, and that end can more suitably be applied to a common purpose; or
- (h) the purpose has ceased in any other way to provide a suitable and effective means of using the property;

then the property or the remainder of the property, as the case may be, shall be held for such other charitable purposes as the High Court, on the application of the trustee, declares to be consistent with the original intention of the settlor.

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

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

16. Termination and redomicilation of international trust

(1) On the termination of an international trust the trustee shall, within a reasonable time and subject to subsection (2), distribute the trust property in accordance with the terms of the trust to the beneficiaries or purposes entitled thereto.

(2) The trustee may retain sufficient trust property on account to make a reasonable provision for any existing, future or contingent liabilities or any other expenses.

(3) Where a trust which has been registered under this Ordinance terminates, the trustee shall notify the registered agent, who shall then notify the Registrar of Trusts and return the Certificate of Registration and request that the trust be removed from the Register.

(4) Where the Registrar of Trusts receives a notice of termination of the trust and payment of the prescribed fee, the Registrar of Trusts shall cancel the entry on the register and issue an endorsement certificate certifying such termination.

(5) Where a trust which has been registered under this Ordinance is redomiciled to a foreign jurisdiction, the trustee shall notify the registered agent who shall then notify the Registrar of Trusts and return the Certificate of Registration and request that the trust be removed from the register.

(6) Where the Registrar of Trusts receives a notice of redomicilation of the trust and payment of the prescribed fee, the Registrar of Trusts shall cancel the entry on the register and issue a Certificate certifying such redomicilation.

17. Duress

To the extent any person (including the settlor) is granted the power under the terms of a trust to demand or request any act on the part of a settlor, beneficiary, trustee, protector, or other person, or has the authority to approve, veto, or compel any action or exercise any power which affects or will affect an international trust or any interest therein, each such person shall:

- (a) accept or recognize only demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, which are given by or are

the result of persons acting of their own freewill and not under compulsion or pursuant to any legal process, directive, order, or like decree of any foreign court, administrative body, or other tribunal or like authority, with the exception of an Order of the High Court; and

(b) ignore any demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any function, power or authority, where the person attempting to demand, request, approve, veto, compel the act, or exercise the function, power or authority is not a person either appointed or so authorised pursuant to the terms of such trust.

18. Termination by beneficiaries

(1) Without prejudice to any power of the High Court and unless expressly prohibited by the terms of any international trust, where all beneficiaries are in existence and have been ascertained, and none is a person under legal disability or a minor, and all beneficiaries are in agreement so to do, they may require the trustee to terminate the trust and distribute the trust property as the beneficiaries direct.

(2) Notwithstanding any rule of equity or practice of the High Court to the contrary, neither a beneficiary who is solely entitled to any interest under a spendthrift trust, nor all of the beneficiaries who together are the persons entitled to any interest under a spendthrift trust shall be entitled, although in existence and ascertained and of full capacity, to call for the direct transfer of their interest or to terminate or modify the trust relating to them if and so far as that entitlement, is without offending any rule of perpetuity or remoteness, excluded by the trust instrument.

(3) The High Court shall not have power to approve variations of trust on behalf of beneficiaries of a spendthrift trust.

(4) The rule in *Saunders v. Vautier* [1841] EWHC Ch. J82 shall have no application to any international trust nor any provision thereof nor to any transfer to such trust.

PART V - BREACH OF TRUST

19. Liability for breach of trust

(1) Subject to the provisions of this Ordinance and to the terms of the trust, a person who commits or concurs in a breach of trust is liable for:

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

(b) any profit which would have accrued to the trust had there not been a breach.

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

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

- (a) the trustee becomes or ought to have become aware of the breach; and
- (b) the trustee actively conceals the breach or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent the breach.

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

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

(6) Nothing in the terms of a trust shall relieve a trustee of liability for a breach of trust arising from its own fraud or wilful misconduct.

20. Constructive trusts

(1) A person who derives a profit from a breach of trust, or who obtains property in breach of trust, shall be deemed to be a trustee of the profit or property, unless such person derives or obtains it in good faith and without actual constructive or implied notice of the breach of trust.

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

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

21. Tracing trust property

Without prejudice to the personal liability of a trustee, trust property which has been charged or dealt with in breach of trust, or any property into which it has been converted may be traced and recovered unless:

- (a) it is no longer identifiable; or
- (b) it is in the hands of a *bona fide* purchaser for value without actual constructive or implied notice of the breach of trust.

22. Beneficiary may relieve or indemnify trustee

(1) A beneficiary may relieve a trustee of liability for a breach of trust or indemnify a trustee against liability for a breach of trust and the terms of the trust may relieve a trustee of liability for a breach of trust or indemnify a trustee against liability for a breach of trust.

(2) Subsection (1) does not apply if the beneficiary:

- (a) is a minor or a person under a legal disability;
- (b) does not have full knowledge of the material facts; or
- (c) is improperly induced by the trustee to act under subsection (1).

23. Power to relieve trustee from personal liability

The High Court may relieve a trustee wholly or partly of liability for a breach of trust where it appears to the High Court that the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust or for omitting to obtain the directions of the High Court in the matter in which the breach arose.

24. Power to make beneficiaries indemnify

Where a trustee commits a breach of trust at the instigation of a beneficiary or at the request of a beneficiary, or with the concurrence of a beneficiary, the High Court (whether or not the beneficiary is a minor or a person under a legal disability) may impound all or part of the beneficiary's interest by way of indemnity to the trustee or a person claiming through such beneficiary.

PART VI – POWERS OF THE HIGH COURT

25. Jurisdiction of the High Court

The High Court has jurisdiction in respect of any matters concerning an international trust where:

- (a) the governing law of the trust or a particular aspect of the trust is this Ordinance;
- (b) a trustee of the trust is resident in the Federation or is registered in Nevis;
- (c) any trust property is situate in Saint Christopher and Nevis but only in respect of property so situate;
- (d) any part of the administration of the trust is carried on in the Federation ; or

26. General powers of the High Court

(1) On the application of a trustee, a beneficiary, a settlor or the settlor's personal representatives, a protector, or with the leave of the High Court, any other person with a vested or contingent interest, the High Court may:

- (a) make an Order in respect of
 - (i) the execution, administration or enforcement of a trust;
 - (ii) a trustee, including an Order as to the exercise of any power by a trustee, the appointment, removal, remuneration or conduct of a trustee, the keeping or submission of accounts, and the making of payments, whether in High Court or otherwise;
 - (iii) a protector, including an Order appointing a protector;
 - (iv) a beneficiary, or a person connected to the trust;

- (v) any trust property including an Order for the vesting, preservation, application, surrender and recovery thereof;
- (b) make a declaration as to the variation or enforceability of a trust;
- (c) direct the trustee to distribute or not to distribute the trust property;
- (d) make such Order in respect of the termination of the trust and distribution of the property as it thinks fit;
- (e) rescind or vary an Order or declaration under this Ordinance or make a new or further Order or declaration.

(2) Where the High Court appoints or removes a trustee under this section:

- (a) it may impose such requirements and conditions as it thinks fit, including provisions as to remuneration and requirements or conditions as to the vesting of the property;
- (b) subject to the Order, a trustee appointed by the High Court shall perform the same functions, and may act in all respects, as if such new trustee had been originally appointed a trustee.

(3) The High Court may, if it thinks fit, by order approve on behalf of:

- (a) a minor or a person without legal capacity 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 persons;
- (c) any person unborn; or
- (d) any person in respect of any interest of his that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is or may be any other person beneficially interested who is capable of assenting thereto, varying, adding to, revoking or replacing all or any of the trusts, enlarging, restricting or removing all or any of the powers of the trustees of managing or administering any of the property subject to the trusts or all or any powers of the trustees, or varying, adding to, removing or replacing any or all of the other provisions of the trusts.

(4) The High Court shall not approve an arrangement on behalf of any person falling within paragraphs (a), (b) or (c) of subsection (3) if carrying it out would be detrimental to that person.

(5) Where a trust instrument provides for the appointment of any person (including the holder of any office under the trust) to approve any arrangement described under subsection (3) on behalf of any person referred to in paragraphs (a) to (d) thereof (whether specified by name or by description and whether or not the identity of such persons is ascertained or ascertainable) and where such approval is subsequently given pursuant thereto, such approval shall have the same effect as if the High Court had approved such arrangement on behalf of such persons pursuant to the powers vested in it under this section.

Provided that no such approval shall be given on behalf of any persons referred to under subsection (3) (a) to (c) unless, in the opinion formed in good faith of the person giving the approval, such arrangement would not be detrimental to the person or persons on whose behalf it is given.

(6) Where in the management or administration of a trust, any sale, lease, pledge, charge, surrender, mortgage, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is in the opinion of the High 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 trust instrument or by law, the High Court may by order confer upon the trustee either generally or in any particular instance, a power for that purpose on such terms and subject to such provisions and conditions, if any, as the High 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.

(7) An application to the High Court under subsection (6) may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

(8) The High Court may, from time to time, rescind or vary any order made under subsection (6), or may make any new or further order.

(9) If a person does not comply with an Order of the High Court under this Ordinance requiring such person to act, the High Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person nominated for the purpose by the High Court (at the expense of the person in default or otherwise, as the High Court directs) and the thing so done has effect in all respects as if done by the person in default.

27. High Court's determination of validity

(1) The High Court may declare an international trust to be invalid if:

- (a) the trust was established by duress, mistake, undue influence or misrepresentation;
- (b) the trust is illegal, immoral or contrary to the public policy of the Federation

(c) the terms of the trust are so uncertain that its performance is rendered impossible (provided that a trust for charitable purposes shall be deemed always to be capable of performance); or

(d) the settlor was, under the Acts of the Federation and the Ordinances of Nevis then in force, at the creation of the trust, incapable of creating such trust.

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

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

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

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

28. Avoidance of fraud

(1) In this section

(a) ‘*disposition*’, in relation to property, connotes every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction by which any legal or equitable interest in property is created, transferred or extinguished;

(b) ‘*intent to defraud*’ means an intention of a transferor wilfully to defeat an obligation owed to a creditor;

(c) ‘*obligation*’ means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had notice.

(d) ‘*relevant disposition*’ means a disposition to which subsection (3)(a) applies;

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

(f) ‘*transferee*’ means the person to whom a relevant disposition is made and shall include any successor in title; and

(2) Subject to this section, every disposition of property made with an intent to defraud and at any undervalue shall be voidable at the instance of a creditor thereby prejudiced.

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

(4) No action or proceedings shall be commenced under this section unless commenced within two years of the date of the relevant disposition.

(5) In the event that any disposition shall be set aside under this section, then –

(a) if the High Court is satisfied that the transferee has not acted in bad faith –

- (i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the High Court); and
- (ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee (and of any predecessor transferee who has not acted in bad faith); and

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

(6) A disposition shall be set aside under this section only to the extent necessary to satisfy the obligation to a creditor at whose instance the disposition has been set aside together with such costs as the High Court may allow.

(7) Nothing in this section shall validate any disposition of property which is neither owned by the transferor nor the subject to a power in that behalf vested in the transferor and nor does this section effect the recognition of foreign law in determining whether the transferor is the owner of such property or the holder of such power.

(8) Nothing in this section shall create or enable any right, claim or interest on behalf of a creditor or person which right, claim or interest would be avoided or defeated by Part VI of this Ordinance.

29. Saving of certain rights

If a trust shall be declared invalid by the High Court and the High Court is satisfied that the beneficiary has not acted in bad faith then:

- (a) the beneficiary shall have a first and paramount charge over the trust property, the subject of the disposition, of an amount equal to the entire costs properly incurred by such beneficiary in the defence of the action or proceedings (and not merely such costs as might otherwise be allowed by the High Court); and
- (b) the trust shall be declared invalid subject to the proper fees, costs, pre existing rights, claims and interests of the beneficiary.

30. Extent of invalidity

An international trust shall be declared invalid pursuant to section 28 only to the extent necessary to satisfy the obligation of a creditor at whose instance the trust was declared invalid together with such costs as the High Court may allow.

31. No validation of property not vested in settlor

(1) Nothing in this Ordinance shall 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.

(2) This Ordinance shall not affect the recognition of any foreign law in determining whether the settlor is the owner of such property or the holder of such power referred to in subsection (1).

32. Foreign judgments not enforceable

Notwithstanding the provisions of any statute, any rule of law or equity to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgment obtained in a jurisdiction other than Saint Christopher and Nevis against:

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

shall be entertained by the High Court if:

- (i) that judgment is based upon the application of any law inconsistent with the provisions of this Ordinance; or
- (ii) that judgment relates to a matter or particular aspect that is governed by this Ordinance or any other Ordinance of Nevis and the Acts of the Federation.

33. Exclusion of foreign law

(1) In this section, unless the context otherwise requires:

“*disposition*” in relation to any property includes any form of conveyance, transfer, assignment, lease, licence, charge, mortgage, pledge, encumbrance or other

transaction of that property or by which any legal or equitable interest in it is created, transferred or extinguished.

“*personal relationship*” includes every form of relationship by blood or marriage, including former marriage and, in particular, a personal relationship between two persons exists if:

- (a) one is the child of the other, natural or adopted (whether or not the adoption is recognised by law), legitimate or illegitimate;
- (b) one is married to the other
- (c) one cohabits with the other or so conducts himself in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of a parent and child or husband and wife; or
- (d) personal relationships exist between each of them and a third person.

(2) All questions arising with regard to the validity, construction, effect or administration, whether the administration is conducted in Nevis or elsewhere, of a trust including:

- (a) questions relating to any of the following matters:
 - (i) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
 - (ii) the rights and duties of trustees among themselves;
 - (iii) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;
 - (iv) the powers of trustees to administer or to dispose of trust assets, to create security interests in trust assets, or to acquire new assets;
 - (v) the powers of investment of trustees;
 - (vi) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;
 - (vii) the relationship between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;
 - (viii) the variation or termination of the trust;
 - (ix) the distribution of trust assets;
 - (x) the duty of trustees to account for their administration; and
- (b) to the extent that they do not fall under paragraph (a), questions as to;

- (i) the fiduciary or non-fiduciary powers, obligations or duties of the trustees or to the liabilities or rights of the trustees;
- (ii) the existence and extent of powers conferred or retained, including powers to vary or revoke the trust and powers of appointment and questions as to the validity of any exercise of any such power;

are to be determined by the proper law of the trust or, where there are different proper laws for different aspects of the trust, the proper law applicable to the area in which the question falls.

(3) Subject to any express provision to the contrary in the trust instrument, no international trust and no disposition of property to be held upon such trust is void, voidable, liable to be set aside or declared defective in any fashion or manner, nor is the capacity of any settlor in relation to the trust or disposition to be questioned, nor is the trustee or any beneficiary or other person to be subjected to any liability or deprived of any right by reason that:

- (a) the law of any foreign jurisdiction prohibits or does not recognize the concept of a trust either in part or in whole;
- (b) the international trust or disposition:
 - (i) 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
 - (ii) contravenes any rule of foreign law or any foreign, judicial or administrative order or arbitration order or action intended to recognise, protect, enforce or give effect to such a right, claims or interest.; or
- (c) this Ordinance, any other Ordinance of Nevis, and the Acts of the Federation are inconsistent with any foreign law.

(4) Heirship rights conferred by foreign law in relation to the property of a living person shall be disregarded when determining rights of ownership of property subject to, or claimed to be subject to, an international trust.

(5) Heirship rights conferred upon persons by foreign law shall not be taken to establish those persons as creditors for the purposes of section 28.

34. Application for directions

(1) A trustee may apply to the High Court for directions as to how such trustee should or might act in any of the affairs and administration of the trust, and the High Court may make such order as it thinks fit.

(2) A trustee acting on the directions given by the High Court on an application filed in accordance with subsection (1), shall be deemed, so far as regards its own responsibility, to have discharged its duty as such trustee in the subject matter of the application.

(3) A trustee who has not made full disclosure to the Court shall not be indemnified in respect of any act done in accordance with the directions given by the Court if such trustee shall have been guilty of any fraud, wilful concealment or misrepresentation in obtaining the directions of the High Court.

35. Payment of costs

The High Court may order the costs and expenses of and incidental to any legal action before the High Court under this Ordinance be paid from the trust property or in such manner and by such persons as it thinks fit.

36. Commencement of proceedings

(1) No action or proceeding whether pursuant to this Ordinance or at common law or in equity shall be commenced to set aside the settlement or disposition of an international trust or against a trustee or trustees for breach of trust, unless such action or proceeding is commenced in the High Court before the expiration of two years, as the case may be, from:

- (a) the date of the settlement of the international trust that is sought to be set aside; or
- (b) the disposition to the international trust that is sought to be set aside; or
- (c) the breach of trust by the trustee or trustees.

(2) No action or proceeding whether pursuant to this Ordinance or at common law or in equity shall be commenced by any person:

- (a) claiming to have had an interest in property before that property was settled upon or disposed to an international trust, and
- (b) seeking to derive a legal or equitable interest in that property,

unless such action or proceeding is commenced in the High Court before the expiration of two years from the date that the property in paragraphs (a) and (b) was settled upon the trusts or disposed to the trustee of an international trust.

(3) No action or proceeding to which subsections (1) or (2) of this section or to which section 28 shall apply, whether substantive or interlocutory in nature, shall be determined and no Order shall be made, or granted by the High Court (including any injunction that shall have the effect of preventing the exercise of, or restoring to a person any rights, duties, obligations or powers or preserving, granting custody of, detaining or inspecting any property) unless the applicant shall first satisfy the High Court, by affidavit, that:

- (a) the action or proceedings have been commenced in accordance with subsections (1) or (2) of this section;
- (b) where the action or proceedings shall allege fraud or be founded upon some other action or proceedings alleging fraud, the determination or order sought would not be contrary to the provisions of section 28.

(4) An affidavit required to be filed pursuant to subsection (3) shall be made by the person on whose behalf the action or proceedings is brought or, in the case of a legal person, a director, a manager or management board member thereof, shall depose as to:

- (a) the circumstances of the cause of action in respect of which the action or proceedings are brought;
- (b) the date upon which the cause of action shall have accrued;
- (c) the date upon which the property, in respect of which the action or proceedings are brought, was settled on or disposed to the international trust; and
- (d) whether an action or proceeding has been commenced in respect of the cause of action and if so, the date upon which that action or those proceedings were commenced.

(5) The provisions of this section shall apply to every trust expressed to be governed by this Ordinance and, if a qualified foreign trust shall change the law by which it is governed to this Ordinance, then every action or proceeding after the change in registration:

- (a) by a person claiming to be interested in or to be prejudiced by the settlement of property upon such a trust; or
- (b) concerning any disposition of property to such a trust;

shall be commenced subject to subsections (1) and (2) and every determination and order shall be made subject to subsection (3) as if upon the date that such settlement or disposition was made the trust was registered as an international trust governed by this Ordinance.

37. Confidential Relationships Act

(1) The Confidential Relationships Act shall apply to every trust registered under this Ordinance.

(2) All proceedings brought under this Ordinance, other than criminal proceedings relating to international trusts, shall be heard *in camera*.

(3) Subject to subsection (4) the full details of any proceedings brought under this Ordinance may only be published with leave of the High Court.

(4) The details of any proceedings brought under this Ordinance may be published without leave of the High Court if the names and any other information which may be used to identify the settlor, the beneficiaries, the trustee, the protector, any parties to the proceedings, any person with a material interest in the trust or any persons involved in the circumstances of the proceedings (other than the judge and the attorneys at law) are redacted.

PART VII - TRUSTEES, PROTECTORS AND BENEFICIARIES

38. Number of trustees

(1) Unless the terms of the trust provide for a greater number, the minimum number of trustees shall be one.

(2) A trust shall not terminate or fail by reason only that there is no trustee or fewer than the number of trustees required by the terms of the trust.

(3) Where there is no trustee or fewer than the number of trustees required by the terms of the trust, the necessary number of new or additional trustees shall be appointed and until the minimum number is reached, the other trustees (if any) shall act only for the purpose of preserving the trust property.

39. Trustees to act by majority

(1) Subject to the any provisions to the contrary contained in the trust instrument, every decision made, resolution passed or power or discretion exercised by trustees is valid if made, passed or exercised by a majority of the trustees if there are more than two trustees

(2) Any deed or other instrument executed pursuant to a decision made, resolution passed or power or discretion exercised by a trustee in accordance with subsection (1) is likewise valid as if it had been executed by all the trustees.

40. Appointment of new or additional trustees

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

(a) the protector (if any and unless the trust instrument provides otherwise);

(b) the trustees for the time being (but so that a trustee shall not be required to join in the appointment of his successor);

(c) the last remaining trustee;

(d) the personal representative or the liquidator of the last remaining trustee; or

(e) if there is no such person (or no such person willing to act) then the High 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, functions, authorities and discretions, and may in all respects act as if it had been originally appointed a trustee.

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

(4) The power of appointment given by subsection (1) (d) to the personal representative of a last remaining trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such last remaining trustee,

who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

41. Appointment of trustee by the Court

(1) Notwithstanding any other powers to be exercised by the High Court under this Ordinance in relation to the appointment of trustees, the High Court may, whenever it is expedient to appoint a new trustee, and it is found inexpedient, difficult or impracticable so to do without the assistance of the High Court, make an order appointing a new trustee either in substitution for or in addition to any existing trustee or if there is no existing trustee.

(2) Without prejudice to the generality of subsection (1), the High Court may make an order appointing a new trustee in substitution for a trustee who is convicted of an offence, or is a person of unsound mind, or is bankrupt, or is a corporation which is in liquidation or has been dissolved.

(3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) A trustee appointed by the High Court shall, before as well as after the trust property becomes vested in it, have the same powers, authorities and discretions, and may, in all respects, act as if it had been originally appointed a trustee by the trust instrument.

(5) Nothing under this section grants power to appoint an administrator or executor.

42. Vesting of trust property in new or continuing trustees.

(1) Where a new trustee is appointed to perform any trust:

(a) if the instrument by virtue of which such trustee was appointed contains a declaration by the appointer to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall, vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the instrument shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and

(b) if the instrument is made after the date referred to in section 1 subsection (2) and does not contain such a declaration, the instrument shall, subject to any express provisions to the contrary therein contained, operate as if it had contained such a declaration by the appointer extending to all the estates, interests and rights with respect to which a declaration could have been made.

(2) Where, by an instrument, a retiring trustee is discharged under the statutory power without a new trustee being appointed:

(a) if the instrument contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the instrument shall, without any conveyance or assignment, operate

to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates; and

(b) if the instrument is made after the date referred to in section 1 subsection (2) and does not contain such a declaration, the instrument shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration whether made before or after the date referred to in section 1 subsection (2) shall, notwithstanding that the estate, interest and right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provisions to the contrary contained in the deed of appointment or discharge) to vest in the persons referred to in subsections (1) and (2), as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) This section does not extend:

- (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
- (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture; or
- (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in a manner directed by or under law.

(5) In this subsection, “lease” includes an underlease and an agreement for a lease or underlease.

43. Notice to Registrar of Trusts of change in trusteeship

(1) Where there is a change in trusteeship by way of addition, removal or resignation of a trustee, the registered agent shall file a written notice with the Registrar of Trusts of such change.

(2) A notice required to be filed in accordance with subsection (1) unless otherwise expressly stated in this Ordinance, shall be filed by the registered agent within 30 days of the occurrence of the event giving rise to the filing requirement.

(3) A change in trusteeship by way of addition, removal or resignation of a trustee shall be effective as of the date the notice under subsection (1) is received by the Registrar of Trusts.

44. Removal and resignation of trustees.

(1) If, in any action brought against a trustee of an international trust in a foreign court, the foreign court:

- (a) fails to dismiss that action; or

(b) orders the trustee to take any action with regards to such trust,

the trustee shall immediately upon the court's action and without the further order of any court, cease in all respects to be trustee of such trust and a successor trustee shall succeed as trustee in accordance with the terms of the trust instrument.

(2) If the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, the High Court, upon the application of any beneficiary of such trust, or any person who has been granted power of appointment of a successor trustee, shall appoint a successor trustee upon terms and conditions as it determines.

(3) Where a trustee ceases being a trustee under this section, that trustee shall have no power or authority other than to convey the trust property to the successor trustee appointed in accordance with the provisions of the trust instrument or appointed by the High Court in accordance with subsection (2).

(4) A trustee, not being a sole trustee, may resign its office by notice in writing delivered to its co-trustees.

(5) A trustee shall cease to be a trustee of the trust immediately upon that trustee's resignation becoming effective.

(6) A person who ceases to be a trustee or is a personal representative of a deceased trustee shall do everything necessary to vest the trust property in the new or continuing trustees.

(7) Where a trustee ceases being a trustee on account of its resignation taking effect, that trustee shall have no power or authority other than to convey the trust property to the successor or continuing trustee.

(8) Where a trustee resigns, that trustee shall immediately give notice in writing to the registered agent of such resignation and the registered agent shall inform the Registrar of Trusts in accordance with section 43.

45. Nature of trustee's estate and insolvency of trustee

(1) Subject to subsection (2), the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust and such property shall not form part of the trustee's own estate.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1) shall not apply to that trustee's interest in the trust property as a beneficiary.

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

46. Appointment of protector by Court

(1) Where a trustee of an international trust has reason to believe that:

- (a) the protector of that trust is dead, is unwilling, refuses or is unfit to act or is incapable of acting;
- (b) there is no other protector of the trust;
- (c) no one has been appointed as successor to the protector referred to in paragraph (a) in accordance with the terms of the trust instrument

then the trustee shall, as soon as practicable, apply to the High Court for the appointment of a protector of the trust.

(2) The order of the High Court under subsection (1) is conclusive of the appointment of the protector and the appointment takes effect from the date of the order.

47. Effect of terms of the trust instrument

Notwithstanding any other provision of this Ordinance or other law, the terms of a trust instrument may expand, restrict, eliminate, or otherwise vary the rights and interests of beneficiaries, including, but not limited to:

- (a) the right to be informed of the beneficiary's interest for any period;
- (b) a trustee's powers, duties, standard of care, rights of indemnification and liability to persons whose interests arise from that instrument.

48. Trustee resolutions

A trustee may:

- (a) act in connection with a trust pursuant to its board of directors, board of managers, management board or other governing body; and
- (b) appoint an officer, employee or agent to act on its behalf in connection with the trust.

49. Trustee books and records

(1) The trustee shall maintain proper and accurate books and records in respect of the trust including, where applicable, material underlying documentation including contracts and invoices and these should reflect the details of all:

(a) funds received and expended by the trustee as trustee of the trust and the matters in respect of which the receipt and expenditure occurs; and

(b) sales, purchases and other transactions by the trustees and the assets and liabilities of the trust.

(2) The books and records required to be maintained by the trustee under subsection (1) shall:

(a) correctly explain all transactions;

(b) enable the financial position of the trust to be determined with reasonable accuracy at any time; and

(c) allow financial statements to be prepared.

(3) The books and records shall be preserved by the trustee for a minimum period of six years following the termination of the relationship and those books and records shall be maintained in mechanical, electronic, digital or any other form at the registered office of the trustee or at such other place or places as the trustee thinks fit.

(4) A trustee who contravenes this section shall be liable to a penalty fine prescribed by the Minister or as otherwise specified by this Ordinance.

50. Investments

(1) Subject to the provisions contained in the trust instrument and the provisions of this Ordinance, a trustee may at any time invest any portion of the trust funds in any kind of investment, whether or not the funds are already invested and the trustee may vary the investment or retain it in its original state.

(2) In making an investment under subsection (1), a trustee shall exercise the diligence and prudence that a reasonable person would be expected to exercise in making an investment as if it were his own money.

(3) Any power conferred upon a trustee under this section shall be exercised according to the discretion of the trustee, but subject to any consent or discretion required by the trust instrument with respect to the investment of trust funds.

51. Community property and tenancy by the entirety property

Unless the trust instrument provides otherwise, property that is determined to be community property or tenancy by the entirety property prior to its transfer to a trustee of an international trust is no longer community property or tenancy by the entirety property upon the transfer.

PART VIII – TRUSTEES AND DEALINGS WITH THIRD PARTIES

52. Interpretation of Part

(1) In this Part,

“contract” includes a warranty, undertaking, covenant and any other legal commitment;

“third party” means a person other than a settlor, trustee, protector or beneficiary of the trust;

“transaction” includes a contract; and

“trust fund” in relation to a trust, means the property for the time being subject to the trust.

(2) In this Part references in relation to a power and the requirements for its exercise are references solely to requirements for the exercise of the power (including, in particular, requirements for consent) expressly laid down by the power.

53. Transactions deemed to be properly entered into with trustees

(1) For the purposes of this Part, where a person, (a third party) enters into a transaction with a trustee, the transaction shall be deemed to be properly entered into by the trustee if the condition stated in subsection (2) is satisfied.

(2) The condition referred to in subsection (1) is that when entering into the transaction it appears to the third party after reasonable inquiry that:

(a) the trustee has power, conferred by the terms of the trust or by law, to enter into a transaction of the kind in question; and

(b) if there are any requirements for the exercise of that power, the trustee has complied with them.

(3) Satisfaction of the condition in subsection (2) shall not require the third party to make inquiry as to whether, in the particular case, the exercise of the power referred to in subsection 2(a) would be in breach of any duty of the trustee, apart from any duty to comply with any requirements for its exercise.

(4) Subsection (1) shall not apply in construing the provisions of sections 55 (3) and (4).

(5) Subsection (1) shall not apply otherwise than for the purposes of this Part, and in particular shall not affect a trustee’s obligation to make restitution or pay compensation if he has acted improperly.

(6) Subsection (1) shall not apply if the third party acted dishonestly in entering into the transaction.

54. Protection of persons dealing with trustees

(1) Where a third party enters into a transaction with a trustee of a trust and that transaction has been properly entered into by the trustee, the provisions of subsection (2) and (3) shall apply, except to the extent that the transaction otherwise provides.

(2) Property acquired by the third party in or by virtue of the transaction shall be taken free and discharged from the trust.

(3) The third party shall not be concerned to see that the property acquired by the trustee from the third party in or by virtue of the transaction is properly applied.

(4) Subsections (1) to (3) shall not prejudice any other right or claim of the third party in relation to the transaction.

55. Optional provision concerning liability of trustees

(1) This section applies to a trust where the terms of the trust expressly so provide.

(2) Where this section applies to a trust, the provisions of subsections (3) and (4) shall have effect.

(3) Except as otherwise provided in the contract, a trustee of the trust shall not be personally liable under or by virtue of a contract with any party properly entered into by the trustee in the trustee's fiduciary capacity in the course of administering the trust if the trustee disclosed in the contract the fiduciary capacity, or if the party was otherwise aware of that capacity.

(4) A claim based on:

- (a) a contract entered into by a trustee of the trust;
- (b) an obligation arising from ownership or control of trust property; or
- (c) a tort committed in the course of administering the trust,

may be asserted by a party in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim, and so that the claimant shall be entitled to satisfaction out of the trust fund directly rather than by way of subrogation to any right of indemnity of the trustee.

56. Limitation of trustee's personal contractual liability

(1) Where section 55 does not apply to a trust, this section shall apply to it.

(2) Subject to subsection (3), where, in a contract properly entered into by a trustee, the trustee discloses his fiduciary capacity, or the other party is otherwise aware of that capacity, the trustee is personally liable for any sum payable under the contract only to the extent of the value of the trust fund when the payment falls due.

(3) When computing the value of the trust fund for the purposes of subsection (2), the trust fund shall be treated as still including any property which, since the contract was entered into, has been distributed.

(4) Subsections (2) and (3) shall have effect subject to any contrary provision in the contract.

(5) For the purposes of subsection (3), property shall be taken to have been distributed if it has ceased to be subject to the trust otherwise than on a disposal in good faith for valuable consideration in the management or administration of trust property.

57. Protection from tortious liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of the trust property, including liability for violation of any law relating to protection of the environment, only if the trustee is personally at fault.

58. Powers relating to the right of subrogation

(1) Subject to the terms of the trust and without prejudice to section 56 where applicable, where a trustee of a trust has incurred a liability in favour of a third party under or by virtue of a contract properly entered into by the trustee, the trustee shall have a right of indemnity against the trust fund and against distributed property or its traceable product, to which right the third party shall be subrogated, and in computing the amount of the indemnity any indebtedness of the trustee shall be disregarded.

(2) If the contract is deemed, by virtue of section 53, to be properly entered into when in fact it was entered into without requisite power or without compliance with any requirements for its exercise or otherwise in breach of duty, the trustee shall be liable to compensate the trust fund for any amount to which the right of subrogation applies by virtue of subsection (1).

(3) The disregarding of any indebtedness of the trustee under subsection (1) shall be solely for the purposes of establishing the extent of the third party's right of subrogation and shall not eliminate or otherwise affect that indebtedness.

(4) For the purposes of this section, indebtedness of a trustee includes all liability, quantified or not, of the trustee to make restitution or pay compensation to the trust fund, including the liability specified in subsection (2).

(5) Rights of indemnity conferred by this section,

(a) shall not prejudice any rights of indemnity or reimbursement to which, apart from this section, a trustee would be entitled;

(b) shall subsist notwithstanding any purported waiver or exclusion, in whole or in part, by the trustee.

(6) For the purposes of subsection (1), property shall be taken to have been distributed if, since the contract was entered into, it has ceased to be subject to the trust otherwise than on a disposal in good faith for valuable consideration in the management or administration of the trust property.

59. Optional power to vary trust for protection of creditors

(1) This section applies where the terms of the trust expressly so provide.

(2) Where this section applies to a trust, subsections (3) to (6) shall have effect.

(3) Where a person has lent money to a trustee of the trust, whether on security or not, that trustee or any trustee for the time being in office may, where so requested by such lender for his or her protection, by declaration in writing, to such extent and in such manner as the trustee thinks fit, restrict or impose conditions on the exercise of any of the following:

(a) powers of investment and other powers in the management and administration of trust property;

(b) rights of beneficiaries, including objects of powers, to actual receipt of trust property to which they have or may become entitled;

(c) powers relating to the appointment, retirement or removal of trustees.

(4) A declaration pursuant to subsection (3):

- (a) shall not be made by a trustee unless he considers it to be compatible with his equitable duties under the trust in relation to its beneficiaries;
- (b) shall not affect any power of the High Court.

(5) A restriction or condition made or imposed under a declaration pursuant to subsection (3) may subsist only during such time or times as there is a liability of money lent under or by virtue of a contract properly entered into by a trustee of the trust.

(6) If, and to the extent that a trust is for purposes, the reference in subsection 4(a) to a trust's beneficiaries shall be taken to include a reference to those purposes.

60. Optional power to create charges

(1) This section applies to a trust where the terms of the trust expressly provide.

(2) Where this section applies to a trust, subsections (3) to (11) shall have effect.

(3) A trustee of the trust may grant security in accordance with this section in favour of a third party acting in good faith and for value in relation to liabilities to that third party incurred by the trustee under or by virtue of a contract properly entered into by the trustee.

(4) The grant of security may take the form of a fixed legal or equitable mortgage or charge over all or any of the property subject to the trust, or of a right in equity in accordance with subsection (5).

(5) A trustee may by writing grant a third party the right in equity, which shall be enforceable as such, to require the trustee to discharge liabilities to that third party out of the trust fund, or some part of it, and a right so granted is referred to in this section as a trustee statutory charge.

(6) A trustee statutory charge shall, except to the extent otherwise agreed by the parties concerned, have priority over:

- (a) rights of persons under the terms of the trust;
- (b) obligations under the trust to apply property for any purpose;
- (c) trustees' right of indemnity against the trust fund;
- (d) creditors' claims against the trust fund not secured by any fixed charge or right in the nature of a fixed security over any trust property, and
- (e) any trustee statutory charge entered into at a later time,

but shall be subject to any fixed charge or right in the nature of any fixed security over any trust property, and subject to any trustee statutory charge entered into at an earlier time.

(7) Nothing in subsection (6) shall affect the rights of a person claiming under a floating security created over property subject to a trust prior to it becoming so subject.

(8) A person receiving any trust property, otherwise than on a disposal by a trustee for value in course of management or administration of the trust fund, shall take it subject to any subsisting trustee statutory charge, but without prejudice to any claim of a third party against a trustee for distributing property before the charge has been satisfied.

(9) A security granted pursuant to subsection (3) may be on such terms and conditions as the trustee thinks fit.

(10) Subject to the terms of the charge, the trustee for the time being of a trust shall pay due regard, in the execution, management and administration of the trust, to the interests of any person entitled to the benefit of a trustee statutory charge.

(11) The powers conferred by this section shall be in addition to any powers to grant security conferred by the trust instrument or by any other provision of law.

61. Prohibition of amendment of applied sections

This Part does not permit the application of sections 55, 59 or 60 to a trust other than in the terms of the relevant section.

62. Application of Part

This Part shall only apply to trusts created on or after the date on which this Part comes into force.

PART IX – REGISTRATION OF TRUSTS

63. Registration of trusts

(1) The Registrar of Trusts shall maintain a register of international trusts and a register of qualified foreign trusts.

(2) Where a trust instrument provides for this Ordinance to be the governing law of all or any aspects of the trust thereby created then the registered agent of that trust shall make an application to the Registrar of Trusts for entry of that trust on the register as an international trust.

(3) Where a trust instrument provides for the law of a jurisdiction other than Nevis to be the governing law of all aspects of the trust thereby created then the registered agent of the trust may make an application to the Registrar of Trusts for its entry on the register as a qualified foreign trust.

(4) Where the governing law of all or any aspects of the trust is changed to this Ordinance, then the registered agent of the trust shall make an application to the Registrar of Trusts for entry on the register as an international trust provided that the Registrar of Trusts shall not accept such an application if the trust is not registered as a qualified foreign trust.

(5) An application for entry on the register of international trusts or on the register of qualified foreign trusts shall be made by the registered agent of the trust in the manner and form prescribed by the Registrar of Trusts.

(6) An application under subsection (5) shall be accompanied by:

- (a) the prescribed fee;
- (b) the name of the trust and its authenticated translation, if any;
- (c) the name of the trustee;
- (d) the name of the registered agent;

- (e) the address of the registered office of the trust which shall be the office of the registered agent;
- (f) the name and address of the protector, if any;
- (g) a certificate from the trustee certifying:
 - (i) that the trust upon registration will be an international trust or a qualified foreign trust;
 - (ii) the date on which the trust was created, settled or established;
 - (iii) in the case of a qualified foreign trust, the governing law of the trust;
 - (iv) where the governing law is changed to this Ordinance, that the trust is registered as a qualified foreign trust and the date of its registration.
 - (v) where the governing law is changed to this Ordinance that there is no illegal activity perpetuated on behalf of the trust
 - (vi) where the governing law is changed to this Ordinance, or where a trust is registered after a period of one year from the date of creation, settlement or establishment, that there is no pending litigation against the trustee.

(7) The Registrar of Trusts shall, on receipt of the prescribed fee, the application and certificate required under subsection (6):

- (a) enter on the appropriate register:
 - (i) the name of the trust and its authenticated translation, if any;
 - (ii) the date of creation, settlement or establishment of the trust;
 - (iii) the name of the registered agent of the trust; and
 - (iv) the address of the registered office of the trust; and
- (b) issue a Certificate of Registration in the prescribed form.

(8) A Certificate of Registration under the endorsement of the Registrar of Trusts shall be conclusive evidence of the valid registration of the trust and of the compliance with all of the requirements of this Ordinance in respect of registration of the trust.

64. Annual Certificate of registration

(1) A Certificate of Registration issued in accordance with sections 63 (7) (b) and subsection 63 (8) shall be valid and effective for a period of one year from the date of registration specified in that certificate.

(2) An application for renewal of registration shall be made by the trustee by:

(a) filing with the Registrar of Trusts an application for renewal in the prescribed form; and

(b) payment of the prescribed fee.

(3) An application for renewal of registration shall be made no later than 90 days after the date of expiry of the last Certificate of Registration and no application for renewal of registration shall be granted unless such application is in accordance with subsection (2).

(4) Where an application for renewal is made more than 90 days after the expiry of the current certificate of registration, then the Registrar of Trusts shall impose a penalty of \$250.00 for each period of 30 days until the registration is renewed.

(5) A renewal of registration shall take effect from the date of expiry of the last Certificate of Registration and shall be valid for a period of one year.

65. Removal of disqualified trusts

The Registrar of Trusts shall remove a trust from the register if the registered agent for that trust fails to pay the annual registration fee or if there is no registered agent, trustee or registered office for the trust for a period of one year.

66. Reinstatement of disqualified trusts

An application for reinstatement of a trust which is disqualified and removed from the register under section 65, shall be made by the existing registered agent or the new registered agent, where applicable, by:

(a) filing with the Registrar of Trusts an application for reinstatement in the prescribed form; and

(b) payment of the prescribed fee.

67. Search of Register

(1) The register of international trusts and the register of qualified foreign trust shall not be open for public inspection except that the Registrar of Trusts shall upon request by any registered agent, issue a trust search to such registered agent.

(2) The Registrar of Trusts shall, upon request of a registered agent, issue a search report containing such information related to the trust as requested by the registered agent.

68. Translations

(1) An instrument which is filed with the Registrar of Trusts which is not in the English language shall be accompanied by an authenticated translation.

(2) When a trust has been established under this Ordinance with a name accompanied with an authenticated translation, the Registrar of Trusts shall issue a certificate with the trust's name and its authenticated translation.

(3) An instrument which is not in the English language and is not accompanied by an authenticated translation at the time of filing shall not be accepted for registration by the Registrar.

69. Prohibition by Minister

(1) On an application by the Minister the High Court may, by Order:

(a) prohibit the registration or the renewal of registration of an international trust or a qualified foreign trust;

(b) direct a trustee to cease carrying on its business or any part of its business immediately or within such time as may be specified in the Order.

(2) An Order made under this section may be revoked or varied at any time by the High Court.

PART X – REGISTERED OFFICE OF TRUST AND SERVICE OF PROCESS

70. Registered office and service of process

(1) A trust which is governed by this Ordinance shall at all times have a trustee which has a registered agent in the island of Nevis.

(2) The registered office of a trust shall be the office of the registered agent of the trust.

71. Service of process

(1) The address for service of process of any documents upon a trustee in its capacity as trustee of an international trust or a qualified foreign trust shall be the registered office of that trustee.

(2) Whenever a trustee fails to maintain a registered agent or whenever such registered agent cannot with reasonable diligence be located at their registered office, the Registrar of Trusts or his deputy, appointee or any person authorised by the Registrar of Trusts shall be the agent of the trustee for service of process.

(3) Service of documents on the Registrar of Trusts as agent of a trustee under this section shall be made by either personally delivering to and leaving with the Registrar of Trusts or his deputy or appointee or any person authorised by the Registrar of Trusts to receive such service, or by leaving at the office of the Registrar of Trusts, duplicate copies of such process together with the prescribed fee.

(4) The Registrar of Trusts shall keep a record of each process served under this section, including the date and time of service.

PART XI – EXEMPTION FROM TAXES

72. Exemption from taxes and duties

(1) Notwithstanding any provision to the contrary in any enactment, the income of a trust registered under this Ordinance shall be exempt from all income tax and all exchange controls.

(2) No estate tax, inheritance tax, succession tax, gift tax, duty or levy is payable with respect to trust property by reason of any death.

(3) Notwithstanding any provision to the contrary in any enactment, a trust registered under this Ordinance shall be exempted from payment of stamp duty with respect to all instruments relating to the trust property or to transactions carried out by the trustee on behalf of the trust.

PART XII – SETTLORS

73. Bankruptcy

Notwithstanding any foreign law, rule or regulation and notwithstanding further that an international trust may have been settled without valuable consideration being given for a disposition to it or is made for the benefit of the settlor or the settlor's spouse or children, an international trust shall not be void or voidable, and the property of the trust shall not be subject to transfer, attachment, encumbrance or other restraint, solely because of the settlor's bankruptcy, insolvency or liquidation in any action or proceeding at the suit of creditors of the settlor.

74. Reservation or grant of power to settlor or others

(1) The reservation by the settlor to himself or the grant to any other person or to any office holder or body, including (but without limitation) a protector or protective committee, in a trust instrument evidencing and recording a trust governed by this Ordinance of any limited beneficial interest in the trust property whether of income or capital, or any or all of the powers specified in subsection (2) (or both such an interest and any or all of such powers) shall not —

(a) invalidate the trust; or

(b) prevent the trust taking effect according to its terms; or

(c) cause any of the trust property to be part of the estate of the settlor for the purposes of succession on death, whether testate or intestate.

(2) The powers referred to in subsection (1) are:

- (a) any power to revoke, vary or amend the trust instrument or any trusts or powers arising thereunder in whole or in part;
- (b) a general or special power to appoint either income or capital of the trust property;
- (c) a power to act as a director or officer of any company wholly or partly owned by the trust;
- (d) a power to give binding directions to the trustee in connection with the purchase, holding or sale of the trust property;
- (e) a power to appoint, add or remove any trustee, protector or beneficiary;
- (f) a power to change the governing law of the trusts and to change those of the terms of the trusts which specify which courts have exclusive or non-exclusive jurisdiction in any proceedings involving rights or obligations under the trusts; and
- (g) a power to restrict the exercise of any powers or discretions of the trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person specified in the trust instrument.

(3) No person, other than a person in whom trust property or an interest in trust property is vested, shall be or become a trustee by reason only of the reservation or grant of any of the powers set out in subsection (2).

(4) Subject to any contrary provision herein, this section applies to any trusts governed by the laws of Nevis, whether created before, on or after the date on which this section comes into force, and to acts and omissions occurring while the trust was governed by this Ordinance .

(5) In this section, “settlor” includes—

- (a) a testator who grants powers under a testamentary trust by the terms of his or her last will and testament; and
- (b) a person who by a declaration of trust declares that assets held by him or her beneficially shall be held by him or her on the terms of the trust so declared.

(6) Except as provided in this section, a settlor shall have no other rights or authority with

respect to property held in a trust or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void and of no effect.

PART XIII – MISCELLANEOUS

75. Immunity from suit

(1) No personal liability, action or other proceeding shall attach to or lie against the Registrar of Trusts, Deputy Registrar or any other officer authorised to administer this Ordinance in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Ordinance.

(2) No action shall lie against the Administration, the Registrar, Deputy Registrar or any other authorised officer for any sums of money, damages or legal costs in respect of any act or failure to act or in respect of any act or thing done in good faith for the purpose of carrying the provisions of this Ordinance into effect.

76. Advisory Committee

(1) The Minister may establish the Advisory Committee as an advisory body for matters affecting this Ordinance and that body shall consist of such members as the Minister may from time to time appoint.

(2) In establishing the Advisory Committee under subsection (1), the Minister shall have regard to the desirability of having members who have the expertise and knowledge of the Ordinance and the law of trusts.

(3) It shall be the duty of the Advisory Committee established under this section to:

(a) advise the Minister on any matter that the Advisory Committee believes that the Minister should be aware of, on an annual basis by September 30th or on such more frequent occasions as determined by the Advisory Committee;

(b) provide recommendation regarding possible amendments to this Ordinance; and

(c) advise the Minister on any matter which is referred to it by the Minister.

(4) The Minister may defray or contribute towards the expenses of the Advisory Committee.

77. Regulations

(1) The Minister may issue such regulations for the purpose of carrying out and effectively administering the provisions of this Ordinance and for prescribing anything that needs to be prescribed.

(2) The Minister shall prescribe all fees under this Ordinance.

78. Repeal and savings

(1) The Nevis International Exempt Trust Ordinance is hereby repealed.

(2) Any existing trust which at the commencement of this Ordinance is validly registered under the Nevis International Exempt Trust Ordinance shall continue to be registered until its next renewal.

(3) A registered agent of trusts which at the commencement of this Ordinance is validly licensed under the Nevis International Exempt Trust Ordinance shall continue to be registered until its next renewal.

HON FARREL SMITHEN
President

MS MYRA A. WILLIAMS
Clerk of the Nevis Island Assembly

No. [] of 2020

Nevis International Exempt Trust Ordinance 2020

Island of Nevis

OBJECTS AND REASONS

A BILL to repeal and replace the Nevis International Exempt Trust Ordinance, with the Nevis International Exempt Trust Ordinance, 2019 to make provisions for the law relating to international trusts and for matters incidental thereto or connected therewith.

Hon. Mark A. G. Brantley
Minister of Finance