

THE ANTIGUA AND BARBUDA INTERNATIONAL EXEMPT TRUST ACT, 2004

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ANTIGUA AND BARBUDA
NO. OF 2004
BILL FOR

AN ACT to provide for the law relating to international trusts and other incidental and connected matter.

[]

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Antigua and Barbuda International Exempt Trust Act, 2004.

Definition and Interpretation

2. In this Act unless the context otherwise requires -

“bankrupt,” in relation to a corporation, includes a corporation which 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;

“Board” means the Board established under Section 316 of the Antigua and Barbuda International Business Corporation Act, Cap. 222 or other Act replacing the same;

“breach of trust” means a breach of any duty imposed on a trustee by this Act or by the terms of the international trust;

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

“Court” means the High Court of Antigua and Barbuda;

“creditor” means a person to whom an obligation is owed;

“foreign trust” means a trust which provides for the law of a jurisdiction other than Antigua and Barbuda to be the governing law of all aspects of that trust;

“formalities” in relation to a disposition of property means documentary and 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 formalities required by reason that the party effecting the disposition is not of full age, is subject to mental or bodily infirmity or is a corporation;

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

“the Gazette” means the Official Gazette of Antigua and Barbuda;

“governing law” means the law governing a trust registered in Antigua and Barbuda or elsewhere;

“heirship rights” means any right, claim or interest in, against or to property of a person arising or accruing in consequence of that person’s death, other than any such right, claim or interest created by will or other voluntary disposition 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 assurances;

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

“interest” in relation to a beneficiary, means his interest under an international trust;

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

- (a) at least one of the trustees is either:
 - (i) a corporation incorporated under the Antigua and Barbuda International Business Corporation Act, Cap. 222; or
 - (ii) a licensed trust company doing business in Antigua and Barbuda;
- (b) the settlor and beneficiaries are at all times non-resident; and
- (c) the trust property does not include any land situated in Antigua and Barbuda;

“Minister” means the Minister for the time being charged with the responsibility of finance in the Antigua and Barbuda;

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

“non-resident” means

- (a) an individual not domiciled in Antigua and Barbuda;
- (b) an individual not ordinarily resident in Antigua and Barbuda;
- (c) a corporation incorporated under the Antigua and Barbuda International Business Corporation Act, Cap. 222; or
- (d) a limited liability company;

“person” means a natural person or a body corporate;

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

- (a) one is the child of the other, natural or adopted (whether or not the adoption is recognised by law), legitimate or illegitimate; or
- (b) one is married to the other (whether or not the marriage is recognised by law); or
- (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 parent 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;

“profit” includes gain or advantage;

“property” -

- (a) means property of any description, wherever situated, including any share therein, but excluding any land in Antigua and Barbuda,
- (b) in relation to rights and interest, includes rights and interests whether vested, contingent, defeasible or future;

“protector” in relation to a trust means a person who is the holder of a power which when invoked is capable of directing a trustee in matters relating to the trust and in respect of which matters the trustee has discretion and includes a person who is the holder of a power of appointment or dismissal of trustees;

“provisions of this Act” includes the provisions of any Order hereunder;

“registrar” means the person appointed by the Board who will perform the duties of registrar under this Act;

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

“settlor” means a person who provides trust property or makes a testamentary disposition on trust or to a trust;

“terms of a trust” means the terms of an international trust, and other terms applicable under its proper law;

“Trust” where a person (known as “a trustee”) holds or has vested in him, property which does not form, or which has ceased to form part of his own estate

- (a) for the benefit of any person (known as “a beneficiary”) whether or not yet ascertained or in existence; or
- (b) for any valid charitable or non-charitable purpose which is not for the benefit only of the trustee; or
- (c) for such benefit as is mentioned in sub-paragraph (a) and also for any such purpose as is mentioned in sub-paragraph (b).

“trustee” has the meaning given above and includes a corporate trustee;

"Trustee Company" means a company incorporated under the provisions of the International Business Corporation Act, Cap. 222. However a Company, which is not also licensed as a Trust Company under the provisions of the International Business Corporation Act, Cap. 222, may act as a trustee for no more than three trusts.

“trust property” means property held on trust.

Validity of international trusts

- 3.(1)** An international trust registered under this Act shall be valid and enforceable notwithstanding that it may be invalid according to the law of the settlor’s domicile or residence or place of current incorporation.
- (2)** An international trust shall be invalid and unenforceable to the extent that -
- (a)* it purports to do anything contrary to the laws of Antigua and Barbuda; or
 - (b)* it purports to confer any right or power or impose any obligation the exercise of which or the carrying out of which is contrary to the laws of Antigua and Barbuda;
 - (c)* the trust assets, or any part thereof, are the proceeds of a crime for which the settlor is convicted.

Proper law of international trusts

- 4.(1)** Subject to sub-section (4) below, the proper law of an international trust shall be -
- (a)* the law expressed by the terms of the trust or intended by the settlor to be the proper law;
 - (b)* if no such law is expressed or intended, the law with which the international trust has its closest connection at the time of its creation;
 - (c)* if the law expressed by the terms of the trust or intended by the settlor to be the proper law, or the law with which the international trust has its closest connection at the time of its creation, does not provide for international trusts or the category of international trust involved then the proper law of the international trust shall be the law of Antigua and Barbuda.
- (2)** In ascertaining the law with which an international trust has its closest connection, reference shall be made in particular to -
- (a)* the place of administration of the trust designated by the settlor;
 - (b)* the status of the assets of the trust;
 - (c)* the place of residence or business of the trustee;
 - (d)* the objects of the trust and the places where they are to be fulfilled.
- (3)** The terms of an international trust may provide for a severable aspect of the trust (particularly the administration of the trust) to be governed by a different law from the proper law of the trust.

(4) The terms of an international trust may provide for the proper law of the trust or the law governing a severable aspect of the trust to be changed from the law of one jurisdiction to the law of another jurisdiction.

(5) Where the proper law of an international trust or the law governing a severable aspect of an international trust is changed from the law of another jurisdiction (here called “the old law”) to the law of Antigua and Barbuda no provision of the old law shall operate so as to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the law of Antigua and Barbuda.

(6) Where the proper law of an international trust or the law governing a severable aspect of an international trust is changed from the law of Antigua and Barbuda to the law of another jurisdiction (here called “the new law”) no provision of the law of Antigua and Barbuda shall operate so as to render void, invalid or unlawful any functions conferred on the trustee under the new law.

Maximum duration of international trusts and of accumulation of income

5.(1) Subject to sub-section (2), the maximum duration of an international trust shall be two hundred years from the date of its creation and an international trust shall terminate the two hundredth anniversary of the date of its creation unless it is terminated sooner.

(2) An international trust established for a charitable purpose or purposes may have a duration exceeding two hundred years.

(3) The rule of law known as the rule against perpetuities shall not apply to an international trust to which this section applies.

(4) The terms of an international 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.

**PART 2 – PROTECTIVE OR SPENDTHRIFT, CHARITABLE AND NON-CHARITABLE
INTERNATIONAL TRUSTS**

Protective or Spendthrift trusts

6.(1) The terms of an international trust may make the interest of a beneficiary -

- (a)* subject to termination;
- (b)* 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; or
- (c)* subject to a restriction on alienation of or dealing in that interest;

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

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

- (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 such shares) as the trustee in his absolute discretion shall appoint
 - (i)** the beneficiary or any spouse or child of the beneficiary; or
 - (ii)** if there is no such spouse or child the beneficiary and the persons who would be entitled to the estate of the beneficiary if he had then died intestate and domiciled in Antigua and Barbuda.

(3) In sub-section (2) above a “determining event” shall mean the occurrence of any event or any act or omission on the part of the beneficiary (other than the giving of consent to an advancement of trust property) which would result in the trust becoming payable to any person other than the beneficiary.

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

Charitable trusts

7.(1) For the purposes of this Act and subject to sub-sections (2) and (3) below, the following purposes shall be regarded as charitable.

- (a)* the relief of poverty;
- (b)* the advancement of education;
- (c)* the advancement of religion;
- (d)* the protection of the environment;

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

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

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

Trusts for non-charitable purposes

8.(1) An international trust may be created for a purpose which is non-charitable provided that -

- (a) the purpose is specific, reasonable, and capable of fulfillment;
- (b) the purpose is not immoral, unlawful or contrary to the public policy of Antigua and Barbuda; 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 protector.

(2) If the Minister has reason to believe that there is no protector of an international trust for a non-charitable purpose or the protector is unwillingly or incapable of acting, he may appoint a person to be protector of the trust and such person shall from the date of appointment exercise the functions of the trust.

Protector of a trust

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

(2) The protector shall have the following powers -

- (a) (unless the terms of the trust shall otherwise provide) the power to remove a trustee and appoint a new or additional trustee;
- (b) such further powers as are conferred on the protector by the terms of the trust or by this Act.

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

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

(5) Subject to the terms of the international trust, 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 a majority of the protectors for the time being agree on its exercise.

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

PART 3 - TERMINATION OR FAILURE OF INTERNATIONAL TRUSTS

Failure or lapse of interest

10.(1) Subject to the terms of the international 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) Sub-section (1) shall not apply to an international trust established for a charitable purpose to which section 11 applies.

Failure of charitable trusts

11.(1) Where international 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 purpose was laid down by reference to an area which was then, but has since ceased to be, a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason ceased to be suitable or to be practicable in administering the gift;
- (e)* the purpose has been adequately provided for by other means;
- (f)* the purpose has ceased to be charitable (by being useless or harmful to the community or otherwise);
- (g)* the property and other property applicable for a similar purpose, can be more effectively used in conjunction, and to that end can more suitably be applied to a common purpose; or
- (h)* the purpose has ceased in any other way to provide a suitable and effective 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 trustee, may declare to be consistent with the original intention of the settlor.

(2) Where international trust property is held for a charitable purpose, the Court, on the application of the trustee, may approve any arrangement which varies or revokes the 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 sub-section (1) above or approve an arrangement under sub-section (2) unless satisfied that any person with a material interest in the trust has had an opportunity of being heard.

Termination of international trust

12.(1) On the termination of an international trust the trust property shall, subject to sub-section (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 a reasonable provision for liabilities (existing, future, contingent or other).

Termination by beneficiaries

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

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

PART 4 - BREACH OF TRUST

Liability for breach of trust

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

- (a)* any loss or depreciation in value of the trust property resulting from the breach; and
- (b)* any profit which would have accrued to the trust had there been no breach.

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

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

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

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

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

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

Constructive trusts

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

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

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

Tracing trust property

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

17.(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) Sub-section (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
- (c)* is improperly induced by the trustee to act under subsection (1).

Power to relieve trustee from personal liability

18. 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

19. 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 his interest by way of indemnity to the trustee or any person claiming through him.

PART 5 - POWERS OF THE COURT

Jurisdiction of the Court

- 20.** The Court has jurisdiction in respect of any matters concerning an international trust where -
- (a) the proper law of the trust is the law of Antigua and Barbuda;
 - (b) a trustee of the trust is resident in Antigua and Barbuda;
 - (c) any part of the administration of the trust is carried on in Antigua and Barbuda.

General powers of the Court

21.(1) On the application of a trustee, a beneficiary, a settlor or his personal representatives, a protector, 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 of any power by a trustee, the appointment, remuneration or conduct of a trustee, the keeping or submission of account, and the making of payment, whether into Court or otherwise;
 - (iii) a protector, including an order appointing a protector;
 - (iv) a beneficiary, or any person connected with a trust;
 - (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 of 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;
 - (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;
 - (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.

Courts determination of validity

22.(1) The Court may declare an international trust to be invalid if -

- (a)* the trust was established by duress, mistake, undue influence or misrepresentation; or
- (b)* the trust is immoral or contrary to the public policy of Antigua and Barbuda; or
- (c)* the terms of the trust are so uncertain that its performance is rendered impossible (provided that a charitable purpose shall be deemed always to be capable of performance); or
- (d)* the settlor was, at the time of its creation, incapable under the law in force in Antigua and Barbuda of creating such a trust.

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

- (a)* if those purposes cannot be separated or the terms cannot be separated, the trust is invalid;
- (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 which are valid and the purposes which are lawful.

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

(4) Property 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 death.

(5) In determining the existence and validity of an international trust registered under this Act the Court shall apply -

- (a)* the provisions of this Act;
- (b)* any other law of Antigua and Barbuda; and
- (c)* any other law which may be applied;

if to do so would validate the trust.

Avoidance of fraud

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

- (a) was so settled established or disposed by or on behalf of the settlor with principal intent to defraud that creditor of the settlor; and
- (b) did at the time such settlement establishment or disposition took place render the settlor insolvent or without property by which that creditor's claim (if successful) could have been satisfied,

then such settlement, establishment or disposition shall not be void or voidable and the international trust shall be liable to satisfy the creditor's claim and such liability shall only be to the extent of the interest that the settlor had in the property prior to settlement, establishment or disposition and any other accumulation to the property (if any) subsequent thereto.

(2) In determining whether a trust, settled or established or a disposition, has rendered the settlor insolvent or without property by which a creditor's claim (if successful) may be satisfied, regard shall be had to the fair market value of the settlor's property, (not being property of or relating to the trust) at the time immediately after the settlement, establishment or the disposition referred to in sub-section (1)(b) and in the event that the fair market value of such property exceeded the value of the creditor's claim, at that time, after the settlement, establishment or disposition, then the trust so settled or established or the disposition shall for the purposes of this Act be deemed not to have been so settled or established or the property disposed of with intent to defraud the creditor.

(3) A trust settled or established and a disposition to such trust shall not be fraudulent as against a creditor of a settlor -

- (a) if settled, established or the disposition takes place after the expiration of two years from the date that such creditor's cause of action accrued; or
- (b) where settled, established or the disposition takes place before the expiration of two years from the date that the creditor's cause of action accrued, that creditor fails to commence such action before the expiration of one year from the date such settlement establishment or disposition took place.

(4) A trust settled or established and a disposition of property to such trust shall not be fraudulent as against a creditor of a settlor if the settlement, establishment or disposition of property took place before that creditor's cause of action against the settlor accrued or had arisen.

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

- (a) has settled or established a trust or has disposed of property to such trust within two years from the date of that creditor's cause of action accruing;
- (b) has retained, possesses or acquires any of the powers or benefits referred to in paragraphs (a) to (f) of section 46;
- (c) is a beneficiary.

(6) Where a trust is liable to satisfy a creditor's claim in the manner provided for in sub-section (1), that creditor's rights to recovery shall be limited to the property referred to in subsection (1), or to the proceeds of that property, to the exclusion of any claim, right or action against any trustee or any other property of the trust.

(7) For the purpose of this section the onus of proof of the settlor's intent to defraud the creditor lies on the creditor.

(8) For the purpose of this section -

- (a)* the date of the cause of action accruing shall be, the date of that act or omission which shall be relied upon to either partly or wholly establish the cause of action, and if there is more than one act or the omission shall be a continuing one, the date of the first act or that date that the omission shall have first occurred, as the case may be, shall be the date that the cause of action shall have accrued;
- (b)* the term “cause of action” means the earliest cause of action capable of assertion by a creditor against the settlor of a trust or, as the case may be, against the settlor of property upon a trust by which that creditor has established (or may establish) an enforceable claim against that settlor;
- (c)* the entry of judgment in any proceeding shall not constitute a separate cause of action.

(9) The provisions of this section shall apply to all actions and proceedings brought in any court, however described, against any person (whether a party to the proceedings or not) with regard to the settlement or establishment of an international trust or the disposition of property to such a trust, or receipt of property by or for such a trust and the remedy conferred by sub-section (1) shall be the sole remedy available in such an action or proceeding to the exclusion of any other relief or remedy against any party to the action or proceeding.

(10) Failure by a creditor to present all claims arising out of any controversy and join all parties with a material interest shall prevent that creditor from presenting such claims and bringing an action against such parties in a subsequent proceeding.

(11) For the purposes of this section the term “creditor” means a creditor of the settlor, including a judgment creditor and an assignee from such creditor of any claim and includes any person who alleges a cause or action against a settlor.

Saving of certain rights

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

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

Extent of invalidity

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

No validation of property not vested in settlor

26.(1) Nothing in this Act shall validate any disposition of property which is neither owned by the settlor nor the subject of a power in that behalf vested in the settlor.

(2) This Act shall not affect the recognition of any foreign laws in determining whether the settlor is the owner of such property or the holder of such power referred to in sub-section (1) of this section.

Foreign judgment not enforceable

27. Notwithstanding the provisions of any treaty or convention; the provisions of any statute; any rule of law, or equity, to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgment obtained in a jurisdiction other than Antigua and Barbuda against -

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

shall be entertained by any Court in Antigua and Barbuda if -

- (i)** that judgment is based upon the application of any law inconsistent with the provisions of this Act; or
- (ii)** that judgment relates to a matter or particular aspect that is governed by the laws of Antigua and Barbuda.

Exclusion of foreign laws

28. No international trust governed by this Act and no disposition of property to be held upon the trust shall be declared 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 recognize the concept of a trust either in part or in whole; or
- (b)* the international trust or disposition avoids or defeats rights, claims or interests conferred by the law of a foreign jurisdiction upon any person or, contravenes any rules, law, judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interest; or
- (c)* the laws of Antigua and Barbuda or the provisions of this Act are inconsistent with any foreign law.

Applications for directions

29. 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

30. The Court may order the cost 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 6 - TRUSTEES, PROTECTORS AND BENEFICIARIES

Beneficiaries of trusts

31.(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 of a person as a beneficiary or the exclusion of a beneficiary from benefit.

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

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

Disclaimer of beneficial interest

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

(2) A disclaimer shall be in writing and subject to the terms of the trust, may be temporary and may, if the disclaimer so provides be revoked in the manner and circumstances described or referred to therein.

(3) A disclaimer is not effective until received by a trustee.

Number of trustees

33.(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 by reason only that there is no trustee or fewer than the number of trustees required by the terms of the trust.

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

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

- (a)* the number of trustees shall not be more than four; and
- (b)* if at any time there are more than four persons named as trustees, only the first four persons so named shall be the trustees of the trust.

Appointment of new or additional trustees

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

- (a)* the protector (if any); or
- (b)* the trustees for the time being (but so that a trustee shall not be required to join in the appointment of his successor); or
- (c)* the last remaining trustee; or
- (d)* the personal representative or the liquidator of the last remaining trustee; or
- (e)* if there is no such person (or no such person willing to act), 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) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the Court.

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

Corporate trustees

35. A corporate trustee may -

- (a)* act in connection with a trust by resolution of the corporate trustee 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.

PART 7 - REGISTRATION OF INTERNATIONAL TRUSTS

Registration of trusts

- 36.(1)** The registrar shall maintain a register of international trusts.
- (2)** Where a trust provides for the law of Antigua and Barbuda to be the governing law of all or any aspects of that trust an application for entry on the register as an international trust shall be made to the registrar within 45 days of the date on which the trust is created, settled or established.
- (3)** Where a trust provides for the law of a jurisdiction other than Antigua and Barbuda to be the governing law of all aspects of that trust and the governing law of all or any aspects of the trust is changed to the law of Antigua and Barbuda, an application for entry on the register as an international trust shall be made to the registrar within 45 days of the date on which the governing law is changed.
- (4)** An application for entry on the register of international trusts shall be made in the manner and form prescribed by the registrar.
- (5)** An application under sub-section (4) shall be accompanied by:-
- (a)** the prescribed fee;
 - (b)** notice of the name and registered office of the trust;
 - (c)** a certificate from a trustee company, a barrister, a solicitor or an attorney at law certifying:
 - (i)** that the trust upon registration will be an international trust;
 - (ii)** the date on which the trust was created, settled or established; and
 - (iii)** in the case of a foreign trust, the law under which the trust was settled and the date on which the trust was amended to provide for the law of Antigua and Barbuda to be the governing law of all or any aspects of that trust.
- (6)** On the application of a trustee company, a barrister, a solicitor or an attorney at law, the registrar may, if satisfied that there is good reason for any delay in registration, extend the period of 45 days mentioned in sub-section (2) or (3) of this section.
- (7)** The registrar shall, on receipt of the prescribed fee, the notice and certificate required under sub-section (5) -
- (a)** enter on the appropriate register the name of the trust, the date of creation, settlement or establishment of the trust and the address of the registered office of the trust and in the case of a foreign trust, the date on which the trust was amended to provide for the law of Antigua and Barbuda to be the governing law of all or any aspects of that trust;
 - (b)** issue a certificate of registration in the prescribed form.
- (8)** A certificate of registration under the hand and seal of the registrar shall be conclusive evidence that all the requirements of this Act in respect of registration have been complied with.

Annual certificate of registration

37.(1) A Certificate of registration issued in accordance with section 36 shall be valid and effective for a period of one year from the date of registration specified in that certificate.

(2) An application for renewal of registration shall be made by -

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

(b) payment of the prescribed fee.

(3) An application for renewal of registration shall be made not later than 90 days after the date of expiry of the last certificate of registration and no application for renewal of registration shall be granted unless such application is in accordance with sub-section (2) hereof.

(4) On the application of a trustee company, a barrister, solicitor or attorney at law, the registrar may, if satisfied that there is good reason for any delay in renewal, extend the period of 90 days mentioned in sub-section (3) of this section.

(5) Every renewal of registration shall take effect from the date of expiry of the last certificate of registration.

(6) Every renewal of registration shall be for a period of one year from the date of expiry of the last certificate of registration.

(7) The provisions of this Act shall cease to apply to any trust that fails to renew its registration in accordance with this section.

Notification of termination

38. Where an international trust which 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 cancel the certificate of registration.

Inspection of register

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

Minister may vary fees

40. The Minister may, on recommendation by the Board, vary the fees payable under this Act, by Order published in the Gazette.

Registered office

41.(1) The registered office of an international trust shall be the office of the trust company or corporation which is a trustee.

(2) The address for service of any documents upon an international trust shall be the registered office of that trust.

PART 8 - EXEMPTION FROM TAXES

Exemption from taxes and duties

42. Notwithstanding any provision to the contrary in any enactment, a trust registered under this Act shall be exempt from -

- (a) all income tax;
- (b) all estate, inheritance, succession and gift tax payable with respect to the trust property by reason of any death;
- (c) stamp duty with respect to all instruments relating to the trust property or to transactions carried out by the trustee on behalf of the trust;
- (d) all exchange controls.

PART 9 - MISCELLANEOUS

Commencement of proceedings

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

- (a) to set aside the settlement of an international trust;
- (b) to set aside any disposition to any international trust; or
- (c) against a trustee or trustees for breach of trust

shall be commenced, unless such action or proceeding is commenced in the Court before the expiration of two years from -

- (d) the date of the settlement of the international trust that is sought to be set aside;
- (e) the disposition to the international trust that is sought to be set aside; or
- (f) the breach of trust by the trustee or trustees;

as the case may be.

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

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

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

(3) No action or proceeding to which sub-sections (1) or (2) of this section or to which section 23 shall apply, whether substantive or interlocutory in nature, shall be determined and no order shall be made, or granted by the Court (including any injunction that shall have the effect of preventing the exercise of, or restoring to a person any rights, duties, obligations or power or preserving, granting custody of, detaining or inspecting any property) unless, the applicant shall first satisfy the Court by affidavit, that -

- (a)* the action or proceeding has been commenced in accordance with sub-sections (1) or (2) of this section;
- (b)* where the action or proceeding shall allege fraud or be founded upon some other action or proceeding alleging fraud, the determination or order sought would not be contrary to the provisions of section 23; and
- (c)* that the requirements of section 52 have been fulfilled.

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

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

(5) The provisions of this section shall apply to every trust expressed to be governed by the law of Antigua and Barbuda and, in the event that a foreign trust shall change the law by which it is governed to that of Antigua and Barbuda, then every proceeding after the change in registration –

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

shall be commenced subject to sub-sections (1) and (2) and every determination and order shall be made subject to sub-section (3) as if upon the date that such settlement or disposition was made the trust was registered as an international trust governed by the law of Antigua and Barbuda.

Investments

44.(1) A trustee shall not invest any of the trust funds other than in securities, assets, or property authorised expressly or by necessary implication for the investment of the trust funds by and under the instrument by which the trust is established or created.

(2) Where the instrument by which the trust is created or established authorises expressly or by necessary implication the investment of the trust funds in any investments authorised by the laws of Antigua and Barbuda for the investment of trust funds the instrument shall be deemed to authorise investment as expressed in the Schedule to this Act.

Bankruptcy

45. Notwithstanding any provision of the law of the settlor's domicile or place of ordinary residence of the settlor's current place of incorporation and notwithstanding further that an international trust is voluntary and without valuable consideration being given for the same or is made for the benefit of the settlor's spouse or children, an international trust shall not be void or voidable in the event of the settlor's bankruptcy, insolvency of liquidation (other than in the case of an international company registered pursuant to the Antigua and Barbuda Business Corporation Act, Cap. 222 or other Act replacing the same, that is in liquidation) or in any action or proceeding at the suit of creditors of the settlor, but shall remain valid and subsisting and take effect according to its tenor subject to sections 22 and 23 of this Act.

Retention of control by settlor

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

- (a)* retains, possesses or acquires power to revoke the trust;
- (b)* retains, possesses or acquires power to amend the trust;
- (c)* retains, possesses or acquires any benefit, interest or property from the trust;
- (d)* retains, possesses or acquires the power to remove or appoint a trustee or protector;
- (e)* retains, possesses or acquires the power to direct a trustee or protector on any matter;
- (f)* is the beneficiary of the trust solely or together with others.

Personal Relationship or Heirship Rights

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

Translations

48.(1) Every document filed with the Registrar and not in English shall be accompanied by a certified translation.

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

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

Immunity from suit

49. No action shall be against the Government of Antigua and Barbuda, any statutory body or authority or a public or judicial officer in respect of any act or failure to act in accordance with the provisions of this Act.

Prohibition by the Board

50.(1) The Board may -

- (a)* prohibit the registration of an international trust;
- (b)* direct any international trust to cease carrying on its business or any part of its business immediately or within such time as may be specified by the Board;
- (c)* direct the Registrar to remove a trust from any register.

(2) A decision made under this section may be revoked or varied at any time by the Board.

Advisory bodies

51.(1) The Board may advise the Minister on matters affecting the offshore financial sector in Antigua and Barbuda either by virtue of this Act or the International Business Corporation Act, Cap. 222.

(2) It shall be the duty of the Board to advise the Minister on any matter which is referred to it by the Minister.

Payment to Court registry

52. Every creditor before bringing any action or proceeding against any trust property governed by this Act shall first deposit with the Court registry the sum of \$25,000.00, for securing the payment of all costs as may become payable by the creditor in the event of his not succeeding in such action or proceeding against the trust property.

Community property

53.(1) Where a husband and wife transfer property to an international trust or a trust that subsequently becomes an international trust and, immediately before being transferred, such property or any part of any accumulation thereto is, pursuant to the law of its location or the law either of the transferors' domicile or residence, determined to be community property, then notwithstanding such transfer and except where the provisions of the trust deed may provide to the contrary, that property and any accumulation thereto shall, for the purpose of giving effect to that law, be deemed to be community property and be dealt with in a manner consistent with that law but in every other respect shall be dealt with in accordance with the trust deed and the governing law of that deed.

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

Confidentiality

54. (1) Except where the provisions of this Act require, and subject to this section, or pursuant to an order of a court of competent jurisdiction in Antigua and Barbuda, it shall be an offence under this Act for a person to divulge or communicate to any other person information relating to the establishment, constitution, business undertaking or affairs of an international trust.

(2) All judicial proceedings other than criminal proceedings relating to an international trust shall, unless ordered otherwise be heard in camera and no details of the proceedings shall be published by any person except in accordance with subsection (3).

(3) Every decision of the Court in respect of any proceedings concerning the application or interpretation of this Act shall be published or reported for the purposes of affording a record of this proceedings, provided that in every case –

- (a) the written decision of the Court shall be edited to such extent as shall be necessary to preserve secrecy in respect of the identity of the trust, or every interested party and of the subject matter of the proceedings; and
- (b) no such decision shall be reported or published unless or until a judge of the Court shall have ascertained the views of the parties to the proceedings as to the adequacy of any editing undertaken, and certified in writing to the Registrar of the Court that the decision as edited may be released for publication or reporting.

(4) Unless excluded by the terms of a trust instrument, a trustee or an officer or employee of a trustee or trustee company may divulge or make available information relating to the establishment, constitution, business undertakings or affairs of an international trust –

- (a) to any person or class of persons as that trustee, officer or employee considers necessary from time to time, in its complete discretion, for carrying out the management and administration of the trust assets in the ordinary course of business; or
- (b) to a legal practitioner –
 - (i) for the purpose of obtaining legal advice relating to establishment, constitution, business undertakings or affairs of an international trust; or
 - (ii) for the purpose of prosecuting or defending any litigation relating to the establishment, constitution, business undertakings or affairs of an international trust.

Statute of Elizabeth

55 The enactment titled 13 Elizabeth 1 Ch 5 (1571) shall have no application to any international trust that is governed by this Act nor any provision thereof nor to any transfer into such trust.

Execution of Trust Instrument

56 Notwithstanding any rule of law or equity to the contrary and except where there is express provision to the contrary contained in the trust instrument, a trust instrument and any counterpart thereof (whether an original or copy including a facsimile copy) may be executed by the settlor, trustee and any other parties thereto at different times and in different places whether within or outside of Antigua and Barbuda and a trust instrument so executed and a trust thereby created established or settled whether registered before or after the coming into force of this Act shall be as valid as if the trust instrument were executed by the settlor and those parties simultaneously at the time the trust instrument was executed by the settlor, and at a place within Antigua and Barbuda.

Regulations

57.(1) The Minister may, upon the recommendation of the Board-

- (a) make regulations for the better carrying out of the provisions of this Act,
- (b) prescribe all fees under this Act, and
- (c) prescribe anything else necessary for carrying out the provisions of this Act.

SCHEDULE

SECTION 44

AUTHORISED TRUSTEE INVESTMENTS

1. The following shall be regarded as authorised investments:
 - (a) securities issued by, or the payment of interest on which is guaranteed by, the Antigua and Barbuda;
 - (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;
 - (iii) the government of any territory within the Commonwealth;
 - (iv) the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Eastern Caribbean Central Bank, the European Economic Community, 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 registered under the Companies Act (Cap. 1995) that is a licensed financial institution within the meaning of Antigua and Barbuda's Banking Act.
 - (d) debentures issued by a quoted company;
 - (e) quoted shares.

2. In this Schedule, unless the context otherwise requires, the following expressions have the following meanings: -

“approved stock exchange” means The International Stock Exchange of the United Kingdom and Republic of Ireland Limited (including the Unlisted Security Market of the International Stock Exchange), 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, the Hang Seng Index, the Nikkei Average, the Eastern Caribbean Stock Exchange or any other stock exchange approved by the Minister;

“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 shares” means shares quoted on an approved stock exchange;

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

“shares” include stock.