



## SAINT VINCENT AND THE GRENADINES

## ACT NO. 37 OF 2018

## I ASSENT

[L.S.]

DR. FREDERICK BALLANTYNE  
Governor-General  
31st December, 2018.

AN ACT to amend the International Trusts Act, Chapter 491.

[ 31st December, 2018 ]

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

1. (1) This Act may be cited as the International Trusts (Amendment) Act, 2018.

Short title and commencement

(2) This Act comes into force on the 1st day of January 2019.

2. The International Trusts Act, in this Act referred to as the principal Act, is amended in section 1, by deleting "International Trusts Act" and substituting "Trusts Act".

Short title of International Trusts Act amended  
Cap. 491  
International trusts to be known as "trusts"

3. The principal Act is amended as follows—

(a) by deleting "international trust" wherever the phrase occurs and substituting "trust" in—

- (i) the heading to section 20; and
- (ii) sections 16(6), 18(1), 21(1), 33 and 51;

(b) by deleting "an international trust" and substituting "a trust"—

- (i) in the title of Part XI; and

- (ii) wherever the phrase occurs in sections 7, 8(1), (3) and (4), 10(1) and (4), 11(5), 20(1), 28(1), (4) and (8), 30, 34(1), 35, 36(1), (2), (3), (4), (5) and (5)(c), 38, and 44;
- (c) by deleting “International Trusts” and substituting “Trusts” in the titles of Part II, Part VII and Part XII; and
- (d) by deleting “international trusts” and substituting “trusts” in the following provisions—
- (i) in section 3, in the definition of “Registered Trustee”;
- (ii) in sections 4(3), 50 and 67.
- Amendment of section 3
4. Section 3 of the principal Act is amended—
- (a) by inserting after the definition of “Authority” the following—
- “beneficial owner”, in relation to an express trust, means—
- (a) each settlor of the trust;
- (b) each trustee of the trust;
- (c) each beneficiary of the trust;
- (d) where all individual beneficiaries have not been determined, the class of persons for whom the trust is established; and
- (e) any individual who has control over the trust;”;
- (b) by inserting after the definition of “beneficiary” the following—
- “Business Companies Act” means the Business Companies (Amendment and Consolidation) Act;”;
- (c) by inserting after the definition of “charitable purpose” the following—
- “charitable trust” means a purpose trust which is created exclusively for a charitable purpose or one or more charitable purposes;”;

- (d) in the definition of “disposition”, by inserting after “gift”, the word “, charge”;
- (e) by inserting after the definition of “disposition” the following—
- “express trust” means a trust that is not a resulting trust or a constructive trust;
- “file” in relation to a document, means to file the document with the Registrar of Trusts;
- “foreign judgment” means—
- (a) a judgment or order of a court of a jurisdiction outside the State; or
- (b) a decision of any tribunal outside the State, whether in arbitration or otherwise;”;
- (f) by repealing the definition of “insolvent” and substituting the following—
- “insolvent” has the meaning specified in subsection (3);”;
- (g) by repealing the following definitions—
- (i) “Comptroller”;
- (ii) “Confidential Relationship Preservation Act”;
- (iii) “intent to defraud”;
- (iv) “International Banks Act”;
- (v) “International Business Company”;
- (vi) “International Business Companies Act”;
- (vii) “International Insurance Act”;
- (viii) “International Shipping Company”;
- (ix) “international trust” or “trust”;
- (x) “Registrar of International Companies”; and
- (xi) “relative”;
- (h) by inserting after the definition of “personal representative”, the following—

- “proper law” has the meaning specified in section 28;”;
- (i) in paragraph (a) of the definition of “property”, by deleting “wherever situated, including any share or interest therein, but excluding any real property which is situated in the State” and substituting “wherever situated whether in the State or elsewhere, including any share or interest therein”;
  - (j) by inserting after the definition of “Registered Agent and Trustee Licensing Act”, the following—

““registered trust” means a trust that is registered under section 55;”;
  - (k) by inserting after the definition of “Registered Trustee”, the following—

“Registrar of Business Companies” means the Registrar of Business Companies appointed under section 182 of the Business Companies Act;”;
  - (l) in the definition of “resident”—
    - (i) in paragraph (b), by deleting “, the majority of shares, beneficial interests or other indicia of ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of subparagraphs (a) or (c) hereof, or by the State”; and
    - (ii) in paragraph (c), by deleting the colon at the end of the paragraph and substituting a semi-colon; and
    - (iii) by repealing the proviso after paragraph (c);
  - (m) by repealing the definition of “settlor” and substituting the following—

“settlor” means a person who directly or indirectly provides trust property or who makes a testamentary disposition on trust or to a trust;”;
  - (n) by inserting after subsection (2), the following—

“(3) A person is insolvent if—

- (a) the person is unable to pay his debts as they fall due; or
- (b) the value of the person's liabilities, actual, contingent or prospective, exceeds his assets.".
5. Section 4 of the principal Act is amended in subsection (3)(a) by deleting "or taxable to the trustee". Amendment of section 4
6. The principal Act is amended by repealing section 5. Repeal of section 5
7. Section 6 of the principal Act is repealed and the following substituted— Repeal and substitution of section 6
- "Creation of a 6. A trust may be created—  
trust
- (a) by oral declaration;
- (b) by an instrument in writing, including a will or codicil; or
- (c) by conduct.".
8. The principal Act is amended by inserting after section 6, the following— Insertion of section 6A
- "Validity of a 6A.(1) Subject to subsection (2) and section 36(2), a trust is valid and enforceable in accordance with the terms of the trust.  
trust
- (2) A trust is invalid and unenforceable—
- (a) to the extent that it purports to do anything contrary to the law of the State;
- (b) to the extent that it purports to confer any right or power or impose any obligation, the exercise, effect or carrying out of which is contrary to the law of the State;

- (c) if it does not have at least one trustee who is a registered trustee;
- (d) if it has no beneficiary, ascertainable in accordance with section 9A(1), unless—
  - (i) the trust is a charitable purpose trust; or
  - (ii) the trust is a purpose trust within the meaning of section 12; or
- (e) if the court declares that the trust to be invalid under section 36.”.

Amendment of  
section 8

9. Section 8 of the principal Act is amended—

- (a) by deleting “instrument” wherever the word appears in subsections (1) and (4); and
- (b) in subsection (2), by deleting “a purpose trust or a trust established exclusively for one or more charitable purposes” and substituting “a purpose trust, including a charitable trust”.

Repeal and  
substitution of  
section 9

10. Section 9 of the principal Act is repealed and the following substituted—

“Reservation of  
powers by settlor

9. (1) The reservation or grant by a settlor of a trust of a power or interest specified in subsection (2) does not affect the validity of the trust nor delay the trust taking effect.

(2) The powers and interests referred to in subsection (1) are as follows—

- (a) a power to revoke, vary or amend the terms of

the trust or any trusts or powers arising under it, in whole or in part;

- (b) a power to advance, appoint, pay or apply income or capital of the trust property or to give directions for the making of such advancement, appointment, payment or application;
- (c) a power to act as a director or officer of any corporation wholly or partly owned by the trust;
- (d) to give binding directions to the trustee in connection with the purchase, holding, sale, lending or charging of the trust property;
- (e) to appoint or remove any trustee, enforcer, protector or beneficiary, or any other person who holds a power, discretion or right in connection with the trust or in relation to trust property;
- (f) to appoint or remove an investment manager or investment adviser;

- (g) to change the proper law of the trust or the forum for the administration of the trust;
- (h) to restrict the exercise of any powers or discretions of a trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust; and
- (i) a limited beneficial interest in the trust property.

(3) A trustee who acts in compliance with the valid exercise of any powers referred to in subsection (2) does not, by reason only of such compliance, act in breach of trust.”.

Insertion of section 9A 11. The principal Act is amended by inserting after section 9, the following—

“Beneficiaries of a trust 9A. (1) A beneficiary shall be—

- (a) identifiable by name; or
- (b) ascertainable by reference to—
  - (i) a class; or
  - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the



time which under the terms of the trust is the time by reference to which members of a class are to be determined.

(2) The terms of a trust may provide for the addition or removal of a person as a beneficiary or the exclusion of a beneficiary from benefit either revocably or irrevocably.

(3) The terms of a trust may impose an obligation on a beneficiary as a condition of benefit.

(4) A settlor or trustee of a trust may also be a beneficiary of the trust.”.

12. Section 11 of the principal Act is amended—

Amendment of section 11

(a) by repealing subsection (1) and substituting the following—

“(1) A trust may be created for one or more charitable purposes.”; and

(b) by inserting after subsection (5), the following—

“(6) A charitable trust is a purpose trust and Part V applies to a charitable trust, except to the extent provided.”.

13. Section 12 of the principal Act is repealed and the following substituted—

Repeal and substitution of section 12

“Creation of purpose trust 12. (1) Subject to subsection (2), a trust may be created for one or more purposes.

(2) A purpose trust created under subsection (1) is valid and enforceable only if all of the following conditions are met—

- (a) the trust is created by an instrument in writing;
- (b) the purpose or purposes for which the trust is created are specific, reasonable and capable of fulfilment;
- (c) the purpose or purposes are not immoral, unlawful or contrary to public policy;
- (d) the terms of the trust provide for—
  - (i) the appointment of a protector in relation to the trust's purposes; and
  - (ii) the appointment of another protector on any occasion on which there is no protector, or no protector able and willing to act;
- (e) in the case of a purpose trust which is not a charitable trust, the terms of the trust

specify the event upon the happening of which the trust shall terminate and provide for the disposition of surplus assets of the trust upon its termination; and

- (f) the trust is registered under Part XII.

(3) The terms of trust of a charitable trust may, but are not required to—

- (a) specify an event or date upon the happening or occurrence of which the trust ceases to be a purpose trust;
- (b) provide for the disposition of assets of the trust when the trust ceases to be a purpose trust.”.

14. The principal Act is amended by repealing sections 13 and 14 and substituting the following—

“Protector may not be trustee

13. The protector of a purpose trust shall be a person who is not a trustee of the trust.

Appointment of protector by Authority

14. (1) The Authority may, by notice in writing, appoint a person to be protector of a purpose trust if it has reason to believe that—

- (a) the protector of the trust is dead, or is unwilling, or refuses or is unfit to act, or is incapable of acting and there is no other

Repeal and substitution of sections 13 and 14

protector of the trust;  
or

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

(2) The appointment of a protector by the Authority under subsection (1) takes effect from the date of the appointment or such later date as may be specified in the notice.”.

Insertion of sections 14A and 14B 15. The principal Act is amended by inserting after section 14, the following—

No protector of purpose trust in office or p r o t e c t o r unwilling or unable to act

14A.(1) The Registered Trustee of a purpose trust shall, at any time when there is no protector of the trust, take such steps as are necessary to secure the appointment of a protector.

(2) If the Registered Trustee of a purpose trust has reason to believe that that the protector of the trust—

- (a) is not willing or is refusing to act; or  
(b) is incapable of acting,

the trustee shall apply to the court for the removal of the protector and for the appointment of a replacement.

(3) On an application under subsection (2), the court may, by order—

- (a) remove a protector from office;
- (b) appoint a substitute or additional protector;
- (c) provide for the Registered Trustee's costs of the application to be payable out of the trust property.

(4) Notice of an application to the court under this section shall be given to the Authority, which may appear and be heard at the hearing.

No Registered Trustee of purpose trust in office

14B.(1) If a trustee or protector of a purpose trust has reason to believe that there is no Registered Trustee of the purpose trust and that no Registered Trustee is likely to be appointed in the immediate future, the trustee or protector shall take such steps as are necessary to secure the appointment of a Registered Trustee of the trust and, if unable to secure such appointment, apply to court under subsection (2).

(2) If, at any time, a purpose trust does not have at least one Registered Trustee, application may be made to the court by—

- (a) the settlor, unless the terms of the trust provide otherwise;
- (b) any existing trustee of the trust;
- (c) the protector of the trust; or
- (d) the Authority.

(3) On an application under subsection (2), the court may, by order—

- (a) appoint a registered trustee of the trust;
- (b) provide for the costs of the application to be payable out of the trust property.”.

Amendment of  
section 16

16. Section 16 of the principal Act is amended—

- (a) in subsection (1), by deleting “The terms of an international trust may provide, or in the case of a trust created under Part V shall provide,” and substituting “The terms of a trust may provide, or in the case of a purpose trust shall provide,”;
- (b) by inserting after subsection (1) the following—
  - “(1A) The appointment of a person as a protector of a trust has no effect—
  - (a) unless the person—
    - (i) is a party to the trust instrument, as protector; or
    - (ii) consents by written notice addressed to the Registered Trustee, in the case of a purpose trust or to the trustee or trustees in the case of any other trust; or
  - (b) if the person is a trustee of the trust.”;
- (c) by repealing subsections (2) and (3) and substituting the following—
  - “(2) The protector of a purpose trust has the power and the duty to enforce the trust.
  - (2A) The trustee of a trust shall provide the protector of the trust with—
  - (a) the accounts of the trust and information relating to the accounts of the trust;

- (b) copies of the trust instrument and of deeds and other written instruments executed pursuant to the trust instrument;
- (c) legal and other professional advice received by the trustees; and
- (d) such, if any, other documents and information as the terms of the trust require to be provided to the protector.

(2B) The protector of a trust that is not a purpose trust has the following powers, except to the extent that the terms of the trust provide otherwise—

- (a) the power to remove a trustee and appoint a new or additional trustee; and
- (b) the power to change the proper law of the trust.

(3) A settlor or a beneficiary of a trust may be appointed as protector of the trust.”;

- (d) by repealing subsection (5) and substituting the following—

“(5) Subject to subsection (5A), a protector owes a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust is created.

(5A) In the case of a trust that is not a purpose trust, the terms of trust may modify or exclude subsection (5).”; and

- (e) by repealing subsection (8) and substituting the following—

“(8) If the terms of trust provide for the appointment of a protector but, at any time, a protector is not appointed or in existence, the trust does not fail and, in the case of a trust that is not a purpose trust, the trust instrument shall be interpreted as though references to the protector are excluded.”.

Insertion of 17. The principal Act is amended by inserting after section 16 the  
 section 16A, 16B following—

“Restrictions on 16A.(1) A protector shall not—  
 protector

- (a) derive, directly or indirectly, any profit from the appointment;
- (b) cause or permit any other person to so derive any such profit; or
- (c) on his own account enter into any transaction with the trustees, or relating to the trust property, which may result in any such profit, except—
  - (i) with the approval of the court;
  - (ii) as permitted by this Act; or
  - (iii) as expressly provided by the terms of the trust.

(2) A protector is entitled to be paid, and shall be reimbursed, by the trustees from the trust property for all expenses and liabilities properly incurred in connection with the trust.

Resignation and 16B.(1) A protector may resign his  
 removal of office by delivering a written notice  
 of resignation addressed to the  
 protector trustee.



(2) Subject to subsection (3), the resignation of a protector takes effect on delivery of the notice of resignation to the trustee.

(3) The resignation of a protector to facilitate a breach of trust or a breach of the protector's duty has no effect.

(4) A person ceases to be the protector of a trust immediately on—

- (a) the removal from office of the protector by the court;
- (b) the resignation of the protector becoming effective;
- (c) the coming into effect of a provision in the terms of the trust under or by which he the protector is removed from office or otherwise ceases to hold office; or
- (d) the appointment of the protector as a trustee of the trust.”.

18. Section 18(2) of the principal Act is amended by deleting “an international trust established for a charitable purpose” and substituting “a charitable trust”.

Amendment of section 18

19. Section 19(1) of the principal Act is amended by deleting “an international trust for a charitable purpose” and substituting “a charitable trust”.

Amendment of section 19

20. The principal Act is amended by inserting after Part VII, the following—

Insertion of sections 21A to 21I

## “PART VIIA

*Trustees*

“Powers of trustees of 21A. Subject to the terms of the trust, this Act and the general law, a trustee has, in relation to the trust property, all the powers of a natural person acting as the beneficial owner of such property.

Delegation by trustee 21B.(1) A trustee shall not delegate his powers unless permitted to do so by this Act, the general law or by the terms of the trust.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee, whether or not there is any necessity, may—

- (a) delegate management of trust property to, and employ, investment managers whom the trustee reasonably considers to be competent and qualified to manage the investment of trust property; and
- (b) employ professional or skilled persons to act in relation to any of the affairs of the trust or to hold any of the trust property.

(3) A trustee who, without any breach of trust on his part, makes, or permits the continuation of, a delegation or appointment under subsection (2), is not be liable for any loss to the trust arising from the delegation or appointment.

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

## Duties of trustees

21C.(1) A trustee shall, in the execution of his duties and in the exercise of his powers and discretions—

(a) act—

- (i) with due diligence;
- (ii) as would a prudent person; and
- (iii) to the best of his ability and skill; and

(b) observe the utmost good faith.

(2) Subject to this Act and the general law, a trustee shall —

- (a) carry out and administer the trust in accordance with its terms; and
- (b) exercise his powers only in the interests of the beneficiaries.

(3) Subject to the terms of the trust, a trustee shall, so far as is reasonable, preserve and enhance the value of the trust property.

(4) A trustee shall not, except with the approval of the court or to the extent permitted by this Act or the general law or as expressly provided by the terms of the trust—

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

(5) A trustee shall keep trust property separate from his own property and separately identifiable from any other property of which he is trustee.

(6) A trustee who, without reasonable excuse, contravenes subsection (4) or (5) commits an offence and is liable to a fine of forty thousand dollars.

Duty of co-trustees to act together

21D.(1) Subject to the terms of the trust, where there is more than one trustee all the trustees shall join in the execution of the trust.

(2) Subject to subsection (3), where there is more than one trustee no power or discretion given to the trustees shall be exercised unless all the trustees agree on its exercise.

(3) The terms of a trust may empower trustees to act by a majority but a trustee who dissents from a

decision of the majority may require his dissent to be recorded in writing.

Impartiality of trustees

21E.(1) Subject to the terms of the trust, where there is more than one beneficiary, or more than one purpose, or at least one beneficiary and at least one purpose, a trustee shall not execute the trust for the advantage of one at the expense of the other.

(2) Subsection (1) does not prejudice the exercise by the trustee of a discretion conferred by the terms of the trust.

Trust records

21.F(1) A trustee shall keep the following documents relating to the trust—

- (a) the trust deed and any other document that contains terms of the trust;
- (b) any variations made to the trust deed or the terms of the trust;
- (c) any records of trustee decisions made during the trustee's trusteeship;
- (d) any written contracts entered into during that trustee's trusteeship;
- (e) records of the trust property;
- (f) documents of appointment, removal, and discharge of

trustees (including any court orders appointing or removing trustees);

- (g) any letter or memorandum of wishes from the settlor;
- (h) any other documents necessary for the administration of the trust;
- (i) any documents referred to in paragraphs (a) to (i) that were kept by a former trustee during that person's trusteeship and passed on to the current trustee.

(2) The documents specified in subsection (1) shall be kept for the duration of the trustee's trusteeship.

(3) A trustee who contravenes this section commits an offence and is liable to a fine of forty thousand dollars.

Keeping trust records where there is more than one trustee

21G If there is more than one trustee of a trust –

- (a) each trustee shall hold the documents specified in section 21F(1)(a) and (b) or copies of those documents; and
- (b) the trustees shall ensure that at least one of the

trustees holds the other documents specified in section 21F and that those documents or copies of them will be made available to the other trustee or trustees on request.

Trustee's  
obligation to  
maintain  
financial records  
and prepare  
accounts

21H.(1) A trustee shall—

- (a) keep, or cause to be kept accurate records, including underlying documentation, relating to his trusteeship and the financial affairs of the trust; and
- (b) ensure that proper accounts are prepared and maintained.

(2) The financial records and accounts required to be kept under subsection (1) shall be—

- (a) sufficient to show and explain transactions in relation to the trust and the administration of the trust; and
- (b) retained for a minimum period of six years from the end of the financial period to which they relate.

(3) Records that must be kept under subsection (1) include underlying documentation such as invoices and contracts for the following—

- (a) all sums of money representing trust property that the trustee receives and expends;
- (b) items or matters for which the trustee receives or expends money that represents trust property;
- (c) all acquisitions and disposals of trust property;
- (d) all assignments of rights or assumption of liabilities by the trustees;
- (e) all transactions relating to the trust that affect the trust property and any liabilities attributable to the trust;
- (f) the trust property; and
- (g) liabilities attributable to the trust.

(4) A trustee who contravenes this section commits an offence and is liable to a fine of fifty thousand dollars.

Trustee must pass on documents

21I. At the time that the trusteeship of a trustee ends, if the trust continues, the trustee must give at least one replacement trustee or continuing trustee the documents that the trustee holds at that time.”.

Amendment of section 22

21. Section 22 of the principal Act is amended—

(a) by inserting after subsection (5), the following—

“(5A) A trustee who resigns in order to facilitate a breach of trust is liable for that breach as if he had not resigned.”; and



(b) by repealing subsection (6) and substituting the following—

“(6) A term of a trust is invalid to the extent that it purports to—

- (a) relieve a trustee from liability arising from his own fraud, self-dealing, wilful misconduct or gross negligence; or
- (b) grant a trustee an indemnity against the trust property in respect of any such liability.”.

22. Section 23 of the principal Act is amended by repealing subsection (1) and substituting the following— Amendment of section 23

“(1) Subject to subsection (2), where a person makes or receives any profit, gain or advantage from a breach of trust the person shall be deemed to be a trustee of that profit, gain, or advantage and of any property which represents it or is obtained by application of it unless the person derives or obtains it in good faith and without actual, constructive or implied notice of the breach of trust.”.

23. The principal Act is amended by inserting after section 6, the following— Insertion of section 27A

“Limitations of actions against a trustee

27A.(1) No period of limitation or prescription shall apply to an action brought against a trustee—

- (a) in respect of any fraud to which the trustee was a party or to which the trustee was privy; or
- (b) to recover from the trustee trust property, or the proceeds thereof—

- (i) in the trustee's possession;
- (ii) under the trustee's control; or
- (iii) previously received by the trustee and converted to his use.

(2) Where subsection (1) does not apply, the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is—

- (a) three years from the delivery of the final accounts of the trust to the beneficiary; or
- (b) three years from the date on which the beneficiary first has knowledge of the occurrence of a breach of trust,

whichever period begins to run first.

(3) Where the beneficiary is a minor or a person without legal capacity, the period referred to in subsection (2) shall not begin to run before the day on which the beneficiary ceases to be a minor or ceases to be a person without legal capacity or, in either case, dies.

(4) Where subsection (1) does not apply, the period within which an action founded on breach of trust may be brought—

- (a) against a trustee by an enforcer is three years from—
  - (i) the date of delivery of the final accounts to the enforcer; or
  - (ii) the date on which the enforcer first has knowledge of the breach of trust, whichever is earlier; or
- (b) against a former trustee by a trustee is three years from the date on which the former trustee ceased to be a trustee.

(5) Where subsection (1) does not apply, no action founded on breach of trust may in any event be brought against a trustee by any person after the expiry of the period of eighteen years following the occurrence of the breach.”.

24. Section 28 of the principal Act is amended in subsection (1)—
- (a) in paragraph (a), by deleting “, or if not so expressed”;
  - (b) by repealing paragraph (b) and substituting the following—
    - “(b) where the terms of the trust do not expressly designate a governing law, the law of the jurisdiction that may reasonably be implied from the terms of the trust as the law that is to govern the trust; or”;
  - (c) in paragraph (c), by inserting at the beginning of the paragraph “where a governing law is not expressly designated and cannot reasonably be implied,”.

Amendment of  
section 28

Repeal and substitution of section 29

25. The principal Act is amended by repealing section 29 and substituting the following—

“Change of proper law

29. (1) The terms of a trust may provide for the proper law of the trust or the proper law governing a severable aspect of the trust to be changed from the law of the State to the law of another jurisdiction.

(2) A change in the proper law of a trust is not valid unless the terms also provide that—

- (a) the change cannot invalidate any other terms of the trust, any purpose of the trust, and any interest of a beneficiary; and
- (b) the change is consistent with the intention of the settlor.

(3) A change in the proper law of a trust does not affect the legality or validity of, or render any person liable in respect of, anything done before the change.”.

Repeal and substitution of section 31

26. The principal Act is amended by repealing section 31 and substituting the following—

“Application of the law of the State

31. Subject to section 32, all questions arising in regard to a trust or in regard to any disposition of property to or upon such a trust including (without limitation) questions as to—

- (a) the capacity of any settlor;
- (b) any aspect of the validity, interpretation or effect of the trust or any variation or termination of the trust;

- (c) the validity or effect of any disposition of property to the trust or distribution of trust property;
- (d) the administration of the trust, whether the administration is conducted in the State or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and protectors and their appointment and removal;
- (e) 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 of such powers;
- (f) the exercise or purported exercise by a foreign court of any statutory or non-statutory power to vary the terms of the trust; or
- (g) the nature and extent of any beneficial rights or interests in the trust property,

are to be determined according to the laws of the State, without reference to the laws of any other jurisdictions.”.

27. Section 33 of the principal Act is amended—

- (a) in paragraph (a), by inserting “or” after the semi colon;
- (b) by repealing paragraph (b) and substituting the following—

Amendment of  
section 33

- “(b) the trust or disposition avoids or defeats rights, claims or interests conferred by any foreign law upon any person by reason of a personal relationship or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests.”; and
- (c) by repealing paragraphs (c) and (d).
- Amendment of section 35      28. Section 35 of the principal Act is amended—
- (a) in paragraph (c), by deleting “or” after the semi colon;
- (b) in paragraph (d), by deleting “registered under this Act.” and substituting “a registered trust; or”; and
- (c) by inserting after paragraph (d), the following—
- “(e) any trust property of the trust is situated in the State.”.
- Amendment of section 36      29. Section 36 of the principal Act is amended—
- (a) in subsection (1)—
- (i) by deleting paragraph (a) and substituting the following—
- “(a) the trust was established by duress, fraud, mistake, undue influence, misrepresentation or in breach of fiduciary duty.”;
- (ii) in paragraph (c), by deleting “(provided that, subject to the provisions of section 19, a charitable purpose shall be deemed always to be capable of performance)”; and
- (iii) in paragraph (d), by deleting “incapable under the laws then in force in the State of creating such a trust” and substituting “did not have the capacity to create the trust”;
- (b) in subsection (4), by deleting “for the settlor absolutely or, if the settlor is dead,” and substituting “for the person who provided the property in respect of which the trust is wholly or partially invalid absolutely or, if he is dead,”.

30. The principal Act is amended by repealing section 39 and substituting the following—

“Recognition and enforceability of foreign judgments

39. To the extent that it is inconsistent with section 33, a foreign judgment shall not be recognised or enforced or give rise to any estoppel, and both its recognition and its enforcement shall be regarded as contrary to the public policy of the State.”.

Repeal and substitution of section 39

31. The principal Act is amended by repealing sections 42 and 43.

Repeal of sections 42 and 43

32. The principal Act is amended by inserting after section 44, the following—

Insertion of section 44A

“Limitation of actions

44A.(1) If by virtue of a disposition made by or on behalf of a settlor his property becomes trust property and—

- (a) the settlor is an individual;
- (b) the settlor is not insolvent when the disposition is made; and
- (c) the settlor does not become insolvent by reason of the disposition,

that disposition shall not be voidable at the instance of any creditor of the settlor.

(2) In any proceedings in which the provisions of this section are to be applied, the burden of proof of the fact that a settlor was insolvent at the time a disposition was made, or became insolvent by reason of

making a disposition, shall be upon the person asserting that fact.

(3) Any action to prove that a settlor was insolvent at the time a disposition was made, or that he became insolvent by reason of a disposition, must be commenced no later than two years after the date of the disposition.”.

Repeal of  
sections 45 to 49  
Insertion of  
section 50A

33. The principal Act is amended by repealing sections 45 to 49.

34. The principal Act is amended by inserting after section 50, the following—

“Insolvency of  
settlor

50A. (1) If by virtue of a disposition made by or on behalf of a settlor his property becomes trust property which is the subject of a trust, the proper law of which is the law of the State, and—

- (a) the settlor is an individual;
- (b) the settlor is not insolvent when the disposition is made; and
- (c) the settlor does not become insolvent by reason of the disposition;

that disposition shall not be voidable at the instance of any creditor of the settlor.

(2) In any proceedings in which the provisions of this section are to be applied, the burden of proof of the fact that a settlor was insolvent at the time a disposition was made, or became insolvent by reason of



making a disposition, shall be upon the person asserting that fact.

(3) Any action to prove that a settlor was insolvent at the time a disposition was made, or that he became insolvent by reason of a disposition, must be commenced no later than four years after the date of the disposition.”.

35. Section 52 of the principal Act is repealed and the following substituted—
- |   |   |  |
|---|---|--|
| <p>“Trust may be registered under this Part</p> | <p>52. A trust may be registered under this Part.</p> | <p>Repeal and substitution of section 52</p> |
|---|---|--|
36. Section 53 of the principal Act is amended by deleting “Registrar of International Business Companies” and substituting “Registrar of Business Companies”.
- |   |  |                                |
|---|--|--------------------------------|
| <p>Registrar of International Business Companies”</p> | <p>Registrar of Business Companies”.</p> | <p>Amendment of section 53</p> |
|---|--|--------------------------------|
37. Section 54 of the principal Act is amended by deleting “, alone or in conjunction with Branch Registries of International Companies created under the International Business Companies Act. “Any such branch Register of Trusts shall operate under terms and conditions designed to ensure confidentiality to the contents of such register”.
- |  |  |                                |
|--|--|--------------------------------|
| <p>“, alone or in conjunction with Branch Registries of International Companies created under the International Business Companies Act. “Any such branch Register of Trusts shall operate under terms and conditions designed to ensure confidentiality to the contents of such register”.</p> | <p>“, alone or in conjunction with Branch Registries of International Companies created under the International Business Companies Act. “Any such branch Register of Trusts shall operate under terms and conditions designed to ensure confidentiality to the contents of such register”.</p> | <p>Amendment of section 54</p> |
|--|--|--------------------------------|
38. Section 55 of the principal Act is amended—
- |  |  |                                |
|--|--|--------------------------------|
| <p>(a) in subsection (5), by deleting from “Any such appeal” to the end of the subsection;</p> | <p>(b) by inserting after subsection (5), the following—</p> | <p>Amendment of section 55</p> |
|--|--|--------------------------------|
- “(6) An appeal under subsection (5) shall be by notice in writing and shall set out the legal and factual basis for the request that the decision of the Registrar of Trusts be set aside.
- (7) The Authority shall determine the appeal and give written notice of its decision to the Registrar of Trusts and the registered trustee no later than four weeks after the date on which it received written notice of the appeal.

(8) The determination by the Authority of an appeal under this section shall not be subject to further appeal except as provided in section 61.”.

Amendment of section 55B      39. Section 55B of the principal Act is amended in the preamble to paragraphs (a) and (b), by inserting before “require”, the word “may”.

Amendment of section 56      40. Section 56 of the principal Act is amended—  
(a) by repealing subsection (1) and substituting the following—

“(1) The Registrar of Trusts shall not register a trust under this Part unless the Registered Trustee provides written confirmation that, to the best of his knowledge and belief—

(a) the trust is valid and enforceable in accordance with this Act; and

(b) on the basis of written representations made to him by the settlor, that the settlor was solvent at the time of settlement of the trust, that neither the settlement nor any subsequent transfer or disposition to the trust will render the settlor insolvent and that no such transfer or disposition has or will be made with the principal intent to defraud his creditors.”; and

(b) by repealing subsection (2).

Repeal of section 57      41. The principal Act is amended by repealing section 57.

Amendment of section 60      42. Section 60 of the principal Act is amended—  
(a) in subsection (1), by repealing paragraph (c) and substituting the following—

“(c) that the trust is valid and enforceable in accordance with this Act;” and

(b) in subsection (2)—

- (i) by deleting “shall gazette” and substituting “shall cancel”; and
- (ii) in paragraph (d), by deleting “to be qualified as an international trust under the requirements of this Act” and substituting “to be valid and enforceable in accordance with this Act”

43. Section 61 of the principal Act is amended by repealing subsection (3) and substituting the following— Amendment of section 61

“(3) The burden of proving that the cancellation of the registration of a trust was not justified lies with the trustee who shall be the appellant in the name of the trust.”.

44. Part XIII of the principal Act is repealed and the following substituted— Amendment of Part XIII

“PART XIII”

*Exemptions*

- “Exemptions
62. (1) No estate, inheritance, succession, gift tax, duty, levy or other charge is payable by non-resident beneficiaries of the trust with respect to any income or assets of a trust registered under this Act.
- (2) Any trust which is duly registered as of the effective date of this Act shall be deemed to be exempted under this Part so long as it shall remain registered as provided in this Act.
- (3) The exemptions provided in this section shall be available to any trust which is registered, and registration of the trust as provided in this Act shall create a rebuttable presumption and *prima facie* evidence of such exemption.
- (4) Any registered trust may transfer its funds or other assets to a

business company registered under the Business Companies Act.

(5) Notwithstanding anything contained in any other law, every transfer which falls under subsection (5) shall be exempt from duty under this section.”.

Repeal of section 63  
Repeal and substitution of section 64

45. The principal Act is amended by repealing section 63.

46. Section 64 of the principal Act is repealed and the following substituted—

64. Subject to the terms of the trust, any other Act requiring disclosure or any order of the court, a trustee is not obliged to disclose to any person, any document which—

- (a) discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred or imposed upon him;
- (b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reasons shall or might have been based;
- (c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty; or
- (d) relates to or forms part of the accounts of the trust, unless, in a case to which paragraph (d) applies, that person is a beneficiary under the trust not being a charity, or a charity which

“Trustee may refuse to make a disclosure

is referred to by name in the terms of the trust as a beneficiary under the trust or the enforcer in relation to any purpose trust.”.

47. The principal Act is amended by repealing section 65.

Repeal of section 65

48. The principal Act is amended by inserting after section 66, the following—

Insertion of section 66A

66A. (1) Subject to subsection (2), this Act shall continue to apply up to 30 June 2021 to a trust registered under this Act before 1 January 2019 as if the provisions of this Act have not been amended on the commencement of this section.

(2) Notwithstanding subsection (1), the provisions of this Act as amended on the commencement of this section shall apply to —

Preservation of existing law for trust registered before 1 January 2019

(a) intellectual property assets acquired or newly created by a trust on or after 1 January 2019; and

(b) income derived from —

(i) the intellectual property assets referred to in paragraph (a);

(ii) specific assets acquired by a trust on or after 1 January 2019; or

(iii) specific projects commenced by a trust on or after 1 January 2019.

(3) In this section, “intellectual property asset” means an intellectual property right including a copyright, a design right, patent and trademark and includes technical know-how, service marks, brand or image rights, or performers rights.”.

Passed in the House of Assembly this 27th day of December, 2018.

**NICOLE HERBERT**

Clerk of the House of Assembly.

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