THE TRUSTS ACT 2001

Act No. 14 of 2001

I assent

CASSAM UTEEM
President of the Republic

6th July 2001

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An Act

To amend and consolidate the law relating to trusts and trustees, and to provide for ancillary and consequential matters.

ENACTED by the Parliament of Mauritius, as follows –

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Trusts Act 2001.

2. Interpretation

In this Act-

"Beneficiary" means a person, whether natural or corporate, entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised;

"Body corporate" means a company, société or association wherever incorporated;

"Breach of trust" means a breach of any duty imposed on a trustee by this Act or by the terms of the trust;

“Charitable trust" means a trust referred to in section 20;

"Code" means the Code Civil Mauricien;

"Commission" means the Financial Services Commission established under the Financial Services Act 2007;

“Constructive trust" means a trust referred to in section 53;

“Corporate trustee" means a body, corporate appointed or acting as trustee;

"Court' means the Supreme Court;

"Custodian trustee" means a trustee referred to in section 25;

“Enforcer" means a person referred to as such in section 21;

"Foreign trust" means a trust the proper law of which is a law other than the law of Mauritius;

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

"Immovable property" includes –

(a) rights and interests in any immovable property;

(b) securities of a body corporate (wherever incorporated), if the majority by value of the property of the body corporate (whether held directly, indirectly or through the interposition of other body corporate, firm, partnership or person) is immovable property or interests in the immovable property; and

(c) interests (however described) in a collective investment scheme or similar scheme (whether operated in Mauritius or not), if the majority by the value of the property of the scheme (whether held directly or indirectly or through the interposition of other body corporate, firm, partnership or person) is immovable property interests in immovable property.

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

“Management company" has the same meaning as in the Financial Services Act 2007;

“Managing trustee" means a trustee referred to in section 26;

"Minister" means the Minister to whom responsibility for the subject of financial services is assigned;

"Minor" means a person who has not attained the age of eighteen;

"Non-charitable purpose trust" means a trust having a purpose other than a charitable purpose;

“Non-citizen" has the same meaning as in the Non-Citizens (Property Restriction) Act;

"Person" means a natural person or a body corporate;

"Person having an interest" means, in relation to a power to apply to the Court, the Attorney-General, a trustee, a settlor, an enforcer, a protector, a beneficiary of the relevant trust, any person empowered by the terms of the trust to make such application, or any other person with leave of the Court;

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

"Profit" includes gain or advantage;

"Property" includes movable and immovable property, wherever situated, rights and interests in the property whether vested, continent, defeasible or future;

“Protective or spendthrift trust" means a trust referred to in section 18;

"Purpose trust" means a trust referred to in section 19, and includes a charitable trust;

"Qualified trustee" means a management company or such other person resident in Mauritius as may be authorised by the Commission to provide trusteeship services;

"Settlor" means a person who provides trust property or makes a testamentary disposition on trust or to a trust;

"Trust" means a trust referred to under section 3 and includes –

(a) the trust property; and

(b) the functions, interest and relationships under the trust;

"trust property" means property held on trust;

3. Existence of trust

(1) For the purposes of this Act, a trust exists where a person (known as a "trustee") holds or has vested in him, or is deemed to hold or have vested in him, property of which he is not the owner in his own right, with a fiduciary obligation to hold, use, deal or dispose of it –

(a) for the benefit of any person (a "beneficiary"), whether or not yet ascertained or in existence;

(b) for any purpose, including a charitable purpose, which is not for the benefit only of the trustee; or

(c) for such benefit as is mentioned in paragraph (a) and also for any such purpose as is mentioned in paragraph (b).

(2) Notwithstanding articles 893, 896, 931 and 1130 of the Code, property and rights may be transferred to or vested upon trust in accordance with this Act.

4. Recognition of trust

Subject to this Act, a trust shall be recognised as valid and enforceable under the laws of Mauritius.

5. Application of Act

This Act shall apply to trusts arising voluntarily, or resulting by operation of law, or by judicial decision.

PART II - NATURE OF TRUSTS

6. Trust instrument

(1) Notwithstanding Article 931 of the Code, a trust other than a unit trust, a constructive or a resulting trust or any trust arising by operation of law or by judicial decision -

(a) may be created by a disposition of property intervivos or by will, or by holding property on trust; and

(b) shall be of no effect unless created by an instrument in writing.

(2) An instrument creating a trust shall be void unless it states-

(a) the name of the trustee;

(b) the intention of the settlor to create a trust, or the declaration of the trustee that he holds property on trust;

(c) the object of the trust, the beneficiaries or class of beneficiaries, as the case may be;

(d) the property transferred or held on trust; and

(e) the duration of the trust.

(3) A trust instrument shall be admissible in evidence notwithstanding the absence of the formalities prescribed by Articles 1325 and 1326 of the Code.

7. Transfer on trust

(1) Subject to the other provisions of this Act, any property may be held by or vested in a trustee on trust.

(2) Notwithstanding subsection (1), no transfer or disposal to a trust shall be valid in respect of -

(a) property which is inalienable under the law of Mauritius;

(b) a leasehold interest the unexpired term of which is less than 18 years;

(c) any immovable property in Mauritius where the trust is a non-charitable purpose trust.

(3) Subject to the terms of the trust, a trustee may accept from any person property to be added to the trust property.

(4) Where a settlor declares a trust respecting a property which he does not own at the time of the declaration -

(a) the trust is incompletely constituted at the time of the declaration and no rights or duties arise under the trust instrument,

(b) unless earlier revoked, the trust shall be deemed to come into existence at the time the settlor becomes legally entitled to the property which was the subject of the declaration.

(5) Article 931 of the Code shall not apply to any transfer of property on trust.

(6) The transfer or disposition on trust of property situated outside Mauritius, which if it had taken place in Mauritius would constitute a valid transfer or disposition of the property under this Act, shall not be declared void or invalid merely by reason that it contravenes the applicable law of the transfer or disposition, or the law of the transferor's domicile or nationality.

(7) The trustee shall not acquire a better title to the trust property than the one which the settlor or transferor had immediately before the transfer or disposition.

(8) Where property in Mauritius is transferred upon trust under the laws of Mauritius, the deed of transfer shall mention expressly the transferee in his capacity as trustee.

(9) No transfer of property to a trustee on trust shall be valid otherwise than in accordance with the formalities prescribed for such transfer.

8. The settlor

(1) Subject to the other provisions of this section, any person who has the legal capacity to contract may create a trust.

(2) A settlor may also be a trustee, a beneficiary, a protector or an enforcer, but shall not be the sole beneficiary of a trust of which he is a settlor.

(3) A settlor, who is a non-citizen and who transfers or disposes of assets to a trust, shall be deemed to have had the capacity to do so, where at the time of the transfer or disposal, he is of full age and of sound mind under -

(a) the laws of Mauritius; or

(b) the laws of his domicile or of his nationality; or

(c) the proper law of the transfer or disposition.

(4) Notwithstanding any enactment, where a non-citizen transfers or disposes of property on trust, the transfer or disposition shall not be set aside, avoided, or otherwise declared invalid or ineffective by virtue of any rule or law of his domicile or nationality relating to inheritance or succession or any rule or law of a similar nature, or any rule or law restricting the right of a person to dispose of his property during his lifetime so as to preserve such property for distribution at his death, or any rule or law having similar effect.

9. Duration of trust

(1) The duration of a trust other than a purpose trust shall not exceed ninety nine years from the date of its coming into existence, unless it is earlier terminated.

(2) Notwithstanding article 900-1 of the Code or any other enactment, a charitable trust may be of perpetual duration.

(3) The terms of a non-charitable purpose trust shall limit its duration to a term not exceeding 25 years.

10. Accumulation of income

(1) Subject to subsection (2), the terms of a trust may direct or authorise the accumulation of all or part of the income of the trust for a period not exceeding the maximum duration of the trust.

(2) Where the trust property includes an immovable property situated in Mauritius, the accumulation period shall not exceed 25 years.

(3) Subject to any power of maintenance or advancement or other terms of the trust, income which is not accumulated shall be distributed.

11. Avoidance of trust

(1) Unless a trust contains an express power of revocation, it shall be deemed to be irrevocable by the settlor and his legal representative.

(2) Notwithstanding –

(a) article 1167 of the Code, any provision of the Bankruptcy Act, or any other law of Mauritius or any rule of law of any other jurisdiction;

(b) the fact that the trust is voluntary, and is effected without consideration, or is made on or for the benefit of the settlor, the spouse or children of the settlor, or any of them,

a trust shall not be void or voidable, or otherwise invalidated in the event of or by reason of the settlor's bankruptcy of liquidation of his property or in any action, or proceedings against the settlor at the suit of his creditors.

(3) Notwithstanding subsection (2), the Court may declare a trust void, where it is established that the trust was made with the intent to defraud persons who were creditors of the settlor at the time when the trust property was vested in the trustee.

(4) No action under subsection (3) shall lie against the trustee of a trust after more than 2 years from the date of the transfer or disposal of the assets to the trust.

(5) Notwithstanding any rule or law relating to enforcement of judgments given by the court of another jurisdiction, where the law of Mauritius is the proper law of a trust, the Court shall not vary it or set it aside or recognise the validity of any claim against the trust property pursuant to the law of another jurisdiction or the order of a court of another Jurisdiction in respect of -

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

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

(c) the claim of creditors in an insolvency.

(6) For the purposes of subsections (2), (3) and (4), "trust" does not include a trust set up by a Mauritian national or a person domiciled in Mauritius.

12. Validity of trust

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

(2) A trust shall not be valid and enforceable where -

(a) it purports to do anything contrary to the law of Mauritius;

(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 Mauritius;

(c) it has no beneficiary identifiable or ascertainable, unless it is a purpose trust;

(d) the Court declares that -

(i) it was established by duress, fraud, mistake, influence, misrepresentation, or in breach of fiduciary duty; or

(ii) it is immoral; or

(iii) its terms are so uncertain that its performance is rendered impossible; or

(iv) the settlor had, at the time of its creation, no legal capacity to create such a trust.

(3) Where some of the terms of a trust are invalid but others are not -

(a) in case the terms or purposes cannot be separated, the trust shall be invalid;

(b) in case the terms can be separated, the Court may declare that the trust is valid as to the terms which are valid.

(4) Where a trust is created for two or more purposes of which some are lawful and others are not -

(a) where the purposes cannot be separated, the trust shall be invalid;

(b) where the purposes can be separated, the Court may declare that the trust is valid with regard to the purposes which are lawful.

(5) Where a trust is partially invalid, the Court may declare what property is to be held subject to the trust and what property is not.

(6) An application to the Court under this section may be made by any person having an interest in the trust.

13. Effect of invalidity on property

Any property as to which a trust is invalid shall, subject to any order of the Court made under section 12(6), be held by the trustees in trust for the settlor absolutely or, if he is dead, for his heirs and successors as if it had formed part of his estate at his death.

PART III - OBJECTS OF TRUST

14. Beneficiaries of a trust

(1) A beneficiary shall be -

(a) identifiable by name; or

(b) ascertainable by reference to –

(i) a Class; or

(ii) a relationship to another person, whether or not living at the time of the creation of the trust or at the time by reference to which, under the terms of the trust, members of a class are to be determined.

(2) The terms of a trust may -

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

(b) impose an obligation upon a beneficiary as a condition of benefit.

15. Class interests

Where a trust is in favour of a class of persons, subject to the terms of the trust -

(a) the class shall be deemed to close when it is no longer possible for any other person to become a member of that class;

(b) a woman over the age of 55 years shall be deemed to be no longer capable of bearing a child; and

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

16. Disclaimer of beneficial interest

(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 -

(a) be temporary; and

(b) where the disclaimer so provides, be revoked in the manner and circumstances specified in the disclaimer.

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

17. Nature of beneficial interest

(1) The interest of a beneficiary is movable property and subject to the terms of the trust freely transmissible.

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

18. Protective or spendthrift trust

(1) The terms of a trust may make the interest of a beneficiary subject to -

(a) termination;

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

(c) diminution, suspension or termination;

in the event of the beneficiary becoming insolvent or any of his property becoming liable to seizure or sequestration for the benefit of his creditors and such trust shall be known for the purposes of this Act 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 that property -

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

(b) if a determining event occurs, and while the interest of the beneficiary continues, in trust to pay the income to any of the following as the trustee shall in his absolute discretion appoint-

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

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

(3) For the purpose of subsection (2), "determining event" means the occurrence of any event, or any act or omission on the part of the beneficiary (other than the giving of consent to an advancement of trust property) which would result

in the whole or part of the income of the beneficiary from the trust becoming payable to any person other than the beneficiary.

19. Purpose trust

(1) A trust may be created for a purpose, notwithstanding the absence of any beneficiary. -

(2) A purpose trust shall 'not be valid and enforceable except where -

(a) the purpose, whether charitable or not, for which the trust is created is -

(i) specific, reasonable and capable of fulfilment;

(ii) not immoral, unlawful or contrary to public policy;

(b) the terms of the trust provide for the appointment of an enforcer who is capable of enforcing the trust and for the appointment of a successor to an enforcer;

(c) at least one trustee is a qualified trustee;

(d) the instrument creating the trust provides for the disposition of surplus assets of the trust upon its termination whether by expiry, on a specified date or on the occurrence of a specified event, or for any other cause.

(3) The transfer or vesting on a non-charitable purpose trust of immovable property situated in Mauritius shall be void and of no effect.

(4) Where a qualified trustee has reason to believe that a person who is appointed to enforce a purpose trust is dead, is unwilling, refuses or is unfit to act or is incapable of acting, he shall as soon as practicable inform the Attorney-General in writing of the fact.

(5) On being satisfied of the inability of the enforcer in terms of subsection (4), the Attorney-General shall within 90 days appoint the successor to the enforcer under the terms of the trust as enforcer, or in his absence or his refusal or inability for any reason, a fit and proper person to be enforcer of the purpose trust.

(6) A purpose trust created by a Mauritian national shall be void except where the appointment of the enforcer and his designated successor is approved by the Commission.

20. Charitable trust

(1) For the purposes of this Act, a trust shall be deemed to be charitable where the trust has as its exclusive purpose or object one or more of the following -

(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 purpose beneficial to the public in general.

(2) A trust established for one or more of the objects or purposes set out in subsection (1) shall be deemed to be charitable notwithstanding that –

(a) the object or purpose may not be of a public nature or for the benefit of the public, but may benefit a section of the public, or members of the, public, or that it may also benefit privately one or more persons or objects within a class of persons not resident in Mauritius; or

(b) the trust is liable to be modified or terminated whether by the exercise of a power of appointment or disposition of assets; or

(c) the trustee has the power to defer the distribution of the benefits to any charity or other beneficiary of the trust for a period not exceeding the duration of the trust; or

(d) the trust may be discretionary;

(e) the charitable objects are pursued in Mauritius or elsewhere and are beneficial to the community in Mauritius or elsewhere.

(3) Articles 910 and 911 of the Code shall not apply to a charitable trust.

21. Enforcers

(1) There shall be appointed under the terms of a purpose trust an enforcer whose duty shall be to enforce the trust in accordance with its terms and purposes.

(2) No person shall at any time act as both trustee and enforcer of the same trust.

(3) An appointment as enforcer shall be of no effect unless the appointment has been accepted by enforcer, and in the case of a purpose trust created by a Mauritian national, the appointment has been approved by the Commission.

(4) An enforcer shall not -

(a) place himself in a position which may conflict with his duties to enforce the purposes of the trust;

(b) derive directly or indirectly any profit by reason of his appointment other than any reasonable fee for his service and for any reasonable expenses which he may have incurred in the discharge of his duties;

(c) enter on his own account into any dealing with the trustee of the purpose trust or in relation to the trust property of the purpose trust of which he is an enforcer.

(5) An enforcer may resign his office and his resignation shall take effect on the delivery of notice in writing to the trustee of the purpose trust.

(6) An enforcer shall be provided, in addition with any documents, accounts or other information to which he may be entitled under the terms, of the purpose trust, with -

(a) annual accounts of the trust;

(b) copies of the trust instrument setting up the purpose trust and any deed, or documents referred to in the instrument; and

(c) legal opinions and advice received by the trustees.

(7) The resignation of an enforcer shall not release the enforcer from any liability in relation to the trust arising before his resignation.

(8) An enforcer shall cease to act as enforcer of the trust –

(a) as from the effective date of his resignation;

(b) by virtue of any term in the trust which has as effect the termination of his appointment as enforcer; or

(c) upon his removal by the Court; or

(d) as from the date he takes appointment as trustee of the same trust.

22. Immovable property in Mauritius

(1) Unless approved by the Prime Minister under the Non-Citizens (Property Restriction) Act -

(a) any transfer or vesting of an immovable property situated in Mauritius upon a trust of which a beneficial interest is held by a non-citizen shall be void and of no effect;

(b) the appointment of a non citizen as beneficiary of a trust the trust property of which includes immovable property situated in Mauritius, shall be void and of no effect.

(2) Notwithstanding any term of the trust, a trustee, except with the approval of the Prime Minister, shall not make any distribution or any payment from the trust, whether of income or capital, whether by way of maintenance, advancement or otherwise, to a beneficiary who is a non-citizen where the trust property includes an immovable property situated in Mauritius.

(3) Where a qualified trustee becomes aware of a breach of any provisions of this section, it shall forthwith report the matter to the Attorney-General who may apply to the Judge in Chambers for an order vesting the immovable property situated in Mauritius in the Curator of Vacant Estates, or for such other order as he thinks fit.

PART IV - TRUSTEES AND PROTECTORS

23. Appointment of trustees

(1) No person shall be appointed as trustee of a trust other than -

(a) a person of full age who has the legal capacity to contract;

(b) a body corporate permitted under its statute to act as trustee.

(2) A trustee shall not hold a beneficial interest under the trust of which he is a trustee except where he is not -

(a) the sole trustee of the trust; or

(b) the sole beneficiary under the trust.

24. Protector of trust

(1) The terms of a trust may provide -

(a) for the office of protector of the trust, whose functions shall be to advise the trustee of the trust, and with such powers as may be conferred;

(b) that the exercise by the trustees of any of their powers and discretions shall be subject to the prior consent of the protector.

(2) The trust instrument may appoint as protector, any person of full age and of sound mind, including the settlor, or any body corporate, any firm, partnership or group of persons, whether incorporate or unincorporate.

(3) Unless otherwise provided in the terms of the trust, the protector shall have the power-

(a) to remove a trustee and to appoint a new or additional trustee;

(b) to determine the law of which jurisdiction shall be the proper law of the trust;

(c) to change the forum of administration of the trust;

(d) to withhold consent from specified actions of the trustees either conditionally or unconditionally.

(4) A person exercising any of the powers set out in subsection (3) shall not by reason only of the exercise of the power be deemed to be a trustee, and unless otherwise provided under the terms of the trust, shall not be liable to the beneficiaries or the trustees for the bona fide exercise of the power.

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

(6) Where there is more than one protector of a trust, any functions conferred on the protectors may be exercised, subject to the terms of the trust, by a majority of the number of protectors.

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

25. Custodian trustee

(1) The terms of a trust may provide for the appointment of a custodian trustee which shall be a firm, a partnership or a body corporate.

(2) Subject to the terms of the trust, -

(a) the trust property shall be vested in the custodian trustee as if the custodian trustee were the sole trustee;

(b) notwithstanding the vesting of the trust property in the custodian trustee, the management of the trust property and the exercise of all powers and discretions exercisable by the trustee under the trust shall remain vested in the managing trustee;

(c) the sole function of the custodian trustee shall be to hold the trust property and invest its funds and dispose of the assets as the managing trustee may direct, for which purpose the custodian trustee shall execute all such documents and perform all such acts as are necessary;

(d) where there is more than one managing trustee, a direction given by the majority of them shall be valid as if given by all of the managing trustees.

(3) The custodian trustee shall not be liable for acting on the direction given by the managing trustee except where the custodian

trustee had reason to believe that the direction so given -

(a) is in contravention of any law, rule or regulation;

(b) is contrary to the terms of the trust;

(c) is contrary to sound commercial practice; or

(d) is otherwise objectionable.

(4) Where the custodian trustee is of opinion that the direction of the managing trustee cannot be complied with for any reason set out under subsection (3), it may apply to the Court as a person having an interest in the trust for a direction and the Court shall make such order as it thinks proper.

(5) The custodian trustee shall not be liable for any act or default committed by the managing trustee.

(6) All actions and proceedings relating to the trust property shall be brought or defended in the name of the custodian trustee at the instruction of the managing trustees, and the custodian trustee shall recover any costs and expenses from the trust property.

(7) No person dealing with the custodian trustee shall be concerned to inquire as to the concurrence or otherwise of the managing trustees or be affected by notice of the fact that the managing trustee have not concurred in any decision or direction.

26. Managing trustee

(1) The terms of a trust may provide for the appointment of a managing trustee having the role and functions to manage the trust without being vested with the trust property which is vested in a custodian trustee.

(2) Where the terms of a trust reserve the exercise of any of the trustees' powers to the managing trustee, no other trustee shall be liable for any of the

decisions, acts or transactions of the managing trustee to the extent that they amount to exercise of powers so reserved.

27. Letters or memoranda of wishes

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

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

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

(4) Where a letter of wishes or a memorandum of wishes is given to or prepared by the trustees of a trust, the trustees-

(a) may have regard to that letter or memorandum in exercising any functions conferred upon them by the terms of the trust; but

(b) shall not be accountable in any way for their failure or refusal to have regard to that letter or memorandum.

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

28. Number of trustees

(1) The number of trustees of a trust shall not exceed 4 of whom, at any one time, at least one shall be a qualified trustee.

(2) A trust shall not terminate or be invalid on, the ground that-

(a) there is no trustee or less than the number required by subsection (1) or by the terms of the trust;

(b) there is no qualified trustee in relation to the trust.

(3) Where the number of trustees is less than the number required by the terms of the trust, the necessary number of additional trustees shall be appointed.

(4) Where at any time there is no qualified trustee of a trust, any person having an interest in the trust may apply to the Judge in Chambers for the appointment of a qualified trustee nominated in the application.

(5) The Judge -

(a) on being satisfied that notice of the application has been served on the existing trustees;

(b) having ascertained that the person nominated is qualified and willing to act; and

(c) after hearing the Commission or its representative,

may appoint that person as a trustee.

(6) Until the required number is reached, or a qualified trustee is appointed, the existing trustee shall act only for the purpose of preserving the trust property.

29. New or additional trustees

(1) Where the terms of a trust contain no provision for the appointment of an additional trustee, or in the absence of a protector or a power by the protector to make the appointment, such a trustee may be appointed by the persons in the order set out hereunder -

(a) the remaining trustees;

(b) the last remaining trustee;

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

(d) in the absence of any of the persons referred to in paragraphs (a) to (c), by the Judge in Chambers, on application by the person having an interest.

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

(3) A trustee with power to appoint a new or additional trustee who refuses or fails to exercise the power may be removed from office by the Judge in Chambers, on application by a person having an interest.

(4) On the appointment of a new or additional trustee, the trust property shall be deemed to vest in him jointly with his co-trustee, if any, without any conveyance or assignment.

(5) No vesting of trust property in a trustee on the death, retirement or removal of a trustee shall be construed as a transfer of property or shall give rise to any taxes or duties under any enactment.

30. Acceptance by trustee

(1) A person appointed as trustee may refuse the, appointment, but where he knowingly intermeddles with the trust or its affairs, he shall be deemed to have accepted it.

(2) A person appointed as trustee may, within 3 months of being informed of the appointment -

(a) disclaim the appointment by notice in writing to the settlor or to the other trustees;

(b) where the settlor is dead or cannot be found, and there are no other trustees, apply to the Court for relief from the appointment, whereupon the Court may make such order as it thinks fit.

(3) Any person who fails to disclaim appointment or to apply for relief within the period prescribed under subsection (2) shall be deemed to have accepted the appointment.

31. Resignation or removal of trustee

(1) A trustee other than a sole trustee may resign his office by delivering a written notice of resignation to his co-trustees.

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

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

(b) his removal from office by the Court;

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

(3) A person who ceases to be a trustee under this section shall do everything necessary to vest the trust property in the new or continuing trustees.

(4) When a trustee resigns or is removed -

(a) he shall, subject to paragraph (b), duly surrender all trust property held by or vested in him or otherwise under his control;

(b) where so permitted by the terms of the trust, he may require that he be provided with reasonable security for liability (existing, future, contingent or otherwise) before surrendering the trust property.

(5) A trustee who complies with subsection (4)(a) shall be relieved of liability to any beneficiary, trustee or other person interested under the trust for any act or omission in relation to the trust property or to his functions as a trustee, except any liability -

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

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

32. Nature of trustee's interest

(1) Subject to subsection (2) -

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

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

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

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

33. Disclosure by trustee

(1) Subject to the other provisions of this section, a trustee shall, on receipt of a request, provide accurate information as to the state and amount of the trust property and the conduct of the trust administration -

(a) to the Court;

(b) to the settlor, the enforcer, or the protector of the trust, unless the trustee has reason to believe that such person is making the request under duress;

(c) where the terms of the trust so authorise –

(i) to any beneficiary of the trust of full age who has legal capacity and having a vested interest in the trust;

(ii) to any charity for the benefit of which the trust was established.

(2) Except where ordered by the Court or a Judge in Chambers for a reason specified in subsection (3), a trustee shall keep as confidential and shall not be required to disclose to any person not legally entitled to it under subsection (1), or be required to produce or divulge to any Court, tribunal, committee of enquiry or other authority in Mauritius or elsewhere, any information or document in his possession or under his control relating to -

(a) the state and amount or any other details of the trust property;

(b) the conduct of the trust administration;

(c) the trustee's deliberations as to the manner in which a power or a discretion was exercised, or a duty conferred or imposed by the law or by the terms of the trust was performed;

(d) the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason will be or might have been based; or

(e) the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.

(3) Notwithstanding any other enactment, the Court or the Judge in Chambers shall not make an order for disclosure or production of any confidential information referred to in subsection (2) except on the application of the Director of Public Prosecutions and on proof beyond reasonable doubt that the confidential information is bona fide required for the purpose of any enquiry or trial into or relative to -

(a) the trafficking of narcotics and dangerous drugs and to the proceeds of such trafficking, contrary to the Dangerous Drugs Act 1986, arms trafficking or economic crime and money laundering under the Economic Crime and Anti- Money Laundering Act 2000;

(b) any act done, otherwise than in Mauritius which, if done in Mauritius, would have constituted an offence of trafficking or economic crime and money laundering under the Economic Crime and Anti-Money Laundering Act 2000.

(4) This section shall be without prejudice to-

(a) the obligations of Mauritius under any international treaty, convention or agreement, and to the obligations of any public sector agency under any international arrangement or concordat;

(b) such disclosure as is necessary for the purpose of administering this Act and the Financial Services Act 2007, or of discharging a function under these enactments.

(5) Where on application by a person having an interest in the trust, the Court is satisfied that the disclosure is bona fide required for the purpose of any civil proceedings, the Court may order the disclosure of information or document or part of it, subject to such conditions as it thinks fit to impose for the purpose of protecting the information or document so obtained from abuse.

34. Corporate trustee

A body corporate may as trustee -

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

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

35. Notice of other trusts

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

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

36. Dealings with third parties

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

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

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

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

(3) A bona fide purchaser for value without notice of a breach of trust -

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

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

(4) A third party paying or advancing money to a trustee is not concerned to see that -

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

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

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

(5) In this section "third party' means a person other than a settlor, enforcer, protector, trustee or beneficiary of the trust.

PART V - DUTIES OF TRUSTEES

37. Fiduciary duties

(1) A trustee shall in the exercise of his functions, observe the utmost good faith and act -

(a) with due diligence;

(b) with care and prudence; and

(c) to the best of his ability and skill.

(2) Subject to this Act, a trustee shall execute and administer the trust, and exercise his functions -

(a) in accordance with the terms of the trust;

(b) only in the interest of the beneficiaries or in fulfilment of the purpose of the trust.

(3) A trustee shall not use or deal with trust property for his own profit or for any purpose not connected with the trust.

(4) A trustee shall not -

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

(b) cause or permit any other person to derive such profit; or

(c) on his own account enter into any transaction with his co-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.

38. Duty relating to trust property

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

(2) A trustee shall take all such steps as may be reasonably required with due regard to the nature and amount or value of the property, for the possession of all outstanding trust property and for the preservation of the trust property and the assertion or protection of the title to it.

(3) A trustee shall keep updated and accurate accounts and records of his trusteeship.

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

39. Duty to act together

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

(2) Subject to subsections (3) and (4), where there is more than one trustee, no functions given to the trustees shall be exercised unless all the trustees agree on its exercise.

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

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

40. Duty to act impartially

(1) Where a trust has more than one beneficiary, or more than one purpose, the trustees, subject to the terms of the trust and to subsection (2), shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

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

PART VI - GENERAL POWERS OF TRUSTEES

41. Powers of trustees

(1) Subject to his duties under this Act and to the terms of the trust, a trustee has, in relation to the trust property, all the powers of a beneficial owner.

(2) A trustee shall exercise his powers only in the interests of the beneficiaries or of the purpose for which the trust is established and in accordance with the terms of the trust.

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

42. Consultation by trustees

(1) A trustee may consult professional persons in relation to the affairs of the trust.

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

(3) A person shall not, by virtue of being so consulted or giving or refusing such consent, be deemed to be a trustee.

43. Delegation by trustees

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

(2) Unless otherwise provided by the terms of the trust, a trustee may -

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

(b) appoint accountants, lawyers, bankers, brokers, custodians, investment advisers, nominees, property agents; and other professionals to act in relation to any of the affairs of the trust or to hold any of the trust property; or

(c) authorise any of the persons referred to in paragraphs (a) and (b) to retain or to receive any commission or other payment usually payable for such services rendered.

(3) A trustee shall not be liable for any loss to the trust arising from a delegation or appointment under subsection (2) or from the default of any such delegate or appointee where the trustee exercised the standard of care of a reasonable land prudent man of business in -

(a) the selection of the delegate or appointee;

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

44. Remuneration of trustees

(1) Subject to -

(a) the terms of the trust;

(b) an order of the Court,

a trustee shall be entitled to remuneration for his services.

(2) A trustee shall be entitled to be reimbursed out of the trust property for all expenses and liabilities properly incurred by him in connection with the trust.

45. Power to appropriate

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

46. Accumulation and advancement

(1) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, where a beneficiary is a minor and his interest -

(a) is a vested interest; or

(b) is an interest which will become vested -

(i) on attaining the age of majority; or

(ii) at any later age; or

(iii) upon the happening of any event, the trustee may -

(A) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or such later age or the happening of such event;

(B) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary;

(C) advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest.

(2) The receipt of a parent or the lawful guardian of a beneficiary who is a minor shall be a sufficient discharge to the trustee for a payment made under subsection (1).

(3) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, the trustee may advance or apply for the benefit of a beneficiary part of the trust property prior to the date of the event upon the happening of which the beneficiary becomes entitled absolutely to the property.

(4) Any part of the trust property advanced or applied under paragraph (3) shall be brought into account in determining from time to time the share of the beneficiary in the trust property.

(5) No part of the trust property advanced or applied under paragraph (3) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

47. Power of appointment

The terms of a trust may confer on the settlor, trustees or any other person power to appoint all or any part of the trust-property or any interest in it, to or for the benefit of,

any person (whether or not a beneficiary of the trust immediately prior to the appointment or Assignment).

48. Power of revocation

(1) A trust and any exercise of a power under the trust may be expressed to be capable of -

(a) revocation, in whole or in part; or

(b) variation.

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

(3) Subject to the terms of the trust, where the trust is revoked in whole or in part, the trustees shall hold the trust property, or part of the trust property which is subject of the revocation, as the case may be, in trust for the settlor absolutely or, if he is dead, for his heirs and succession as if it had formed part of his estate at the time of his death.

49. Permitted investments

(1) Subject to subsection (2), the terms of a trust may authorise the trustees to invest trust property in securities and investments with or without conditions or restrictions.

(2) The powers of investment conferred by the terms of a trust do not derogate from the duties imposed on trustees under this Act.

PART VII - BREACH OF TRUST

50. Liability for breach of trust

(1) Subject to this Act and to the terms of the trust, a trustee who commits or concurs in a breach of trust shall be 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 shall not be liable for a breach of trust committed by another person prior to his appointment or for a breach of trust committed by his co-trustee unless -

(a) he becomes or ought to 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 trustees commit a breach of trust, they shall be 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, wilful misconduct, or gross negligence.

51. Relief by beneficiary

(1) Subject to subsection (2), a beneficiary may -

(a) relieve a trustee of liability to him for a breach of trust;

(b) indemnify a trustee against liability for a breach of trust;

(2) Subsection (1) shall 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).

52. Relief by Court

(1) 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 -

(a) has acted honestly and reasonably; and

(b) ought fairly to be excused -

(i) for the breach of trust;

(ii) for omitting to obtain the directions of the Court in the matter in which the breach arose.

(2) Where a trustee commits a breach of trust at the instigation, at the request or with the concurrence of a beneficiary, the Court may, whether or not the beneficiary is a minor or a person under legal disability, order -

(a) the defaulting beneficiary to indemnify the trustee in respect of the consequences of the breach of trust; and

(b) the trustee to appropriate any part of the interest accruing to the, beneficiary for that purpose.

PART VIII - CONSTRUCTIVE TRUST AND TRACING

53. Constructive trust

(1) A person holding any fiduciary obligations who -

(a) derives a profit from a breach of his fiduciary duties; or

(b) obtains property as a result of such a breach,

shall be deemed to be a trustee of the profit or property for the person to whom the duties are owed.

(2) A trustee who-

(a) derives a profit from a breach of trust; or

(b) obtains property as a result of such a breach,

shall be deemed to be a trustee of the profit or property for the beneficiary of the trust.

(3) Without prejudice to any other remedy provided by law, the person referred to in subsection (1) to whom fiduciary duty is owed, or the beneficiary referred to in subsection (2), may apply to the Court for an order that the profit or property obtained from the breach of fiduciary duties or of trust be traced and recovered to him.

(4) A person shall not be liable for breach of trust or of fiduciary duty under this section where he established that the profit or property was obtained in good faith.

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

54. Tracing

Without prejudice to the personal liability of a trustee, or a person in breach of his fiduciary duty, trust property which has been charged or dealt with in breach of trust or fiduciary duty, or the property into which it has been converted, may be followed and recovered unless –

(a) it is no longer identifiable;

(b) it is in the hands of a bona fide purchaser for value without notice of the breach of trust, or of any other defect in the title;

(c) it has been charged in favour of a person who bona fide acquired his rights therein for value and without notice of the breach of trust or any other defect in the title;

(d) a person, other than the trustee, derived his title through a bona fide purchaser or charge holder for value without notice of the breach of trust or defect.

Amended by [Act No. 5 of 2002]

PART IX-FAILURE, LAPSE AND TERMINATION OF TRUST

55. Failure or lapse of interest

Subject to the terms of the trust and to any order of the Court,
where -

(a) an interest lapses;

(b) a trust terminates;

(c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust; or

(d) property is vested in a person otherwise than for his sole benefit, but the trust upon which he is to hold the property is not declared or communicated to him,

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

56. Termination of trust

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

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

57. Termination by beneficiaries

(1) Notwithstanding anything in the terms of the trust, a trust shall terminate where the beneficiaries who all -

(a) are in existence and have been ascertained;

(b) are persons of full age with no legal disability or incapacity; and

(c) are in unanimous agreement so to do,

require by notice the trustee to terminate the trust.

(2) Where a trust is terminated under subsection (1), the trustee shall distribute the trust property as the beneficiaries may direct.

58. Termination by Court

On the application of any person having an interest in the trust, the Court may -

(a) direct the trustees to distribute, or not to distribute, the trust property; or

(b) make such other order in respect of the termination of the trust and the distribution of the property as it thinks fit.

59. Termination or variation of a charitable trust

(1) Where trust property is held for a charitable purpose and-

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

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

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

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

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

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

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

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

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

(2) Where trust property is held for a charitable purpose, the Court, on the application of the Attorney-General, the trustee or the enforcer, may approve any arrangement which varies or revokes the powers or terms of the trust or enlarges or modifies the purposes 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.

PART X - APPLICATION TO FOREIGN TRUST

60. Enforceability of foreign trust

(1) Subject to subsection (2), a foreign trust is governed by, and shall be interpreted in accordance with, the terms of the trust and its proper law.

(2) A foreign trust shall not be enforceable in Mauritius to the extent that -

(a) it purports to do anything which under the law of Mauritius is an offence;

(b) it confers or imposes any right or function the exercise or discharge of which under the law of Mauritius is an offence;

(c) it is immoral or contrary to public policy; or

(d) it purports to apply directly to immovable property situated in Mauritius.

61. Proper law

(1) Subject to subsection (2), the proper law of a trust shall be-

(a) the law expressed by the terms of the trust or intended by the settlor to be the proper law;

(b) where no such law is expressed or intended, the law with which the trust has its closest connection at the time of its creation; or

(c) where 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 trust has its closest connection at the time of its creation does not provide for trusts or the category of trusts involved, the proper law of the trust shall be the law of Mauritius.

(2) In ascertaining the law with which a 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 situs of the assets of the trust,

(c) the place of residence or business of the trustee;

(d) the objects of the trust and the places where they are to be fulfilled.

PART XI - POWERS OF COURT

62. Application to Court

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.

63. General powers of Court

(1) On the application of any person having an interest in the trust, 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 any functions of the trustee, the appointment or the removal of a trustee, the remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments whether into court or otherwise;

(iii) a beneficiary, or any other person connected with a trust; or

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

(b) make a declaration as to the validity or enforceability of a trust; or

(c) 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 requirements and conditions as to the vesting of trust property;

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

64. Powers of Court in case of default

Where a person does not comply with an order of the Court or the Judge in Chambers under this Act requiring him to do any thing, the Court may, without prejudice to any action for contempt of Court, order on such terms and conditions as it thinks fit, that the thing be done by another person, nominated for the purpose by the Court or the Judge, at the expense of the person in default (or otherwise, as the Court directs), and a thing so done shall have effect in all respects as if done by the person in default.

65. Payment of costs

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

66. Variation of trust

(1) The Court, on the application of any person having an interest in the trust on behalf of -

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

(b) any person unborn;

(c) any person, ascertained or not, who may become entitled, directly or indirectly, to an interest under a trust, as being (at a future date or on the happening of a future event) a person of any specified description or a member of a specified class; or

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

may, subject to subsection (2), approve any arrangement which varies powers or revokes the terms of a trust or enlarges or modifies the powers of management or administration of any trustees, whether or not there is another person with a beneficial interest who is capable of assenting to the arrangement.

(2) The Court shall not approve an arrangement on behalf of a person mentioned in subsection (1)(a), (b) or (c) unless the arrangement appears to be for his benefit.

67. Approval of transactions

Where, in the management or administration of a trust, a transaction is, in the opinion of the Court, expedient, but cannot be effected because the necessary power is not vested in the trustees by the terms of the trust or by law, the Court may, on the application of any person having an interest in the trust -

(a) confer upon the trustees, generally or in any particular circumstances, the necessary power, on such terms and subject to such conditions as the court thinks fit; and

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

PART XII - MISCELLANEOUS

68. Limitation of actions

(1) Notwithstanding any other enactment, a period of limitation and prescription of 30 years shall apply to an action brought by a person having an interest against a trustee -

(a) in respect of any fraud to which the trustee was a party or was privy; or

(b) to recover from the trustee trust property or the proceeds thereof -

(i) held by or vested in him or otherwise in his possession or under his control; or

(ii) previously received by him and converted to his use.

(2) Notwithstanding subsection (1), the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is -

(a) 2 years from delivery of the final accounts of the trust to the beneficiary; or

(b) 2 years from the date on which the beneficiary first has knowledge of the breach of trust,

whichever period first begins to run.

(3) Where the beneficiary is a minor or a person under legal disability, the period referred to in subsection (2) does not begin to run until his minority or disability, as the case may be, ceases.

69. Rules of Court

The Chief Justice may, after consultation with the Rules Committee and the Judges, make such rules as he thinks fit -

(a) with respect to proceedings, practice and procedures of the Supreme Court in connection with any matter, cause and application under this Act;

(b) generally with respect to applications for directions under this Act.

70. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) The regulations under subsection (1) may provide for the taking of fees and levying of charges.

71. Transitional provisions

(1) Subject to the other provisions of this section, a trust which immediately before the coming into force of this Act is valid, in existence and registered under an enactment repealed by section 73, shall continue to be valid and shall be governed by the applicable enactment as if it has not been repealed.

(2) Any act made, any authorisation given or any registration effected in connection with a trust under an enactment which is repealed under section 73, shall be deemed, where required under this Act, to have been made, given or effected under this Act.

(3) Any register kept under any provision of an enactment repealed by section 73 shall be deemed to be part of the register kept under the corresponding provision of this Act.

(4) Any person having an interest in it trust to which an enactment referred to in section 73 is applicable immediately before the coming into force of this Act, may apply to the Court for any variation of the terms of the trust rendered necessary as a result of the coming into force of this Act, and the Court shall make such order as it thinks just.

(5) Where by the effect of a choice of law provided in a trust instrument made before the coming into force of this Act, a trust is to be governed by the laws of Mauritius, the trust shall be governed by this Act.

72. Consequential amendments

(1) The Code is amended in -

(a) article 543, by adding after the existing paragraph the following new paragraph -

"Les biens peuvent aussi faire l'objet d'une affectation particulière par effet de la fiducie suivant les dispositions du Titre Deuxième Bis du Livre Troisième et du Trusts Act 2001."

(b) article 711, by adding after the words "par donation entre-vifs ou testamentaire," the following words -

"par effet de la fiducie,"

(c) article 893, by deleting the word "On" and replacing it by the following words -

"A l'exception des transferts ou detentions des biens à titre fiduciaire; on"

(d) article 897, by adding -

(i) after the words "présent titre", a comma;

(ii) immediately after the newly inserted comma, the following words -

“et les transferts ou dispositions de biens à titre fiduciaire"

(e) article 900-1, by adding after the figure "1074", the following words -

“et du Trusts Act 2001”

(f) in Livre Troisième, by adding after article 1100, the new Titre Deuxième - Bis as follows-

TITRE DEUXIEME – BIS

De la fiducie

Article 1100 – 1

Est appelée fiducie - ou trust - l'ensemble de droits et d'obligations dont fait l'objet un patrimoine (le "bien fiduciaire") qui est affecté dans l'intérêt des bénéficiaires ou dans un but déterminé, et qu'une personne (le "fiduciaire") s'oblige à détenir, gérer et administrer suivant cette affectation.

La fiducie résulte d'un acte juridique, ou d'un jugement, ou dans certains cas par effet de la loi. Par dérogation aux articles 893, 896 et 1130, elle peut être créée à titre onéreux ou à titre gratuit ou par testament.

Article 1100 - 2

Le bien fiduciaire formé de biens et de droits transférés en fiducie, constitue un patrimoine d'affectation autonome et distinct de celui du constituant, du fiduciaire ou du bénéficiaire, sur lequel aucun d'entre eux n'a de droit réel.

En cas de décès du fiduciaire, les biens et droits objet de la fiducie ne font pas partie de sa succession. En cas de dissolution d' une personne morale fiduciaire, les biens et droits objet de la fiducie ne font pas partie de l'actif partageable ou transmissible à titre universal.

Sans préjudice des droits des créanciers du constituant titulaires d'un droit de suite attaché à une sureté constituée antérieurement au contrat de fiducie et hors le cas de fraude aux droits des créanciers du constituant, les biens transférés au fiduciaire ne

peuvent être saisis que par les titulaires de créances nées de la conservation ou de la gestion de ces biens par le fiduciaire.

Article 1100 - 3

Sous réserve de cc qui suit, les biens fiduciaires ne sauront être imputé à la quotité disponible ou sujet au rapport du moment où les biens sont mis en fiducie.

Toutefois la fiducie ne peut porter atteinte aux droits des héritiers du constituent lorsqu'au jour de son décès, celui-ci est de nationalité mauricienne ou domicilié à Maurice. Ou encore les héritiers peuvent faire valoir leurs droits au rapport portant sur un immeuble sis à Maurice et faisant partie des biens fiduciaires. Les dispositions énoncées dans les articles 1100 - 4 et 1100 - 5 fixent les règles d' application de ces droits.

Article 1100 - 4

Si, lors du décès du constituant, la valeur des biens et droits transférés au fiduciaire excède la quotité disponible, la fiducie est réductible suivant les règles applicables aux donations entre vifs, sous particularités qui suivent.

La valeur des biens et droits transférés au fiduciaire s'impute sur la rèserve ou sur la quotité disponible de la succession du constituant selon les distinctions opérées aux articles 864 et 865.

L'action en réduction est exercée contre le bénéficiaire lorsque les biens et droits lui ont été transmis et contre le fiduciaire dans le cas contraire. La réduction du bien fiduciaire peut toujours être faite en valeur.

Article 1100 - 5

Pour l'application de l'article 922 du présent Code, il est tenu compte, après en avoir déduit les dettes, de la valeur et de l'état des biens fiduciaires au jour du décès du constituant s'ils n'ont pas été transmis au

bénéficiaire. Pour les biens transmis au bénéficiaire, il est tenu compte de leur état au jour de cette transmission et de leur valeur au jour du décès du constituant. Si les biens ont été aliénés par le bénéficiaire, il est tenu compte de leur valeur à l'époque de l'aliénation et, s'il y a subrogation, de la valeur des nouveaux biens au jour du décès du constituant.

Pour l'application de l'article 923, il est tenu compte, pour les biens transmis au bénéficiaire, de la date à laquelle la désignation de ces derniers a été fixée; et de la date du décès du constituent pour les biens qui n'ont pas encore été transmis aux bénéficiaires.

Article 1100 - 6 Sous réserve des dispositions précitées, la fiducie est régie par le Trusts Act 2001 ou toute autre loi particulière.

(2) The Income Tax Act 1995 is amended -

(a) in section 2 –

(i) in the definition of "charitable trust", by deleting the words "Trusts Act 1989" and replacing them by the words "Trusts Act 2001 ";

(ii) by deleting the definition of "trust' and replacing it by the following definition-"trust" means a trust recognised under the laws of Mauritius;

(b) by deleting section 46 and replacing it by the following section -

46. Trusts

(1) Subject to section 7 and subsections (2) and (3) of this section, every trust shall be liable to income tax on its

chargeable income at the rate specified in Part III of the First Schedule.

(2) A trust of which -

(a) the settlor is a non-resident; and

(b) all the beneficiaries appointed under the terms of the trust are, throughout an income year, non-resident, or hold a Category 1 Global Business Licence or a Category 2 Global Business Licence under the Financial Services Act 2007,

shall be liable to income tax on its chargeable income at the rate specified in Part II of the First Schedule.

(3) Where a trust which qualifies under subsection (2) deposits a declaration of non-residence for any income year with the Commissioner within 3 months after the expiry of the income year, it shall be exempt from income tax in respect of that income year.

(4) The chargeable income under subsections (1) and (2) shall be the difference between -

(a) the net income derived by the trust; and

(b) the aggregate amount distributed to the beneficiaries under the terms of the trust.

(5) Any amount distributed to the beneficiaries under the terms of the trust shall be deemed to be a charge under section 10(l)(d) and shall be liable to income tax in the hands of the beneficiaries.

(6) Notwithstanding subsection (5), a non-resident beneficiary of a trust shall be exempt from income tax in respect of his income under the terms of the trust.

(c) in section 116, in subsection (1), by adding immediately after the word "trust", the words "other than a trust to which section 46(3)applies";

(d) in section 119, in subsection (1), by adding immediately after the word "trust", the words “other than a trust to which section 46(3)applies";

(3) The Land (Duties and Taxes) Act 1984 is amended -

(a) in section 2 -

(i) in the definition of "deed of transfer" -

(A) in paragraph (a)(ii), by deleting the words "under the Trust Act 1989" and replacing them by the words "under the Trusts Act 2001";

(B) in paragraph (b), by adding after subparagraph (vi), the following new subparagraph -

(vii) An instrument witnessing the distribution of a trust property by a trustee under the terms of a trust to a beneficiary other than a distribution to a beneficiary who is a heir or successor of the settlor;

(ii) in the definition of "property", in paragraph (b), by adding after subparagraph (v), the following new subparagraph -

(vi) any immovable property distributed by a trustee under the terms of a trust to any beneficiary of that trust;

(iii) in the definition of "transferor", by adding after paragraph (f), the following new paragraph -

(g) in the case of a distribution of an immovable property by a trustee to a beneficiary under the terms of a trust

other than a distribution to a beneficiary who is a heir or successor of the settlor;

(b) in section 4 –

(i) in subsection (1), by adding after paragraph (c), the following new paragraph (d), the full stop at the end of paragraph (c) being deleted by a semi-colon -

(d) in the case of a distribution of an immovable property by a trustee to a beneficiary under the terms of that trust, the value of the immovable property so distributed.

(ii) in subsection (3) -

(A) by adding after paragraph (c), the following new paragraph (d), the existing comma being deleted and replaced by a semi-colon -

(d) where property is distributed by a trustee under the terms of a trust to any beneficiary of that trust,

(B) by deleting the existing provisions appearing immediately after the new paragraph (d) and replacing them by the following new provisions the deed witnessing such attribution or distribution shall be deemed to constitute sufficient evidence for the purposes of subsection (1) that the property has duly been transferred to that shareholder, partner or beneficiary, as the case may be, on the date the attribution or distribution takes place".

(4) The Registration Duty Act is amended -

(a) in section 2 -

(i) deleting in the definition of "charitable trust" the words "Trusts Act 1989" and replacing them by the words "Trusts Act 2001";

(ii) by inserting in their appropriate alphabetical order, the following new definitions -

"settlor" has the same meaning as in the Trusts Act 2001;

"trust" has the same meaning as in the Trusts Act 2001;

(b) in the First Schedule -

(i) in Part II, by adding after item 30, the following new item –

31. Any instrument creating a trust or an instrument witnessing the addition of a property to a trust property.

(ii) in Part III, by adding after item 11, the following new item -

12. Any instrument witnessing the distribution of a property of a trust by a trustee under the terms of a trust to any beneficiary other than a distribution to a beneficiary who is a heir or successor of the settlor.

73. Repeal

The following Acts are repealed –

(a) The Trusts Act 1989;

(b) The Trust Companies Act 1989; and

(c) The Offshore Trusts Act 1992.

74. Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

Passed by the National Assembly on the twenty-second day of May two thousand and one.

ANDRE POMPON
Clerk of the National Assembly