ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER T70

TRUSTS ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 3/2014, in force 2 May 2014

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Attorney General's Chambers
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TRUSTS ACT

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TRUSTS ACT

PART 1

PRELIMINARY PROVISIONS

Interpretation

1. (1) In this Act—

"bankrupt", in relation to a company, includes a company that is insolvent and "bankruptcy" shall be construed accordingly;

"beneficiary" means a person entitled to benefit under a trust or in whose favour a power to distribute trust property may be exercised;

"breach of trust" means a breach of a duty imposed on a trustee by this Act or by the terms of the trust or otherwise imposed on him as trustee by any rule of law or equity;

"company" means a body corporate wherever incorporated;

"Court" means the High Court;

"disposition", in relation to property, means any 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 and "dispose" shall be construed accordingly;

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

"formalities", in relation to a disposition of property, means any documentary or other actions required generally by the laws of a relevant jurisdiction for all dispositions of like form concerning property of like nature without regard to—

(a) the fact that the particular disposition is made in trust;

(b) the terms of the trust;

(c) the circumstances of the parties to the disposition; or

(d) any other particular circumstances;

but includes any special formality required by reason that the party effecting the disposition is not of full age, is subject to a mental or bodily infirmity or is a company;

"functions" includes rights, powers, discretions, obligations, liabilities and duties;

"governing law" means the law governing a trust executed in Anguilla or elsewhere;

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"he", "him" or "his", in relation to a company, includes "it" and "its", as the case may be;

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

"insolvency" includes the making of an administration order, the appointment of a receiver and the bankruptcy of any person;

"insurance" includes assurance;

"interest", in relation to a beneficiary, means his interest under a trust;

"Judge" means a Judge of the Court;

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

"personal relationship" includes any form of relationship by blood or marriage, including former marriage, and in particular a personal relationship between two persons that 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, whether or not the marriage is recognised by law;

(c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parents and child or husband and wife; or

(d) personal relationships exist between each of them and a third person;

but no change in circumstances causes a personal relationship once established to terminate;

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

"prescribed" means prescribed by regulation;

"profit" includes gain or advantage;

"property"—

(a) means property of any description, wherever situated, including any share in it;

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

"protective or spendthrift trust" has the meaning ascribed to it by section 11;

"protector" means a person appointed as protector under the terms of a trust and capable of enforcing it, whether or not he has other functions conferred upon him in relation to the trust;

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"provisions of this Act" includes the provisions of any order made under it;

"settlor", in relation to a trust, means each person who directly or indirectly, on behalf of himself or any other, as owner or as the holder of a power in that behalf, disposes of property to be held in the trust or declares or otherwise creates the trust;

"terms of a trust" means the written or oral terms of a trust, and any other terms applicable to it under its proper law;

"trust" means the relationship that exists when a person (known as a "trustee") holds or has vested in him, or is deemed to hold or have vested in him, property that does not form, or that has ceased to form, part of his own estate—

(a) for the benefit of any person (known as a "beneficiary") whether or not yet ascer tained or in existence;

(b) for any valid charitable or non-charitable purpose that is not for the benefit only of the trustee; or

(c) for both (a) and (b);

and includes—

(d) the trust property; and

(e) the functions, interests and relationships under the trust;

"trust company" means a company that holds a trust company licence under the Trust Companies and Offshore Banking Act;

"trust property" means property held on trust;

"trustee" includes a trust company;

"unit trust" means a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust in any profits or income arising from the acquisition, holding, management or disposal of property.

(2) For the purposes of this Act, a company is resident in the place in which it has its registered office.

(3) Any reference in this Act to an enactment is, unless the context otherwise requires, a ref erence to that enactment as amended, extended, re-enacted, or applied by or under any other enactment, including this Act.

Application of Act

2. (1) Subject to subsections (2) and (4), this Act applies to trusts created before or after 1 January, 1995.

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(2) Sections 1, 3, 6 and 51 and Parts 8 to 10, 12 and 13 apply to all trusts; the other sections of this Act shall apply only to trusts the proper law of which is the law of Anguilla.

(3) For greater certainty, section 18 of the Limitation Act applies to all trusts.

(4) Where, in the opinion of the Court, the application of this Act to a trust created before 1st January, 1995 would likely result in an injustice, the Court may, on application by a person interested in the trust, instead of making an order under this Act make any order in relation to the trust that it could have made under the Trustee Ordinance (Cap. 355) or the Trustees' Relief Act (Cap. 357) immediately before their repeal, and that order shall be as valid and effectual as if the Ordinance or Act had not been repealed.

(5) For the purposes of this section, a trust is created at the time at which property is first received by or vested in the trustee to be held by him in accordance with the terms of the trust.

Validity of trust

3. Subject to the provisions of this Act, a trust is valid and enforceable in Anguilla.

Creation of a trust

4. (1) A trust, other than a unit trust, may be created by oral declaration, or by an instrument in writing (including a will or codicil), by conduct, by operation of law or in any other manner.

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

(3) No formalities or technical expressions are required for the creation of a trust if the inten tion of the settlor to create a trust is clearly manifested.

(4) A trust respecting land situated in Anguilla, other than a trust arising by operation of law, is unenforceable unless evidenced in writing.

Duration of a trust and of accumulation of income

5. (1) An instrument creating or varying a trust may provide for the duration and date of termination of the trust.

(2) The rules of law known as the rules against perpetuities shall not apply to a trust.

(3) For the avoidance of doubt, it is declared that the rules referred to in subsection (2) include—

(a) the application or effect of those rules in respect of accumulations; and

(b) the rule of law prohibiting trusts of perpetual duration.

(4) The terms of a trust may direct or authorise the accumulation of all or part of the income of the trust for a period not exceeding the maximum duration of the trust.

Restrictions upon validity of a trust

6. (1) Subject to the provisions of this Act, a trust shall be valid and enforceable in accordance with its terms.

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(2) A trust shall be invalid and unenforceable—

(a) to the extent that—

(i) it purports to do anything contrary to the law of Anguilla,

(ii) 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 the law of Anguilla, or

(iii) it has no beneficiary identifiable or ascertainable, unless the trust was created for a valid charitable or non-charitable purpose; or

(b) to the extent that the Court declares that—

(i) the trust was established by duress, fraud, mistake, undue influence or misrepre sentation,

(ii) the trust is immoral or contrary to public policy,

(iii) the terms of the trust, other than a trust for a charitable purpose, are so uncertain that its performance is rendered impossible, or

(iv) the settlor was, at the time of its creation, incapable under the law in force in Anguilla of creating such a trust.

(3) A charitable purpose shall be deemed always to be capable of performance.

(4) Where a trust is created for 2 or more purposes of which some are lawful and others are not, or where some of the terms of a trust are invalid 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 Court may declare that the trust is valid as to the terms that are valid and the purposes that are lawful.

(5) Where a trust is partially invalid, the Court may declare what property is to be held subject to the trust.

(6) Property provided by a settlor and as to which a trust is invalid shall, subject to any order of the Court, be held by the trustee in trust for the settlor absolutely or, if he is dead, as if it had formed part of his estate at his death.

(7) Where a trust is created under the law of Anguilla, the Court shall not vary it or set it aside or recognise the validity of any claim against the trust property pursuant to the law of another jurisdiction or the order of a Court of another jurisdiction in respect of—

(a) the personal and proprietary consequences of marriage or the termination of marriage;

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(b) succession rights (whether testate or intestate) including the fixed shares of spouses or relatives;

(c) the claims of creditors in an insolvency; or

(d) the imposition of any foreign tax or duty.

(8) Subsection (7) shall have effect notwithstanding the provisions of the Reciprocal Enforcement of Judgments Act.

Property that may be held on trust

7. (1) Any property may be held by or vested in a trustee upon trust.

(2) A trustee may accept from any person property to be held on trust.

(3) A trustee shall not be bound to accept property to be held on trust but, where a trustee accepts property subject to the performance of an obligation, the trustee shall be deemed to have given to the settlor of that property for good consideration an undertaking to perform that obligation.

(4) Where a settlor declares a trust respecting property he does not own at the time of the declaration, the trust is incompletely constituted at the time of the declaration and no rights or duties arise under it.

(5) If the settlor subsequently receives property that was the intended subject matter of the declaration of trust, the Court shall at the instance of the beneficiary or the trustee and, whether the beneficiary has given consideration for the declaration of trust or not, compel the settlor to transfer that property to the trustee or to hold that property on the terms of the trust.

PART 2

THE SETTLOR, BENEFICIARIES AND PURPOSES OF A TRUST

Who may be the settlor of a trust

8. (1) Any person who has under the law of Anguilla the capacity to own and transfer property may be the settlor of a trust.

(2) The settlor may also be a trustee, a beneficiary or a protector of the trust.

Beneficiaries of a trust

9. (1) A beneficiary shall be identifiable by name or ascertainable by reference to a relationship to some person (whether or not living at the time of creation of the trust) or otherwise by reference to a description or to a class.

(2) The terms of a trust may—

(a) provide for the addition of a person as a beneficiary or the exclusion of a beneficiary or the exclusion of a beneficiary from benefit under the trust;

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(b) impose an obligation on a beneficiary as a condition of benefit under the trust.

(3) Where a trust is in favour of a class of persons then, subject to the terms of the trust—

(a) the class closes when it is no longer possible for any other person to become a member of the class;

(b) a woman over the age of 65 years shall be deemed to be no longer capable of bearing a child; and

(c) where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and retained until a member of the class exists or the class closes.

(4) A beneficiary may—

(a) disclaim his whole interest under a trust; or

(b) subject to the terms of the trust, disclaim part of his interest under a trust, whether or not he has received some benefit from his interest.

(5) Subject to the terms of the trust, a disclaimer—

(a) shall be in writing;

(b) may be temporary; and

(c) may, if the disclaimer so provides, be revoked in the manner and under the circumstances specified in it.

(6) Where a beneficiary disclaims the whole or part of his interest under a trust the like con sequences shall apply under section 6(6) as if the trust were invalid with respect to that interest or that part.

Nature of a beneficial interest

10. (1) The interest of a beneficiary is personal property.

(2) Subject to the terms of the trust, the interest of a beneficiary may be sold, pledged, charged, transferred or otherwise dealt with in any manner whatsoever.

Protective or spendthrift trusts

11. (1) The terms of a trust may make the interest of a beneficiary—

(a) subject to termination;

(b) subject to a restriction on alienation of or dealing in that interest or any part of that interest; or

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

and the trust shall be known as a protective or a spendthrift trust.

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

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

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

(i) the beneficiary and any spouse or child of the beneficiary,

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

(3) In subsection (2), a "determining event" means the occurrence of any event or any act or omission on the part of the beneficiary, other than the giving of consent to an advancement of trust property, that would result in the whole or part of the income of the beneficiary from the trust becoming payable to any person other than the beneficiary.

(4) Any rule of law or public policy that prevents a settlor from establishing a protective or a spendthrift trust of which he is a beneficiary is hereby abolished.

Letters or memoranda of wishes

12. (1) The settlor of a trust may give to the trustee a letter of his wishes or the trustee may prepare a memorandum of the wishes of the settlor with regard to the exercise of any functions conferred on the trustee by the terms of the trust.

(2) A beneficiary of a trust may give to the trustee a letter of his wishes or the trustee may prepare a memorandum of the wishes of the beneficiary with regard to the exercise of any functions conferred on the trustee by the terms of the trust.

(3) Where a trust is in favour of a class of persons, a member of that class may give to the trustee a letter of his wishes or the trustee may prepare a memorandum of the wishes of that member with regard to the exercise of any functions conferred on the trustee by the terms of the trust.

(4) Where a letter of wishes or a memorandum of wishes is given to or prepared by the trustee of a trust, the trustee may have regard to that letter or memorandum in exercising any functions conferred upon him by the terms of the trust, but the trustee shall not be bound to have regard to that letter or memorandum and shall not be accountable in any way for his failure or refusal to have regard to that letter or memorandum.

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(5) No fiduciary duty or obligation shall be imposed on a trustee merely by the giving to him of a letter of wishes or the preparation by him of a memorandum of wishes.

Definition of charitable purpose

13. (1) For the purposes of this Act, and subject to subsections (2) and (3), the following purposes shall be regarded as charitable—

(a) the relief of poverty;

(b) the advancement of education;

(c) the advancement of religion;

(d) the protection of the environment;

(e) the advancement of human rights and fundamental freedoms;

(f) any other purposes that are beneficial to the community.

(2) A purpose shall not be regarded as charitable unless the fulfilment of that 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 Anguilla or elsewhere and whether it is beneficial to the community in Anguilla or elsewhere.

Trusts for non-charitable purposes

14. (1) A trust may be created for a commercial or other purpose that is non-charitable if—

(a) the purpose is specific, reasonable and capable of fulfilment;

(b) the purpose is not immoral, unlawful or contrary to public policy; and

(c) the terms of the trust provide for the appointment of a protector who is capable of enforcing the trust and for the appointment of a successor to any such protector.

(2) If the Attorney General has reason to believe that there is no protector of a trust for a non-charitable purpose or the protector is unwilling or incapable of acting, he may apply to the Court for the appointment of a person to be protector of the trust, and the Court may, unless it feels that the person is not fit, by order declare him to be the protector to enforce the trust.

(3) The order of the Court under subsection (2) is conclusive evidence of the appointment of the protector to enforce the trust and the appointment takes effect as from the date of the order.

(4) Where any costs are incurred by the Attorney General in connection with any application under subsection (2), the Court may make such order as it considers just as to the payment of those costs out of the assets of the trust.

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PART 3

PROTECTORS AND TRUSTEES

Protector of a trust

15. (1) The terms of a trust may provide for the office of the protector of the trust.

(2) The protector has the following powers—

(a) unless the terms of the trust shall otherwise provide, the power to remove a trustee and to appoint a new or additional trustee;

(b) the power to enforce the trust;

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

(3) The protector of a trust may also be a settlor, a trustee or a beneficiary of the trust.

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

(5) Subject to the terms of the 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.

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

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

Who may be the trustee of a trust

16. (1) Any person who has capacity other than a minor under the law of Anguilla may be the trustee of a trust.

(2) The trustee may also be a settlor, a beneficiary or a protector of the trust.

The number of trustees

17. (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 cease to be valid only on the ground 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 surviving trustee, if any, shall act only for the purpose of preserving the trust property.

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(4) Except in the case of a trust established for a charitable purpose—

(a) the number of trustees shall not be more than 4; and

(b) if at any time there are more than 4 persons named as trustees, only the first 4 persons so named shall be the trustees of the trust.

Appointment of new or additional trustees

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

(a) the protector, if any;

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

(c) the last remaining trustee;

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

(e) if there is no such person or no such person willing to act, the Court;

may appoint a new or additional trustee.

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

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

Appointment of trustee resident in Anguilla

19. (1) Where there is no trustee resident in Anguilla, a beneficiary resident in Anguilla may apply to the Court for appointment of a person resident in Anguilla and nominated in the application as an additional trustee.

(2) If satisfied that notice of the application has been served on the existing trustee, the Court, after hearing any representations, may appoint a person who is willing to act as an additional trustee.

(3) Notwithstanding the provisions of section 17, the power contained in this section may be exercised even it results in there being more than 4 trustees for the time being of the trust.

(4) The terms of a trust may expressly exclude the operation of subsections (1) and (2).

Renunciation of trusteeship

20. (1) No person shall be obliged to accept appointment as a trustee, but a person nominated as trustee who knowingly intermeddles with the trust property shall be deemed to have accepted appointment as a trustee.

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(2) A person who has not accepted and is not deemed to have accepted appointment as a trustee of a trust may within a reasonable period of time after becoming aware of his nomination as trustee—

(a) disclaim his appointment by notice in writing to the other trustees of the trust, if any; or

(b) if there are no other trustees or the other trustees cannot be contacted, apply to the Court for relief from his appointment and the Court may make such order as it thinks fit.

(3) A person nominated as a trustee who does not act under subsection (2) within a reasonable period after becoming aware of his nomination shall be deemed to have accepted appointment as a trustee.

Resignation or removal of trustees

21. (1) A trustee, other than a sole trustee, may resign by notice in writing to his co-trustees.

(2) A trustee shall cease to be a trustee immediately upon—

(a) the delivery of a notice of resignation under subsection (1);

(b) his removal from office by the Court;

(c) his removal from office by the protector of the trust; or

(d) the coming into effect of or the exercise of a power under a provision in the terms of the trust under or by which he is removed from, or otherwise ceases to hold his office.

(3) 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.

(4) A trustee who resigns or is removed—

(a) shall duly surrender all trust property held by or vested in him or otherwise under his control; and

(b) may, before surrendering the trust property, require that he be provided with rea sonable security for liabilities whether existing, future, contingent or otherwise.

(5) A former trustee shall not be liable to any trustee or to any beneficiary or other person interested under the trust for any act or omission in relation to the trust property or to his functions as a trustee, except for any liability—

(a) arising from a breach of trust to which the trustee or, in the case of a trust company, any of its officers or employees, was a party or was privy during the term of his appointment; or

(b) in respect of an action to recover from the trustee or, in the case of a trust company, any of its officers or employees, trust property or the proceeds thereof in his possession or under his control.

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Nature of trustees' and protectors' interests

22. (1) Subject to subsection (2)—

(a) the interest of a trustee or protector in the trust property is limited to that which is nec essary for the proper performance of the trust; and

(b) the trust property does not form part of the trustee's or protector's estate.

(2) Where a trustee or protector of a trust is also a beneficiary of the trust, subsection (1) does not apply to his interest as a beneficiary.

(3) Where a trustee or protector becomes insolvent, or upon his property becoming liable to distraint, seizure, sequestration or similar process of law, his creditors shall have no recourse against the trust property except to the extent that the trustee or protector himself has a claim against it or a beneficial interest in it.

Trust company may act by resolution

23. A trust company may—

(a) act in connection with a trust by a resolution of the trust company or of its board of directors or other governing body; or

(b) appoint an officer or employee to act on its behalf in connection with the trust.

Trustees of more than one trust

24. (1) A trustee is not, in the absence of fraud, affected by notice of any instrument, matter, fact or thing in relation to a trust if he obtained notice of it by reason of his acting or having acted as trustee of another trust.

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

Dealings by trustees with third parties

25. (1) Where, in a transaction or matter affecting a trust, a trustee informs a third party that he is acting as trustee, a claim by the third party in respect of the transaction or matter shall, subject to subsection (3), extend only to the trust property.

(2) If the trustee fails to inform the third party that he is acting as trustee—

(a) he incurs personal liability to the third party in respect of the transaction or matter; and

(b) he has a right of indemnity against the trust property in respect of his personal liabil ity, unless he acted in breach of trust.

(3) Nothing in this section shall prejudice any claim for breach of warranty of authority.

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(4) A *bona fide* purchaser for value without notice of a breach of trust—

(a) may deal with a trustee in relation to trust property as if the trustee were the beneficial owner thereof; and

(b) is not affected by the trusts on which the property is held.

(5) A third party paying or advancing money to a trustee is not concerned to see—

(a) that the money is needed in the proper exercise of the trust functions;

(b) that no more than is so needed is raised; or

(c) that the transaction or the application of the money is proper.

(6) In this section "third party" means a person other than a settlor, trustee, protector or bene ficiary of the trust.

PART 4

DUTIES AND POWERS OF TRUSTEES

General duties of trustees

26. (1) A trustee shall in the execution of his functions—

(a) act with due diligence;

(b) observe utmost good faith;

(c) act to the best of his skills and abilities; and

(d) exercise the standard of care of a reasonable and prudent man of business.

(2) A trustee shall carry out and administer the trust in accordance with this Act and, subject to this Act, in accordance with the terms of the trust.

(3) A trustee shall owe a fiduciary duty to the beneficiaries of the trust, the members of a class for whose benefit the trust was established, or the purpose for which the trust was established.

(4) A fiduciary duty that is owed to a purpose for which a trust was established may be enforced by the protector of the trust or, in the case of a trust established for a charitable purpose, by the Attorney General.

(5) A trustee shall, subject to the terms of the trust and to the provisions of this Act—

(a) ensure that the trust property is held by or vested in him or is otherwise under his control; and

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(b) preserve and, so far as is reasonable, enhance the value of the trust property.

(6) Except with the approval of the Court or in accordance with the terms of the trust or the provisions of this Act, a trustee shall not—

(a) derive, directly or indirectly, any profit from his trusteeship;

(b) cause or permit any other person other than a professional advisor consulted by him under section 30(6) directly or indirectly to derive any profit from his trusteeship; or

(c) on his own account enter into any transaction with his co-trustees or relating to the trust property that may result in any such profit.

(7) The trustee of a trust shall keep accurate accounts and records of his trusteeship.

(8) A trustee shall keep trust property separate from his own property and separately identifi able from any other property of which he is a trustee.

Identification information

27. (1) Subject to the terms of the trust and as soon as reasonably practicable after the trustee has been identified or appointed, the trustee shall take reasonable measures to identify the identity of—

(a) each beneficial owner with a vested interest; and

(b) each person who is the object of a power.

(2) The Registrar may request that a trustee of a registered trust provide him or her with information relating to the identity of any beneficiary as the Registrar may reasonably require.

(3) A trustee has 28 days from the date of the request to comply with the request made by the Registrar under subsection (2).

(4) If a trustee does not comply with subsection (3), the Registrar may apply to the High Court under section 21(2)(b) for an order to have the trustee removed from his or her trusteeship and all costs associated with bringing this action shall be paid by the trustee.

Maintenance of proper accounting records

28. (1) The trustee shall keep proper accounting records including: accounts, books, deeds, contracts, vouchers and receipts, for—

(a) all sums of money received and expended by the trust and the matters for which the receipt and expenditure takes place;

(b) all sales and purchases of goods and services and other related transactions for the trust; and

(c) the assets and liabilities of the trust.

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(2) The accounting records shall be sufficient to explain all monetary transactions by the trust and shall—

(a) contain sufficient details to enable a transaction to be understood;

(b) disclose with reasonable accuracy the financial position of the trust at any time; and

(c) be in a format that allows financial statements to be prepared and audited.

Period for which accounting records shall be maintained

29. The period for which accounting records under section 28 shall be maintained is 6 years beginning on the date—

(a) on which all activities taking place in the course of the transaction in question were completed; or

(b) of the ending of the business relationship for whose formation the record was compiled.

Offences and Penalties

30. (1) If the trustee breaches sections 28 or 29, then the trustee commits an offence and is liable on summary conviction to a penalty of $5,000.

(2) A beneficiary may indemnify a trustee against liability for a breach of trust under subsection 1.

(Act 3/2014, s. 5)

Duty to supply information and duty of confidentiality

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

(a) the Court;

(b) the settlor or protector of the trust;

(c) in the case of a trust established for a charitable purpose, the Attorney General;

(d) subject to the terms of the trust, any beneficiary of the trust who is of full age and capacity; and

(e) subject to the terms of the trust, any charity for the benefit of which the trust was established.

(2) Subject to the provisions of this Act and to the terms of the trust, and except as is neces sary for the proper administration of the trust or by reason of any other Act, the trustee of a trust shall keep confidential all information regarding the state and amount of the trust property or the conduct of the trust administration.

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(3) Subject to the terms of the trust and to any order of the Court, a trustee is not obliged to disclose documents that reveal—

(a) his deliberations as to how he should exercise his functions as trustee;

(b) the reasons for any decision made in the exercise of those functions; or

(c) any material upon which a decision referred to in paragraph (b) was or might have been made.

Duty of trustees to act together

32. (1) Subject to the terms of the trust, all the trustees of a trust shall join in execution of the trust.

(2) Subject to subsections (3) and (4), no functions conferred on trustees shall be exercised unless all the trustees agree on their exercise.

(3) Subject to the terms of the trust and to subsection (4), any functions conferred on trustees of a charitable trust shall be exercised if more than one-half of the trustees for the time being of the trust agree on their exercise.

(4) The terms of a trust may empower the trustees to act individually or by a majority with respect to the exercise of some or all of the functions conferred on the trustees or to delegate the exercise of these functions to one or more trustees.

(5) A trustee who dissents from a decision of the majority of trustees or of a co-trustee or of the trustees to whom any functions have been delegated may require his dissent to be recorded in writing.

Duty to act impartially

33. (1) Subject to the terms of the trust, where a trust is established for one or more beneficiaries or purposes, whether concurrent or consecutive, a trustee shall act impartially as between these beneficiaries and purposes.

(2) Subject to the terms of the trust and to the provisions of this Act, any rule of law that requires a trustee to buy, hold or sell certain investments or to apportion the capital or income of the trust fund between beneficiaries is hereby abolished.

General powers of trustees

34. (1) Subject to the terms of the trust and the provisions of this Act, a trustee shall have in relation to the trust property all the powers of a beneficial owner.

(2) Subject to the terms of the trust and the provisions of this Act, a trustee shall exercise his functions only in the interests of the beneficiaries or of the purpose for which the trust is established and in accordance with the terms of the trust.

(3) Where the terms of a trust provide that the trustee may add or remove beneficiaries or pur poses for which the trust is established, then, if that power is exercised properly and on the basis of

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valid considerations, the exercise of the power shall not be regarded as a breach of the duty of the trustee under the trust.

(4) A trustee may sue and be sued as trustee.

(5) The terms of a trust may require a trustee to consult or obtain the consent of another person before exercising any functions under the trust.

(6) Where he considers it necessary or desirable in the interests of the good administration of the trust, a trustee may consult a lawyer, accountant, investment advisor or other person in relation to the affairs of the trust.

(7) A person is not, merely by virtue of giving or refusing his consent to the exercise of any functions or being consulted in relation to the affairs of the trust, deemed to be a trustee or to owe a fiduciary duty to the beneficiaries of the trust.

Powers of investment

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

(2) Where the terms of a trust or any other instrument provide that any money requiring investment shall only be invested in "authorised trustee investments" or any similar expression, the money shall be invested only in investments that are specified in Schedule 1.

(3) The terms of a trust may provide that Schedule 1 shall apply to the trust with such modifi cations as are specified by the terms of the trust.

(4) A trustee shall not be liable for breach of trust by reason only of continuing to hold an investment that has ceased to be an investment authorised by the terms of the trust or by the general law.

(5) Subject to the terms of the trust, in selecting investments a trustee or, as the case may be, any investment advisor or other person to whom the trustee has delegated the management of the trust property, shall have regard—

(a) to the need for diversification of investments in the trust insofar as is appropriate to the circumstances of the trust; and

(b) to the suitability to the trust of the investments proposed.

(6) Subject to the terms of the trust, before investing money in any investment, a trustee shall consider whether he should obtain appropriate advice as to whether the investment is suitable and satisfactory and, if he considers that the obtaining of such advice is necessary, shall obtain and consider such advice accordingly.

(7) Subject to the terms of the trust, a trustee shall determine whether and, if so, at what inter vals he should obtain appropriate advice as to whether the existing investments of the trust are suit-

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able and satisfactory and, if he considers that the obtaining of such advice is necessary, shall obtain and consider such advice accordingly.

(8) For the purposes of subsections (6) and (7), advice is appropriate if it is the advice of a person who is reasonably believed by the trustee to be qualified to give such advice, and that advice may be given by a person notwithstanding that he gives it in the course of his employment, including employment with a trustee of the trust.

Powers of trustees: Schedule 2

36. (1) Subject to the terms of the trust, the powers contained in Schedule 2 shall apply to all trusts to which this section applies.

(2) The terms of a trust may provide that some or all of the powers contained in Schedule 2 shall be incorporated by reference and shall apply with or without modification and this section applies to any trust the terms of which so provide.

Delegation by trustees

37. (1) A trustee may not delegate the exercise of his functions unless permitted to do so by this Act or by the terms of the trust.

(2) Except where the terms of the trust provide to the contrary, a trustee may—

(a) delegate the management of trust property to, and appoint, investment managers whom the trustee reasonably considers to be qualified to manage the investment of the trust property;

(b) appoint and employ any lawyer, accountant or other person to act in relation to any of the affairs of the trust or to hold any of the trust property; and

(c) authorise any person referred to in paragraph (a) or (b) to retain or receive any commission or other payment usually payable for services of the description rendered.

(3) A trustee shall not be liable for any loss arising to the trust from a delegation or appoint ment under subsection (2) or from the default of the delegate or appointee, if the trustee exercised the standard of care of a reasonable and prudent man of business in—

(a) the selection of the delegate or appointee; and

(b) the supervision of the activities of the delegate or appointee.

Reimbursement of expenses

38. A trustee shall be entitled to be reimbursed out of the trust property all expenses properly incurred by him in connection with the trust.

Payment of trustees

39. (1) Subject to the terms of the trust, an individual trustee engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for business transacted, time spent and acts done by him or any partner or employee of his or of his firm in connection

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with the trust including acts that a trustee who is not being engaged in any profession or business could have done personally.

(2) Subject to the terms of the trust, a trust company shall be entitled to such remuneration as may from time to time be agreed in writing between the trust company and the settlor or protector or, in the absence of an agreement, in accordance with its standard terms and conditions as to the administration of trusts current from time to time.

(3) Where the terms of trust provide that a trustee shall not receive any payment for acting as trustee, payment may nevertheless be authorised—

(a) by the Court; or

(b) by some or all of the beneficiaries of the trust;

but a beneficiary may not validly authorise payment if the beneficiary—

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

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

(e) is improperly induced by the trustee to authorise the payment.

(4) Where some only of the beneficiaries authorise payment to a trustee in accordance with subsection (3), the payment shall be made out of the share of the trust property that in the opinion of the trustee is referable to the interests of those beneficiaries who so authorise payment.

Power to appropriate

40. Subject to the terms of the trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in the manner and in accordance with the valuation that he considers appropriate.

Power and duty of maintenance

41. Subject to the terms of the trust and to any prior interest or charge affecting the trust property, where any property is held by a trustee in trust for any beneficiary for any interest whatsoever—

(a) while the beneficiary is a minor, the trustee—

(i) may at his discretion pay to the parent or guardian of the beneficiary or otherwise apply the whole or part of the income attributable to that interest for or towards the maintenance, education or benefit of the beneficiary, and

(ii) shall accumulate the residue of the income as an accretion to the trust property and as one fund with the trust property for all purposes but may, while the beneficiary is a minor, apply those accumulations as if they were income of the then current year; and

(b) if the beneficiary is no longer a minor and his interest has not yet vested in possession, the trustee shall thenceforth pay the income attributable to the interest to the beneficiary until his interest vests in possession or terminates.

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Power of advancement

42. Subject to the terms of the trust, a trustee may in his discretion pay or apply trust property for the advancement or benefit of any beneficiary whose interest in the trust has not yet vested in possession, but—

(a) any trust property so paid or applied shall be brought into account in determining the share of the beneficiary in the trust property;

(b) no payment or application shall be made that prejudices any person entitled to any prior interest unless the person is of full age and consents to the payment or application or, if the person is not of full age, the Court consents; and

(c) the part of the trust property so paid or advanced shall not exceed the presumptive share of the beneficiary in the trust property.

Accumulation and maintenance settlements

43. Where any property is directed to be held on accumulation and maintenance trusts for the benefit of a beneficiary or a class of beneficiaries, the provisions of sections 37 and 38, unless the terms of the trust otherwise provide, apply to the interest of such beneficiary or beneficiaries.

Receipt of parents or guardians

44. The receipt of a parent or guardian of a beneficiary who is a minor or is under legal disability shall be a sufficient discharge to the trustee for a payment made to or for the benefit of the beneficiary.

Power of appointment

45. The terms of a trust may confer on the trustee or any other person power to appoint all or any part of the trust property to, or to trustees for the benefit of, any person or valid charitable or non-charitable purpose, whether or not the person was a beneficiary of the trust or the purpose was an object of the trust prior to the appointment.

Power of revocation or variation

46. (1) A trust and any exercise of a power or discretion under a trust may be expressed to be capable of revocation, in whole or in part, or of variation.

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

(3) Subject to the terms of the trust, if a trust is revoked in whole or in part, the trustee shall hold the trust property that is the subject of the revocation in trust for the settlor absolutely or, if he is dead, as if it had formed part of his estate at death.

(4) In so far as the terms of a trust make no provision for revocation of the trust, the trust is irrevocable.

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PART 5

TERMINATION OR FAILURE OF TRUSTS

Failure or lapse of interest

47. (1) Subject to the terms of the trust and to any order of the Court, where—

(a) an interest lapses;

(b) a trust terminates; or

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

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

(2) Subsection (1) does not apply to a trust established for a charitable purpose to which section 44 applies.

Application of property held on charitable trusts

48. (1) Where trust property is held for a charitable purpose and—

(a) the purpose has been, as far as may be, fulfilled;

(b) the purpose cannot be carried out at all or not according to the directions given and to the spirit of the gift;

(c) the purpose provides a use for part only of the property;

(d) the property, and other property applicable for a similar purpose, can be more effec tively used in conjunction, and to that end can more suitably be applied to a common purpose;

(e) the purpose was laid down by reference to an area that 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 that has for any reason since ceased to be suitable or to be practicable in administering the gift;

(f) the purpose has been adequately provided for by other means;

(g) the purpose has ceased to be charitable by reason of being useless or harmful to the community or otherwise; or

(h) the purpose has ceased in any other way to provide a suitable and effective method of using the property;

the property or the remainder of the property, as the case may be, shall be held for such other charitable purpose as the Court, on the application of the Attorney General or the trustee, may declare to be consistent with the original intention of the settlor.

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(2) Where trust property is held for a charitable purpose, the Court, on the application of the Attorney General or the trustee, may approve any arrangement that 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—

(a) is now suitable or expedient; and

(b) is consistent with the original intention of the settlor.

(3) The Court shall not make a declaration under subsection (1) or approve an arrangement under subsection (2) unless satisfied that any person with a material interest in the trust or in any fund subject to the terms of the trust has had an opportunity to be heard.

Termination of trusts

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

(2) The trustee may retain sufficient assets to make reasonable provision for liabilities, exist ing, future, contingent or otherwise.

Termination by beneficiaries

50. (1) Without prejudice to any power of the Court, and notwithstanding the terms of the trust, where—

(a) all the beneficiaries are in existence and have been ascertained;

(b) none is a person under legal disability or a minor; and

(c) all beneficiaries are in agreement to do so;

the beneficiaries may, subject to subsection (2), require the trustee to terminate the trust and distribute the trust property as the beneficiaries direct.

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

PART 6

VARIATION OF TRUSTS

Power to provide for variation of terms of trust

51. (1) The terms of a trust may be varied in any manner provided by its terms.

(2) This section is in addition to section 48.

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Variation of trusts by the Court

52. (1) The Court may, on the application of any beneficiary, the trustee, the settlor or his personal representative, or the protector of a trust, approve on behalf of—

(a) a minor or a person under legal disability having directly or indirectly an interest, vested or contingent, under the trust;

(b) any person unborn;

(c) any person who is presently unascertained but 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; or

(d) any person, in respect of an interest that may accrue to him by virtue of the exercise of a discretionary power on the failure or determination of an interest under a protective or spendthrift trust;

any arrangement that varies or revokes the terms of the trust or enlarges or modifies the powers of management or administration of the trustee, whether or not there is another person with a beneficial interest who is capable of assenting to the arrangement, but the Court shall not approve an arrangement on behalf of a person mentioned in paragraphs (a), (b) or (c) unless the arrangement appears to be for his benefit.

(2) Where, in the management or administration of a trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is, in the opinion of the Court, expedient, but cannot be effected because the necessary power has not been conferred on the trustee by the terms of the trust or by law, the Court, on the application of the trustee—

(a) may confer upon the trustee, generally or in any particular circumstances, the neces sary power, on such terms and subject to such conditions as the Court thinks fit; and

(b) may direct the manner in which, and the property from which, any money authorised to be expended, and costs of any transaction, are to be paid or borne.

PART 7

BREACH OF TRUST

Liability for breach of trust

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

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

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

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

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

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

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

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

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

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

Constructive trusts

54. (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 he derives or obtains it in good faith and without actual, constructive or implied notice of the breach of trust.

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

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

Tracing trust property

55. Without prejudice to the personal liability of a trustee, trust property that has been charged or dealt with in breach of trust, or any property into which it has been converted, may be followed 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.

Beneficiary may relieve or indemnify a trustee

56. (1) A beneficiary may relieve a trustee of liability to him 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 legal disability;

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

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

Power to relieve trustee from personal liability

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

Power to make beneficiaries indemnify

58. Where a trustee commits a breach of trust at the instigation, at the request or with the concurrence of a beneficiary, the Court, whether or not the beneficiary is a minor or a person under legal disability, may impound all or part of the interest of that beneficiary by way of indemnity to the trustee or any person claiming through him.

PART 8

POWERS OF THE COURT

Jurisdiction of the Court

59. The Court has jurisdiction in respect of any matters concerning a trust where—

(a) the proper law of the trust is the law of Anguilla;

(b) a trustee of the trust is resident in Anguilla;

(c) any property of the trust is situated in Anguilla;

(d) any part of the administration of the trust is carried on in Anguilla; or

(e) where, in any other case, the Court thinks it appropriate.

General powers of the Court

60. (1) On the application of a trustee, a beneficiary, a settlor or his personal representatives, a protector, the Attorney General in the case of a trust established for a charitable purpose or, with the leave of the Court, any other person, the 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 by a trustee of his functions, the removal of a trustee, the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments, whether into Court or otherwise,

(iii) a protector, including an order appointing a protector,

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(iv) a beneficiary or any person connected with a trust, or

(v) any trust property, including an order as to the vesting, preservation, application, surrender or recovery thereof;

(b) make a declaration as to the validity 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 the distribution of the property as it thinks fit; or

(e) rescind or vary an order or declaration under this Act, or make a new or further order or declaration.

(2) Where the 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 trust property; and

(b) subject to the Court's order, a trustee appointed by the Court has the same functions, and may act in all respects as if he had been originally appointed a trustee.

(3) If a person does not comply with an order of the Court under this Act requiring him to do any thing, the 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 Court at the expense of the person in default or otherwise, as the Court directs, and a thing so done has effect in all respects as if done by the person in default.

Applications for directions

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

Payment of costs

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

PART 9

CHOICE OF GOVERNING LAW

Governing law

63. (1) In determining the governing law of a trust, regard is first to be had to the terms of the trust and to any evidence therein as to the intention of the settlor, and the other circumstances of the trust are to be taken into account only if the terms of the trust fail to provide such evidence.

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(2) A term of the trust expressly selecting the laws of Anguilla to govern the trust is valid, effective and conclusive regardless of any other circumstances.

(3) A term of the trust that the laws of Anguilla are to govern a particular aspect of the trust or that Anguilla or the courts of Anguilla are the forum for the administration of the trust, or any like provision, is conclusive evidence, subject to any contrary term of the trust, that the parties intended the laws of Anguilla to be the governing law of the trust and is valid and effective accordingly.

(4) If the terms of a trust so provide, the governing law of the trust may be changed to or from the laws of Anguilla if—

(a) in the case of a change to the law of Anguilla, the change is recognised by the gov erning law of the trust previously in effect; and

(b) in the case of a change from the law of Anguilla, the new governing law would recognise the validity of the trust and the respective interests of the beneficiaries.

(5) A change in governing law shall not affect the legality or validity of, or render any person liable for, any thing done before the change.

Matters determined by governing law

64. (1) All questions arising in regard to a trust that is for the time being governed by the laws of Anguilla, or in regard to any disposition of property upon the trusts thereof including, without prejudice to the generality of the foregoing, questions as to—

(a) the capacity of any settlor;

(b) any aspect of the validity of the trust or disposition or the interpretation or effect thereof;

(c) the administration of the trust, whether the administration be conducted in Anguilla or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment and removal; or

(d) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment, and the validity of any exercise thereof;

are to be determined according to the laws of Anguilla, without reference to the laws of any other jurisdictions with which the trust or disposition may be connected.

(2) This section—

(a) shall not validate—

(i) any disposition of property that is neither owned by the settlor nor the subject of a power in that behalf vested in the settlor,

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(ii) any trust or disposition of immovable property situated in a jurisdiction other than Anguilla in which the trust or disposition is invalid according to the laws of the jurisdiction, or

(iii) any testamentary trust or disposition that is invalid according to the laws of the testator's domicile;

(b) shall not affect the recognition of foreign laws in determining whether the settlor is the owner of the settled property or is the holder of a power to dispose of such property;

(c) shall take effect subject to any express term of a trust or disposition to the contrary;

(d) as regards the capacity of a company, shall not affect the recognition of the laws of its place of incorporation; and

(e) shall not affect the recognition of foreign laws prescribing generally, without reference to the existence or terms of the trust, the formalities for the disposition of property.

Exclusion of foreign law

65. Without limiting the generality of section 60, it is expressly declared that no trust governed by the laws of Anguilla and no disposition of property to be held upon the trusts thereof is void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of any settlor to be questioned by reason that—

(a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust; or

(b) the trust or disposition—

(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 action intended to recognise, protect, enforce or give effect to any such rights, claims or interests.

PART 10

PROVISIONS APPLICABLE TO A FOREIGN TRUST

Application of Part

66. (1) This Part applies only to a foreign trust.

(2) For the purposes of this Part, a foreign trust includes every trust not governed by the laws of Anguilla.

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Enforceability of a foreign trust

67. (1) Subject to subsection (2), a foreign trust or a severable aspect thereof shall be governed by the foreign law applicable to the validity, construction and administration thereof.

(2) A foreign trust shall be enforceable in Anguilla except to the extent that it purports to do anything the doing of which is contrary to the law of Anguilla or to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Anguilla.

PART 11

VARIANT TYPES OF TRUST

Variant types of trust

68. (1) A settlor may create a trust, in whatever form and by whatever name it is known, of a type recognised by the law or rules of his religion or nationality or that is customarily used by his community, if—

(a) there is a recital to that effect in the instrument creating the trust; and

(b) the trust is of a type approved by the Attorney General by Order published in the *Gazette*.

(2) The instrument creating a trust may be written in a language other than English, if a ver sion in the English language certified by the original trustee to be a true translation is appended to the instrument.

Provisions of variant types of trust

69. A trust of a type approved under section 64(1) may provide that the trustee shall hold the trust property—

(a) for such term as is provided in the trust, to pay or apply the income and capital thereof for the maintenance, education, advancement or benefit of the family of the settlor or for the purposes of performing acts or services in honour of the settlor or the ancestors of the settlor or for any one or more of them; and

(b) thereafter for the advancement of the settlor's religion or for such other charitable purpose as the settlor may specify or, if the settlor has not specified a charitable purpose, for such charitable purpose as the trustee shall determine.

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PART 12

OPTIONAL REGISTRATION OF TRUSTS AND EXEMPTION FROM TAXES

Facility to register trusts

70. (1) In this section—

"Register" means the Register referred to in subsection (2);

"Registrar" means the Registrar of Companies.

(2) The Registrar of Companies shall maintain a Register of Trusts.

(3) The settlor or a trustee of a trust may apply but, subject to the terms of the trust, shall not be obliged to apply to the Registrar to enter the trust on the Register.

(4) An application for entry on the Register shall be accompanied by—

(a) a certified copy of the instrument creating the trust, if any; and

(b) the prescribed fee.

(5) The Registrar shall, on receipt of an application for registration, a certified copy of the instrument creating the trust, if any, and the required fee—

(a) enter on the Register the name of the trust, if any, the name of the settlor and the name of the beneficiary or the purpose for which the trust is established; and

(b) issue to the trustee a certificate of registration.

(6) Where the terms of a trust that has been registered are varied, the trustee shall send to the Registrar a notification of the variation together with the prescribed fee and the Registrar shall amend the entry on the Register accordingly and issue an amended certificate of registration.

(7) Where a trust that has been registered terminates, the trustee shall notify the Registrar and return the certificate of registration and the Registrar shall then cancel the entry on the Register and the certificate of registration.

(8) The Register shall not be open for inspection except that the trustee of a trust may in writing authorise a person to inspect the entry of that trust on the Register.

Exemption from taxes

71. (1) For the purposes of this Act, a trust is an exempt trust if—

(a) the settlor is not resident in Anguilla;

(b) none of the beneficiaries are resident in Anguilla; and

(c) the trust property does not include any land situated in Anguilla or the shares of any company beneficially owning any land situated in Anguilla.

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(2) Subject to this Act, any exempt trust shall not be subject to any income tax, withholding tax, asset tax, gift tax, profits tax, capital gains tax, distributions tax, inheritance tax, estate duty or other like taxes based upon or measured by assets or income originating outside of Anguilla or in connection with matters of administration that may occur in Anguilla, except as provided in section 66.

PART 13

SUPPLEMENTAL

Regulations

72. The Governor may make regulations for the better carrying out of this Act including regulations—

(a) prescribing anything that may be prescribed under this Act; and

(b) amending, making deletions from, adding to or replacing Schedule 1.

Citation

73. This Act may be cited as the Trusts Act, Revised Statutes of Anguilla, Chapter T70.

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SCHEDULE 1

(Section 35)

AUTHORISED TRUSTEE INVESTMENTS

Interpretation

1. In this Schedule—

"approved stock exchange" means—

(a) The International Stock Exchange of the United Kingdom and Republic of Ireland Limited including the Unlisted Security Market of the International Stock Exchange;

(b) the New York Stock Exchange, the American Stock Exchange and the National Association of Security Dealers' Automated Quotation System of the United States of America;

(c) the major stock exchanges of Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, India, Italy, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, Singapore, South Africa, Spain, Sweden and Switzerland; or

(d) the major stock exchanges of the countries of Central and South America;

"debentures" includes debenture stock and bonds, whether constituting a charge on assets or not, and loan stock or notes;

"quoted company" means a company the ordinary shares in which are quoted on an approved stock exchange;

"quoted mutual fund" means an open end or closed end mutual fund the shares in which are quoted on an approved stock exchange;

"quoted shares" means shares quoted on an approved stock exchange;

"quoted unit trust" means a unit trust the units in which are quoted on an approved stock exchange;

"securities" includes shares, debentures, treasury bills and tax reserve certificates;

"shares" include stock.

Authorised trustee investments

2. The following are specified as authorised trustee investments—

(a) securities issued by, or the payment of interest on which is guaranteed by, the Government of Anguilla;

(b) securities issued by, or the payment of interest on which is guaranteed by, any of the following—

(i) the Government of the United Kingdom,

(ii) the Government of the United States of America,

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(iii) the Government of any territory within the Commonwealth,

(iv) the African Development Bank, the Asian Development Bank, the European Union, the European Investment Bank, the International Finance Corporation, the International Monetary Fund or the International Bank for Reconstruction and Development;

(c) deposits with a company, incorporated, continued or registered under the Companies Act* that is a licensed financial institution within the meaning of the Banking Act† or the Trust Companies and Offshore Banking Act;

(d) debentures issued by a quoted company;

(e) units in a quoted unit trust;

(f) quoted shares;

(g) freehold property situated in Anguilla and leasehold property situated in Anguilla of which the unexpired term at the time of the investment is not less than 40 years and mortgages of that freehold or leasehold property;

(h) shares in a quoted mutual fund.

SCHEDULE 2

(Section 36)

POWERS OF TRUSTEES

Trust for sale

1. (1) The Trustees shall stand possessed of any real property from time to time comprised in the Trust Fund Upon Trust to sell the same with power to postpone the sale thereof or of any part thereof for such period as they shall in their absolute discretion think fit and shall stand possessed of all other investments comprised in the Trust Fund Upon Trust at such discretion either to retain the same in the existing state thereof for such period as they shall think fit or at any time or times to sell the same or any part thereof.

(2) The Trustees shall hold the net proceeds of any sale of investments comprised in the Trust Fund and all other moneys held or received by them as capital moneys Upon Trust to invest the same at their discretion in or upon any of the investments by this instrument authorised with powers to vary or transpose such investments for or into others of a like nature.

Powers of investment

2. TRUST moneys to be invested under the trusts of this instrument may be applied or invested in any currency and in any part of the world in the purchase of or upon the security of such common or preferred stocks, shares, mutual fund shares, unit trust units or other securities or commodities (including precious metals), bonds, notes, debentures, certificates of deposit or time deposits, land or other investments or property of whatever nature (and whether or not income-producing or paying dividends or interest) and, whether involving liabilities or not or upon such personal credit with or without security as the Trustees in their absolute discretion think fit without being restricted to trustee investments prescribed under the proper law governing

* Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.
† Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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this instrument and to the intent that the Trustees shall have the same powers in all respects as if they were absolute owners beneficially entitled And in addition (but without prejudice to the generality of the foregoing) the Trustees may invest the Trust Fund in the shares or debentures of any company whatsoever and wheresoever incorporated without the need for diversification and without being liable for any loss occasioned thereby.

Power with regard to mode of application of capital and income

3. ANY power by this instrument or by law conferred on the Trustees to pay, transfer, appropriate or apply the Trust Fund or any income thereof for the benefit of any beneficiary may at the discretion of the Trustees be validly exercised (without prejudice to the generality of such power or to any other mode of application)—

(a) by paying or transferring the same to the trustees of any settlement (whether or not such trustees are resident in Anguilla and whether or not the proper law of such settlement is the law of Anguilla) the provisions of which are in the opinion of the Trustees for the benefit of such beneficiary notwithstanding that such settlement may also contain trusts, powers or provisions (discretionary or otherwise) in favour of other persons or objects; or

(b) (in case of any such person who is a minor) by paying or transferring the same to such minor's parent or guardian or some other person for the time being having the care or custody of such minor upon the recipient undertaking to apply the same for the benefit of the minor;

And the Trustees shall not thereafter be under any obligation to see to the further application of the capital or income so paid or transferred and the receipt of such trustees, parent, guardian or other person shall be a full, sufficient and complete discharge to the Trustees.

Additional powers

4. The Trustees shall have the following powers in addition to those conferred by law—

(1) Power to receive any property from any person as an addition to the Trust Fund either by gift *inter vivos* or by will or under the provisions of any other settlement or trust or otherwise;

(2) Power to borrow on the security of the Trust Fund and for such purpose to make any outlay out of the Trust Fund or the income thereof and to enter into such contracts, mortgages, charges or undertakings relating thereto as the Trustees may in their absolute discretion think fit;

(3) Power to lend any part of the Trust Fund to any person (whether or not a beneficiary) upon such terms (if any) as to security repayment rate or interest and otherwise as the Trustees in their absolute discretion may determine;

(4) With respect to any property comprised in the Trust Fund power to exercise all powers relating thereto as if beneficially entitled thereto and without being restricted in any way by the office of trustee including (without prejudice to the generality of the foregoing power)—

(a) Power to vote upon or in respect of any shares, securities, bonds, notes or other evidence of interest in or obligations of any company, trust, association or concern whether or not the exercise of such power affects the security or the apparent security of the Trust Fund or the purchase or sale or lease of the assets of any such corporation trust association or concern;

(b) Power to deposit any such shares, securities or property in any voting trust or with any depository designated thereby;

(c) Power to give proxies or power of attorney with or without power of substitution for voting or acting on behalf of the Trustees as the owners of any such property; and

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(d) Power to omit to register bonds or securities;

(5) Power (at the expense of the Trust Fund) to incorporate or register or to procure the incorporation or registration of any company (with limited or unlimited liability) in any part of the world for any purpose, including the acquisition of the Trust Fund or any part thereof and so that (if thought fit) the consideration on the sale of the Trust Fund to any such company may consist wholly or partly of fully paid shares, debentures, debenture stock or other securities of the company credited as fully paid that shall be allotted to or otherwise vested in the Trustees and be capital moneys in the Trustees' hands;

(6) Power at any time to apply part of the Trust Fund or the income thereof in effecting or joining in effecting or otherwise acquiring any policy of assurance on the life of any beneficiary or of any other person or any endowment or other policy and to maintain, surrender, exchange, exercise any option thereunder or otherwise deal with such policies as if the Trustees were absolutely entitled thereto;

(7) Power to pay out at any time any part of the Trust Fund in purchasing or acquiring or making improvements in or repairs to or on any land or building (whether freehold, leasehold or of any other tenure or interest, and of whatsoever description and situate in any part of the world) in the occupation of or intended for occupation by any beneficiary And power to permit any beneficiary to occupy until sale of any land or building purchased or acquired as aforesaid or otherwise comprised in the Trust Fund upon such terms (as to payment or non-payment of rent, outgoings, repairs or otherwise) as the Trustees may think fit;

(8) Power at any time or times to lay out any part of the Trust Fund in the purchase or other acquisition of any yachts, boats, motor vehicles, works of art, household furniture, plate, linen, china, cutlery and other articles of household use, ornament or equipment and other chattels for the use of any beneficiary whether occupying a building purchased or acquired as aforesaid or otherwise And power to hand over to any such beneficiary for his use any property so purchased or acquired by the Trustees as aforesaid or otherwise forming part of the Trust Fund upon and subject to such terms and conditions (if any) as to insurance, preservation, maintaining inventories and otherwise as the Trustees think fit;

(9) Power to grant options for such consideration and exercise at such time or times or within such period as the Trustees think fit for the purchase of any property subject to the trusts of this instrument or the acquisition of any interest therein;

(10) Power to keep the Trust Fund either in or out of Anguilla and, if the Trustees think fit, to hold in any part of the world all or any securities or other property in bearer form or registered in the name of the Trustees or nominees without disclosing the fiduciary relationship;

(11) In the event of any duties, fees or taxes whatsoever becoming payable in any part of the world in respect of the Trust Fund or any part thereof in any circumstances whatsoever, power to pay all such duties, fees or taxes out of the Trust Fund or the income thereof with discretion as to the time and manner in which the said duties, fees or taxes shall be paid and the Trustees may pay such duties, fees or taxes notwithstanding that the same shall not be recoverable from the Trustees or from any persons interested under the trusts of this instrument or that the payment shall not be to the advantage of such persons;

(12) Power to make such reserves out of the Trust Fund or the income thereof as the Trustees deem proper for expenses, taxes and other liabilities and to pay from capital or income or to apportion between capital and income any expenses of making or changing investments and selling, exchanging or leasing (including brokers' commissions and charges) and generally to determine what part of the expenses of administering the trusts of this instrument shall be charged to capital and what part to income;

(13) Power to make, execute and deliver deeds, assignments, transfers, leases, mortgages, instruments of pledge creating liens, contracts and other instruments sealed and unsealed;

(14) Power to institute, prosecute and defend any suits or actions or other proceedings affecting the Trustees or the Trust Fund and to compromise any matter of difference or to submit such matter to arbitration

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and to compromise or compound any debt owing to the Trustees or any other claims and to adjust any disputes in relation to debts or claims against them as trustees upon evidence that the Trustees shall deem sufficient and to make partition upon such terms (including if thought fit the payment or receipt of equality money) as the Trustees, shall deem desirable with co-owners or joint tenants besides the Trustees having any interest in any property in which the Trustees are interested and to make partition either by sale or by set-off or by agreement or otherwise;

(15) Power to make any distribution of the Trust Fund pursuant to the trusts of this instrument in cash or in kind or partly in cash and partly in kind and in the case of a distribution to more than one person not strictly rateably but on the basis of equal or other proportionate value (as the case may require) according to the judgment of the Trustees, which shall be binding on all persons interested under this instrument;

(16) Power to take at the expense of the Trust Fund or the income thereof the opinion of legal counsel concerning any question arising under this instrument or on any matter in any way relating to the Trust Fund or the duties of the Trustees in connection with this instrument And the Trustees shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the opinion or advice of such counsel;

(17) Power—

(a) to engage the services of such investment counsel adviser or manager ("the Investment Adviser") as the Trustees may from time to time think fit (including the Settlor or any trustee of this instrument or any trust company or any parent subsidiary or affiliate of such trust company) in order to obtain advice on the investment and reinvestment of the Trust Fund AND to delegate to the Investment Adviser without being liable for any consequential loss discretion to manage the portfolio or any part thereof within the limits and for the period stipulated by the Trustees, and the Trustees—

(i) shall settle the terms and conditions for the remuneration of the Investment Adviser and the reimbursement of the Investment Adviser's expenses as in their uncontrolled discretion they deem proper, and such remuneration and expenses may be paid by the Trustees from and out of the Trust Fund; and

(ii) shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the advice of the Investment Adviser;

(b) to employ and pay at the expense of the capital or income of the Trust Fund any agent or agents in any part of the world whether solicitors, bankers, accountants, stock brokers, managers or other persons (including the Settlor or any trustee of this instrument or any trust company or any parent subsidiary or affiliate of such trust company) to transact any business or to do any act requiring to be transacted or done in execution of the trusts of this instrument including the receipt and payment of money and the execution of documents and in any such event the trustee, the trust company or the parent subsidiary or the affiliate of such trust company is entitled to charge and be paid and to retain for his or its own account all usual professional and other fees and commissions normally paid for such services including fees and commissions shared with other agents;

Trustees may exercise powers despite personal interest

(18) Power for all or any of the Trustees—

(a) to exercise or join or concur in exercising all or any of the powers and discretions by this instrument or by law given to the Trustees notwithstanding that such trustee may have a personal interest in the mode or result of exercising any such power or discretion or may be interested therein in some other fiduciary capacity but any trustee may abstain from acting except as a merely formal party in any matter in which he may be so interested as aforesaid

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and may allow his co-trustees to act alone in the exercise of such powers and discretion in relation to such matter; and

To effect transactions

(b) to purchase or sell any property notwithstanding that the vendor or purchaser is the same as or includes the Trustees or any of them PROVIDED that the price payable on any such purchase or sale is certified as fair and reasonable by an independent valuer employed for the purpose by the Trustees;

Residuary power

(19) Power to effect any transaction concerning or affecting the Trust Fund or any other property whatsoever and to do all other acts and things that the Trustees may in their absolute discretion think expedient in the interests of the Trust Fund or any beneficiary And for the purpose of this section, "transaction" includes any sale, exchange, assurance, conveyance, grant, lease, surrender, reconveyance, release, reservation or other disposition and any purchase or other acquisition and any covenant, contract, licence, option, right of pre-emption and any compromise or partition and any company reconstruction or amalgamation and any other dealing or arrangement, And "effect" has the meaning appropriate to the particular transaction And references to property include references to restrictions and burdens affecting the property;

Powers of sale etc.

(20) All the powers of sale (by public auction or private contract), exchange, mortgaging, leasing or other disposition, management, repair, building and improvement and all other powers of an absolute beneficial owner in respect of any property for the time being comprised in the Trust Fund including, without prejudice to the generality of the foregoing, the power of borrowing on the security of the Trust Fund and for such purpose to make any outlay out of the income or capital of the Trust Fund and to make such contracts and to enter into such undertakings relating thereto as the Trustees in their absolute discretion shall think fit;

(21) Power to spend capital moneys of the Trust Fund on erecting buildings on land for the time being comprised in the Trust Fund or on demolishing and rebuilding or on altering or improving buildings on it or otherwise on improving said land as the Trustees think fit (and any certificate of any architect or surveyor employed by the Trustees or of any Trustee who is qualified as an architect or surveyor that the work specified in such certificate consists only of alteration or improvement shall be conclusive as between the Trustees and all persons interested under the Trust that any capital money spent on such work was properly spent by the Trustees in exercise of the powers conferred by this subparagraph) And to employ any of the capital of the Trust Fund in repairing, developing, enlarging, equipping, furnishing, insuring and maintaining the said land and buildings and fixtures on it;

(22) Where the trust property includes any chattel, the Trustees may employ any of the capital of the Trust Fund in repairing or insuring such chattel and may store, lend or hire it on such terms as the Trustees think fit;

Power to give guarantees

(23) Power at any time in the Trustees' discretion and on such terms as they deem fit to appropriate or to apply the capital or income of the Trust Fund or any part thereof in order to secure the payment of money owed by any beneficiary or the performance of any obligations of any beneficiary and to give any guarantee or to become surety for any beneficiary and for such purposes to mortgage or charge any investments or property for the time being forming part of the Trust Fund or to deposit or transfer any such investments or property with or to any person by way of security;

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To release fiduciary powers

(24) Power from time to time by deed revocable or irrevocable wholly or partially to release, extinguish or restrict any power by this instrument or by law conferred on the Trustees notwithstanding the fiduciary nature of any such power (but not so as to invalidate any prior exercise thereof).

Exclusion of apportionments

5. UNLESS the Trustees in their absolute discretion shall otherwise determine all dividends and other income received shall be treated for all purposes as income accruing at the due date of payment whether or not such dividends or income may have been earned and accrued wholly or partially in respect of a period prior to such date.

Protection of third parties in dealings with trustees

6. (1) NO person or company dealing with the Trustees and no purchaser on any sale made by the Trustees shall be concerned to enquire into the propriety or validity of any act of the Trustees or to see to the application of any money paid or property transferred to or upon the order of the Trustees.

(2) NO firm, association or company, any of whose securities are comprised in the Trust Fund, and no purchaser or person dealing with any trustee purporting to act under any delegation of authority from any other trustee shall be required to ascertain or enquire whether a case exists in which such delegation is permitted or whether such delegated authority is still subsisting.

(3) WHEN anything is dependent upon the value of any property or the existence of any fact, a certificate of the Trustees as to such value or fact shall be conclusive in favour of anyone acting thereon in good faith.

Power in relation to underlying company or companies

7. ANY trustee of this instrument and any director, officer or employee of a trust company or of a parent subsidiary or affiliate of such trust company may act as a director, officer, manager or employee of any company whose shares or debentures may be comprised in the Trust Fund or as a director, officer, manager or employee of any subsidiary or holding company of any such company and may retain for himself or itself any remuneration that he or it may receive as such director, officer, manager or employee, notwithstanding that any votes or other rights attaching to such shares or debentures may have been instrumental either alone or in conjunction with other matters or by reason of their non-exercise in procuring or continuing for him or it, his or its position as such director, officer, manager or employee or that his or its qualifications for any such position may be constituted in part or in whole by any such shares or debentures.

Trustee not bound to interfere with company management

8. THE Trustees shall not be bound or required to interfere in the management or conduct of the affairs or business of any company in which the Trust Fund may be invested (and whether or not the Trustees have the control of such company) And so long as no trustee of this instrument has notice of any wilful negligence, wilful default or fraud or dishonesty on the part of the directors having the management of such company, they may leave the same (including the payment or non-payment of dividends) wholly to such directors, And no beneficiary is entitled as such beneficiary in any way to compel, control or forbid the exercise (including in any particular manner) of any voting or other rights at any time vested in the Trustees with regard to such company, including without prejudice to the generality of the foregoing, any powers the Trustees may have (even if also directors of such company) of compelling such company to distribute any dividend.

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