

**INTERNATIONAL TRUST ACT, 1994**  
**(as amended, 2011)**

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## **PART I – PRELIMINARY**

### **Short title and commencement.**

(2) This Act may be cited as the International Trusts Act 1994, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

### **Interpretation.**

2. In this Act –

“accounting records” means documents relating to assets and liabilities of the international trust including receipts and expenditure, sales and purchases and other transactions;

“Authority” means the Authority referred to in section 78;

“beneficiary” means a person, whether natural or corporate, entitled to benefit under an international trust, or in whose favour a power to distribute trust property may be exercised;

“body corporate” means a company, partnership, or association incorporated under the laws of Seychelles;

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

“charitable international trust” means a trust referred to in section 13;

“constructive trust” means a trust referred to in section 48;

“corporate trustee” means a body corporate acting as trustee of an international trust;

“court” means the Supreme Court;

“financial institution” means an institution in terms of the Financial Institutions Act, 1984;

“foreign trust” means a trust the proper law of which is a law other than a law of Seychelles;

“immovable property” includes rights and interests in any immovable property, shares or interest in a body corporate owning immovable property or interests in such property;

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

“International Business Company” means a company incorporated under the International Business Companies Act, 1994;

“minor” means a person who has not attained the age of eighteen;

“person interested,” in relation to a power to apply to the court, means the Attorney-General, a trustee, a settlor, 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, rights and interests in the property whether vested, contingent, defeasible or future;

“purpose international trust” means a trust referred to in section 14;

“registered declaration of trust” means a declaration of trust registered under section 75;

“resident” means –

- (a) in relation to an individual, a person who is domiciled in Seychelles;
- (b) in relation to a body corporate, a body incorporated or registered under the laws of Seychelles;

“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 written or oral terms of an international trust;

“trust” means a legal relationship which arises where property is vested or deemed to be vested in, or is held by or deemed to be held by, but does not form part of the estate of, a person known as a trustee –

- (a) for the benefit of another person known as a beneficiary, whether or not yet ascertained or in existence;
- (b) for a charitable purpose or for any other purpose which is not for the benefit only of the settlor or the trustee, including for the purpose of –
  - (i) trading (commercial trust);
  - (ii) dealing with life insurance (life insurance trust);
  - (iii) managing cash deposits (cash deposit trust);
  - (iv) managing provident funds, pension funds, employee end of service benefit scheme and employee stock option plans.

### **Application of the Act.**

3. This Act applies to international trusts arising voluntarily or resulting by operation of law or by a decision of the court.

## **PART II – GENERAL PROVISIONS**

### **International Trust.**

- 4.(1)** An international trust is a trust or a constructive trust in respect of which –
- (a) the settlor is not at any time during the duration of the trust a resident of Seychelles;
  - (b) at least one trustee shall be a company licensed under the International Corporate Service Providers Act to provide international trustee services, at all times;
  - (3) the trust property does not, subject to subsections (3) and (4), include –
    - (i) any property situated in Seychelles;
    - (ii) any shares, debentures, or any interests in any body corporate other than a corporate body incorporated under the law of a country other than Seychelles or an International Business Company or another international trust.
- (2)** *Repealed*
- (3)** Notwithstanding subsection (1)(c), a trustee of an international trust may, with the approval of the Authority and subject to any other written law –
- (a) own such immovable property as may be required for the office accommodation of the trustee;
  - (b) invest in securities and hold other investments in Seychelles.
- (4)** A trustee may open and maintain with a financial institution an account out of which all payments required for the administration and operation of the international trust may be effected.
- (5)** Where at any time after declaration of trust has been submitted for registration under section 75, a trust ceases to be an international trust, the resident trustee shall forthwith notify the Authority of this fact.

#### **Validity of international trust.**

- 5.** Subject to this Act, an international trust is valid and enforceable in Seychelles.

#### **Proper law of international trust.**

- 6.(1)** The proper law of an international trust is –
- (a) the law chosen by the settlor to be the proper law, the choice being expressed or implied in the terms of the trust; or
  - (b) if no law is so chosen, the law with which the international trust is most closely connected at the time of its creation.
- (2)** In ascertaining the law with which an international trust is most closely connected, reference shall be made in particular to –
- (a) the place of administration of the trust designated by the settlor;
  - (b) the 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.

(3) The terms of an international trust may provide for the proper law of the trust to be changed, but the change is valid and effective only if the new proper law recognises the validity of the trust and the interest of the beneficiaries.

(4) A change in the proper law of an international trust shall not affect the legality or validity or render any person liable for anything done before the change.

(5) The duties imposed on a trustee in Part V shall have effect notwithstanding anything to the contrary in the proper law of an international trust.

### **Jurisdiction of Court.**

7. The court has exclusive jurisdiction in respect of all matters relating to an international trust.

### **Confidentiality.**

8.(1) Subject to this section, a trustee or any other person shall not disclose to any person not legally entitled to it or be required to produce or divulge to any court, tribunal, committee of enquiry or other authority in Seychelles or elsewhere, any information or document which –

- (a) discloses –
  - (i) the name of the settlor or of any beneficiary;
  - (ii) 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 international trust was performed;
  - (iii) 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;
- (b) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty; or
- (c) relates to or forms part of the accounts of the international trust.

(2) An information or document referred to in subsection (1) may be disclosed –

- (a) where a request is made by a beneficiary under a trust or in the case of a charitable trust by a charity named in the charitable international trust as beneficiary, for information or disclosure of documents relating to the trust;
- (b) to the extent permissible under the terms of the trust.

(3) The court may make an order for disclosure or production of an information or document relating to an international trust for the purpose of an inquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering on application by the Attorney-General on proof to the satisfaction of the

court that the information or document is bona fide so required.

(4) Where, on application by a person interested, 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.

(5) Where the information or document is stored in a computer, any disclosure or supply of the information or document shall be deemed to have been made in compliance with an order of the court under subsection (3) or (4) if it is made in a visible, legible and portable form.

#### **Avoidance of international trust.**

9.(1) Unless an international trust contains an express power of revocation, it shall be deemed to be irrevocable by the settlor or the settlor's legal representative.

(2) Notwithstanding –

(a) any other law of Seychelles or the law of any other country; or

(b) the fact that a 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,

an international trust shall not be void or voidable in the event of or by reason of the settlor's bankruptcy or liquidation of the settlor's property or in any action or proceedings against the settlor at the suit of the settlor's creditors.

(3) Notwithstanding subsection (2), the court may, where it is proved beyond reasonable doubt that an international trust was made with the intent to defraud persons who were creditors of the settlor or the settlor was insolvent at the time when the trust property was vested in the trustee, declare the international trust void or voidable to the extent necessary to satisfy the claim of a creditor.

(4) The onus of proof of the intent to default under subsection (3) shall rest on the creditor.

(5) Notwithstanding the Civil Code, an action under subsection (3) shall not lie against the trustee of an international trust after more than two years from the date of the transfer or disposal of the assets to the international trust.

#### **Forced heirship.**

10.(1) In this section, "foreign rule of forced heirship" means any rule of law of a jurisdiction other than Seychelles which, in order to protect or give effect to the rights of any person or class of persons to inherit, succeed to or share in the settlor's property on the settlor's death, purports to remove or restrict the settlor's right to encumber, alienate or otherwise deal in or dispose of property belonging to the settlor during the settlor's life-time and includes any judicial or administrative order of a jurisdiction other than Seychelles intended to enforce or implement any such rule.

(2) Where a person creates an international trust, or makes any transfer or disposition of property to an international trust –

(a) neither the trust nor the transfer or disposition shall be invalidated by any foreign rule of forced heirship, or by reason of the fact that the concept of trust is unknown to or not admitted by the law of a jurisdiction other than Seychelles;

- (b) the settlor shall be deemed to have had capacity to create the trust or to make the transfer or disposition if the settlor had capacity to do so under –
  - (i) the laws of Seychelles;
  - (ii) the laws of the country or jurisdiction in which the settlor is domiciled or of which the settlor is a national; or
  - (iii) the proper law of the transfer or disposition.

#### **Duration of international trust.**

**11.(1)** For the purposes of this Act, and notwithstanding any provision to the contrary in the laws of Seychelles or in the law of any other country, the duration of an international trust may continue until the one hundredth anniversary of the date on which it came into existence and will then terminate unless terminated sooner pursuant to a relevant direction in the instrument creating it or for some other reason.

**(2)** Subsection (1) shall not apply to a charitable international trust or to a purpose international trust both of which may continue without any time limitation.

#### **Accumulation of income.**

**12.** A direction contained in the terms of an international trust for accumulation of income is valid for any period within the duration of the trust.

#### **Charitable international trust.**

**13.(1)** Notwithstanding any provision to the contrary in the laws of Seychelles or the laws of any other country, an international trust shall be deemed to be charitable where the trust has as its main 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) any other purpose beneficial to the public in general.

**(2)** An international 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 or objects;
- (b) the international trust is liable to be modified or terminated whether by the exercise of a power of appointment or disposition of assets;

- (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;
- (d) the international trust may be discretionary; or
- (e) the charitable objects are pursued in Seychelles or elsewhere.

**Purpose international trust.**

**14.(1)** Notwithstanding any provision of the law of Seychelles or of the law of any other country, an international trust other than a trust with beneficiaries being –

- (a) particular natural persons or bodies corporate whether or not immediately ascertainable;
- (b) some aggregate of natural persons or bodies corporate ascertained by reference to some personal relationship,

shall be a purpose international trust.

**(2)** Notwithstanding any provision in the laws of Seychelles or in the laws of any other country, a purpose international trust shall, subject to subsection (3), be valid and enforceable.

**(3)** The terms of a purpose international trust which is not a perpetual trust, or which may be terminated, shall –

- (a) specify the events upon which the trust terminates; and
- (b) provide for the disposition of the net assets of the trust upon termination.

**(4)** A purpose international trust may be enforced by the settlor or the settlor's personal representative or by any person specified in the instrument establishing the trust as being the person appointed to enforce the trust.

**PART III – CREATION OF INTERNATIONAL TRUSTS**

**Creation of international trust.**

**15.(1)** An international trust –

- (a) may be created by an oral declaration, or by an instrument in writing, a will or codicil;
- (b) shall not be enforceable unless there is in relation to it a registered declaration of trust.

**(2)** This section shall not apply to resulting, implied or constructive trusts.

**Trust property.**

**16.(1)** Subject to section 4(3), any property other than property situated in Seychelles may be held on trust.

- (2) A trustee of an international trust may accept property to be held on trust or to be added to the trust property from any person not being a resident.
- (3) A beneficial interest may be held on trust.

#### **Beneficiaries of an international trust.**

17.(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 an international trust may –

- (a) provide for the addition of a person as beneficiary, or for the exclusion from benefit of a beneficiary;
- (b) impose an obligation upon a beneficiary as a condition of benefit.

(5) A settlor or trustee of a trust may also be a beneficiary but shall not, subject to sections 21, 55(3) and 57 at any time be the sole beneficiary of the trust.

#### **Disclaimer of beneficial interest.**

18.(1) Subject to the terms of the international trust, a beneficiary may disclaim an interest or any part of it, whether or not the beneficiary 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.

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

#### **Nature of beneficial interest.**

19. The interest of a beneficiary shall form part of the beneficiary's movable property and as such may, subject to the terms of the international trust, be sold, pledged, charged, transferred or otherwise dealt with.

### **Enforcement of international trust.**

**20.(1)** Subject to subsections (2) and (3) and to this Act, an international trust shall be valid and enforceable in accordance with its terms.

- (2)** An international trust shall be invalid and unenforceable where –
- (a)* it has no beneficiary identifiable or ascertainable under section 17(1), unless it is a charitable international trust or a purpose international trust;
  - (b)* it applies or purports to apply to property situated in Seychelles;
  - (c)* the court declares that –
    - (i)** it was established by duress, fraud, mistake, influence, misrepresentation, or in breach of fiduciary duty;
    - (ii)** it is immoral;
    - (iii)** its terms are so uncertain that its performance is rendered impossible; or
    - (iv)** the settlor was, at that time of its creation, incapable of creating such a trust.
- (7)** Where some of the terms of an international trust are invalid but others are not –
- (a)* in case the terms 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 an international trust is partially invalid, the court may declare what property is and what property is not to be held subject to the trust.
- (5)** An application to the court under this section may be made by any person interested in the trust.

### **Effect of invalidity on property.**

**21.** Any property as to which an international trust is invalid shall, subject to any order of the court made under section 20, be held by the trustees in trust for the settlor absolutely or, if the settlor is dead, for the settlor's personal representative.

## **PART IV – APPOINTMENT AND DISCHARGE OF TRUSTEES**

### **Number of trustees.**

- 22.(1)** Unless it is administered by a corporate trustee, the number of trustees of an international trust shall not be less than two.
- (2)** A trust shall not be invalid on the ground that –

- (a) it does not have a trustee or the number of trustees is less than that required by subsection (1) or by the terms of the international trust;
- (b) it does not have a trustee who is resident in Seychelles.

(3) Subject to the terms of the international trust, where the number of trustees is less than the number required, the necessary number of additional trustees shall be appointed in accordance with section 23.

(4) Until the required number of trustees under this section or the terms of the international trust is reached, the existing trustee of a trust shall act only for the purpose of preserving the trust property.

#### **New or additional trustees.**

**23.(1)** Where the terms of a trust does not contain provision for the appointment of an additional trustee, the additional trustee may be appointed by the persons in the order set out hereunder –

- (a) the remaining trustee;
- (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 court, on application by the person interested.

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

(3) A trustee with power to appoint a new or additional trustee who fails to exercise the power may be removed from office by the court.

(4) On the appointment of a new or additional trustee, anything may be done which is necessary to vest the trust property in the trustee jointly with a co-trustee.

#### **Acceptance by trustees.**

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

(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; or
- (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.

(8) A person who fails to disclaim an appointment as trustee or to apply for relief within that time under subsection (2) shall be deemed to have accepted the appointment.

### **Resignation or removal.**

**25.(1)** A trustee, other than a sole trustee, may resign by delivering a written notice of resignation to the co-trustees of the international trust.

**(2)** Subject to subsection (3), a resignation shall take effect upon delivery of the notice.

**(3)** A resignation –

*(a)* given to facilitate a breach of trust; or

*(b)* which would result in there being no trustee or less than the number required by section 22;

shall have no effect.

**(9)** A person shall cease to be a trustee immediately upon –

*(a)* removal from office by the court;

*(b)* resignation of the person taking effect; or

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

**(5)** 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.

**(6)** Subsections (1) and (2) are subject to the terms of the trust.

## **PART V – DUTIES OF TRUSTEES**

### **Fiduciary duties.**

**26.(1)** A person shall in the exercise of the functions of a trustee observe the utmost good faith and act –

*(a)* with due diligence;

*(b)* with care and prudence; and

*(c)* to the best of the ability and skill of the person.

**(2)** Subject to this Act, a trustee shall execute and administer the international trust, and exercise the functions of the office of trustee –

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

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

### **Duty to preserve trust property.**

- 27.** Subject to this Act and to the terms of the international trust, a trustee shall –
- (a) ensure that the trust property is held by or vested in the trustee, or held by a nominee on the trustee's behalf, or is otherwise under the control of the trustee; and
  - (b) preserve and enhance so far as is reasonable, the value of the trust property.

### **Duty not to profit.**

- 28.** A trustee shall not –
- (a) derive, directly or indirectly, any profit from the trusteeship;
  - (b) cause or permit any other person to derive such profit; or
  - (c) on the trustee's own account enter into any transaction with a co-trustee, 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.

### **Duty to keep accounting records.**

- 29.(1)** A trustee shall keep or cause to be kept proper accounting records of the trustee's trusteeship that are –
- (a) sufficient to show and correctly explain the international trust's transactions;
  - (b) enable the financial position of the international trust to be determined with reasonable accuracy at any time; and
  - (c) enable for accounts of the international trust to be prepared.
- (2)** For the purpose of subsection (1) accounting records shall not be deemed to be kept with respect to an international trust if they do not give a true and fair view of the state of the international trust's affairs and explain its transactions.
- (3)** The accounting records shall be kept at the trustee's principal place of business in Seychelles or such other place as the trustee thinks fit.
- (4)** Where the accounting records of an international trust are kept at a place other than the trustee's principal place of business in Seychelles, the trustee shall at all times keep at its principal place of business in Seychelles a written record of the physical address of the place at which the records are kept.
- (5)** A trustee shall retain all accounting records for seven years, from the date of completion of the transactions to which they relate.

**(6)** A trustee who fails to comply with the provisions of this section shall be liable to a penalty of US\$50 for each day or part thereof during which the default continues.

#### **Duty to keep register**

**29A.(1)** A trustee shall keep or cause to be kept at the trustee's principal place of business in Seychelles, an up to date register known as the International Trust Register, containing the following information –

- (a)* full name, address, nationality or place of incorporation of each trustee, beneficiary or settlor;
- (b)* the date on which a person is appointed or otherwise became a trustee, beneficiary or settlor;
- (c)* the date on which the person ceases to be a trustee, beneficiary or settlor.

**(2)** Subject to the trust deed, the International Trust Register shall be open for inspection by a trustee, settlor or beneficiary during business hours.

**(3)** The International Trust Register shall be kept in such form as the trustee thinks fit.

**(4)** A trustee who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding SR250,000.

**(5)** Where a resident trustee has not notified the Authority under section 4(5) that an international trust has ceased prior to the commencement of the International Trusts (Amendment) Act 2011, a trustee of the international trust shall comply with provisions of this section within three months of the commencement of this Act.

#### **Duty to keep trust property separate.**

**30.** A trustee shall keep trust property separate from the trustee's own property and separately identifiable from any other property of the trust.

#### **Duty to give information.**

**31.** Subject to the terms of the international trust, a trustee shall, at all reasonable times, at the written request of any beneficiary (including any charity named in the trust) or of the settlor, provide full and accurate information as to the state and amount of the trust property.

#### **Duty of co-trustees.**

**32.(1)** All the trustees of an international trust shall, subject to the terms of the trust, join in the execution of the trust.

**(2)** Subject to subsection (3), no function conferred on trustees shall be exercised unless all the trustees agree on its exercise.

- (3) The terms of an international trust may empower the trustees to act by a majority.
- (4) A trustee who dissents from a decision of the majority may require the trustee's dissent to be recorded in writing.

#### **Impartiality of trustees.**

**33.(1)** Where an international trust has more than one beneficiary, purpose or charity, the trustees, subject to the terms of the international trust and to subsection (2), shall be impartial and, in the execution of the trust, maintain equality among beneficiaries, purposes or charities, as the case may be.

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

### **PART VI – GENERAL POWERS OF TRUSTEES**

#### **Powers of trustees.**

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

(2) A trustee shall exercise the functions of the office of trustee only in the interests of the beneficiaries or of the purpose and in accordance with the terms of the international trust.

#### **Powers to sue.**

**35.** A trustee may sue and be sued as trustee.

#### **Consultation by trustees.**

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

(2) The terms of the international 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.

#### **Delegation by trustees.**

**37.(1)** A trustee shall not delegate any functions of the office of trustee unless permitted to do so by this Act or by the terms of the international trust.

- (2) Except where the terms of the international trust otherwise provide, a trustee may –
- (a) delegate the management of the 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 professional persons to act in relation to the affairs of the trust, or to hold any trust property; and
  - (c) authorise any such manager or person to retain any commission or other payment usually payable for services of the description rendered.

(10) A trustee who in good faith makes or permits the continuation of a delegation or appointment under subsection (2), shall not be liable for any loss to the international trust arising from the delegation or appointment.

#### **Maximum period of delegation.**

**38.(1)** Unless otherwise provided by the terms of the international trust, a trustee may delegate for a period not exceeding 12 months the performance of the trust or function vested in the trustee either alone or jointly as trustee.

- (2) A delegation under this section shall be in writing and –
- (a) in case the delegator is an individual, shall be signed by the delegator in presence of a witness who shall also sign;
  - (b) in case the delegator is a body corporate, shall be signed and sealed in accordance with its rules or its articles of association of the body corporate.

(11) Within 7 days of signing a delegation under subsection (2), the delegator shall give notice of the delegation to –

- (a) every other person who under the terms of the international trust has power either alone or jointly to appoint a new trustee; and
- (b) every co-trustee.

(12) The notice under subsection (3) shall state –

- (a) the date of commencement and duration of the delegation;
- (b) the name and the address of the settlor;
- (c) the reason for delegating the trust or the function;
- (d) the trust or the function delegated.

(5) A trustee may delegate the trust or function to any person qualified to act as trustee of an international trust other than to the only other co-trustee of the delegator.

(6) A third party dealing with the settlor may not rely on a failure to comply with subsections (3) and (4) in order to invalidate anything done by the settlor.

(7) For the purpose of performing the trust or function delegated, the settlor may exercise any function conferred

on the delegator as trustee by law or by the terms of the trust, other than the power to delegate under this section.

#### **Remuneration of trustees.**

**39.(1)** Except –

- (a) where the terms of the international trust expressly so provide;
- (b) with the consent in writing of every beneficiary; or
- (c) by an order of the court, a trustee shall not be entitled to remuneration for services provided as a trustee.

**(2)** All expenses and liabilities properly incurred in connection with the international trust may be paid out of the trust property.

**(3)** A trustee may be reimbursed from the international trust property for all expenses duly incurred by the trustee in the performance of the function of the office of trustee.

#### **Power to appropriate.**

**40.(1)** The terms of an international trust may empower a trustee to appropriate without the consent of the beneficiary any part of the trust property and apply it in or towards satisfaction of the liabilities of a beneficiary.

**(2)** The trustee shall have the discretion to value and decide on the part of the trust property that may be so appropriated.

#### **Body corporate acting as trustee.**

**41.** A body corporate may -

- (a) act in connection with an international trust by a resolution of its board of directors or other governing body; or
- (b) following a resolution referred to in paragraph (a) appoint one or more of its officer or employee to act on its behalf in connection with the international trust.

#### **Non-disclosure by trustee.**

**42.** Subject to section 8, or to the terms of the international trust and to an order of the court, a trustee shall not disclose documents which reveal –

- (a) the deliberations as to how the trustee should exercise the functions of the office of trustee;
- (b) the reasons for any decision made in the exercise of those functions;

- (c) any material upon which such a decision was or might have been based.

## **PART VII – LIABILITY OF TRUSTEES**

### **Liability for breach of trust.**

**43.(1)** Subject to this Act and to the terms of the international 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 international 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) Where trustees are liable for a breach of trust, they are liable jointly and severally.

(4) Nothing in the terms of an international trust shall relieve a trustee of liability for a breach of trust arising from the fraud, wilful misconduct or gross negligence of the trustee.

### **Saving from liability.**

**44.(1)** A trustee of an international trust is not liable for a breach of trust committed by –

- (a) another person prior to the trustee's appointment;  
(b) a co-trustee unless –  
(i) the trustee becomes or ought to have become aware of the breach, or of the intention of the co-trustee to commit the breach; and  
(ii) the trustee actively conceals the breach or intention or fails within a reasonable time to take proper steps to protect or restore the trust property or to prevent the breach.

(2) A trustee who becomes aware of a breach of trust to which subsection (1)(a) applies shall take all reasonable steps to have the breach remedied.

### **Relief by beneficiary.**

**45.(1)** Subject to subsection (2), a beneficiary may –

- (a) relieve a trustee liable for a breach of trust from such liability;  
(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).

#### **Trustees of more than one trust.**

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

(2) A trustee of an international trust shall disclose to a co-trustee any interest which the trustee 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.

#### **Dealings with third parties.**

**47.(1)** Notwithstanding any other law, where in a transaction or matter affecting an international trust a person who is a trustee informs a third party that the person 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 the trustee is acting as such the trustee 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 the personal liability, unless the trustee acted in breach of trust.

(13) In this section, “third party” means a person other than a settlor, trustee or beneficiary of the international trust.

#### **Constructive trusts.**

**48.(1)** A person who derives a profit from a breach of an international trust, or who obtains property on breach of the trust, shall be deemed to be a trustee of the profit or property, unless the person derives or obtains it in good faith without notice of the breach of trust.

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

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

#### **Outgoing trustees.**

**49.(1)** Where a person who is a trustee resigns or is removed –

- (a) the person shall, subject to paragraph (b), duly surrender all trust property held by or vested in the person or otherwise under the person's control;
- (b) the person may require to be afforded with reasonable security for liability (existing, future, contingent or otherwise) before surrendering the trust property.

(2) A trustee who complies with subsection (1)(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 the trustee's 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 the trustee's possession.

## **PART VIII – PROTECTIVE TRUSTS, CLASS INTERESTS AND EXERCISE OF CERTAIN POWERS**

### **Protective trusts.**

50. The terms of an international trust may make the interest of a beneficiary –

- (a) liable to termination;
- (b) subject to a restriction on alienation or dealing; or
- (c) subject to diminution or termination in the event of the beneficiary becoming bankrupt or any of the beneficiary's property becoming liable to arrest, seizure, forfeiture, expropriation, or similar process of law.

### **Class interests.**

51. Subject to the terms of an international trust, where a trust is in favour of a class of persons –

- (a) the class closes when it is no longer possible for any other person to become a member of the class; and
- (b) where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and, subject to the proper duration of the international trust, shall be retained until a member of the class exists or the class closes.

### **Power of variation.**

52.(1) The terms of an international trust may be varied in any manner provided by the trust instrument.

(2) This section is in addition to the powers of variation by the court provided under Part X.

### **Accumulation and advancement.**

**53.(1)** Subject to the duration of the international trust, the terms of an international trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

**(2)** Subject to subsection (3), income of an international trust that is not accumulated shall be distributed.

**(3)** Subject to the terms of an international trust and to any prior interest or charge affecting the trust property, the trustees may –

**(14)** where a beneficiary is a minor (whether or not the minor's interest is vested) –

**(i)** accumulate the income attributable to the beneficiary's interest pending attainment of full age;

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

**(b)** advance or apply for the benefit of a beneficiary part of the trust property prior to the happening of the event upon which the beneficiary is to become entitled to it.

**(4)** Subject to the terms of an international trust –

**(a)** any trust property advanced or applied under this section shall be brought into account in determining the beneficiary's share in the trust property; and

**(b)** no part of the trust property so advanced or applied shall exceed the beneficiary's vested, presumptive or contingent share in the trust property.

**(15)** The receipt of a guardian or custodian of a beneficiary who is a minor or a person under legal disability shall be a sufficient discharge to the trustees for a payment made to or for the benefit of the beneficiary.

### **Power of appointment.**

**54.** The terms of an international trust may confer on the settlor, trustees or any other person power to appoint or assign all or any 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).

### **Power of revocation.**

**55.(1)** An international 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)** A revocation or variation shall not prejudice anything lawfully done by a trustee in relation to the trust before the trustee receives notice of the revocation or variation.

(3) Subject to the terms of an international trust, where the international 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 the settlor is dead, for the settlor's personal representative.

#### **Permitted investments.**

**56.(1)** Subject to section 4(3), the terms of an international trust may authorise the trustees to invest trust property in securities and investments with or without conditions or restriction.

(2) The powers of investment conferred by the terms of an international trust do not derogate from the duties imposed on trustees under Part V.

### **PART IX – FAILURE, LAPSE AND TERMINATION OF TRUSTS**

#### **Failure of lapse.**

**57.** Subject to the terms of an international trust and to any order of the court, where –

- (a) an interest lapses;
- (b) an international 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 the sole benefit of the person, but the international trust upon which the person is to hold the property is not declared or communicated to the person,

the interest or property concerned shall be held by the trustees in trust for the settlor absolutely or, if the settlor is dead, for the settlor's personal representative.

#### **Termination of international trust.**

**58.(1)** On the termination of an international 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).

(3) Without prejudice to the powers of the court under subsection (4), and subject to the terms of the international trust, where all the beneficiaries are in existence and have been ascertained, and none is a person under legal disability or a minor, they may unanimously require the trustee to terminate the trust and distribute the trust property among them, and the trustee shall comply with the request.

(4) The court, on the application of any person having an interest in the trust, 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.

## **PART X – POWERS OF THE COURT**

### **Appointment of resident trustee.**

**59.(1)** Where at any stage of an international trust there is no trustee resident in Seychelles, a person interested may apply to the court for the appointment of a person, resident in Seychelles and nominated in the application, as a trustee.

**(2)** The court –

- (a) on being satisfied that notice of the application has been served on the existing trustees;
- (b) after hearing any representations that any person interested in the trust may have made, and
- (c) having ascertained that the person nominated is qualified and willing to act,

may appoint that person as a trustee.

### **Power to relieve trustee from liability.**

**60.** 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.

### **Power to make beneficiary indemnify.**

**61.** Where a trustee commits a breach of trust at the instigation, or 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 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.

### **Variation of international trusts.**

**62.(1)** The court, on the application of any person interested on behalf of –

- (a) a minor or a person under legal disability having directly or indirectly, an interest, vested or contingent, under an international trust;
- (b) any person unborn;
- (c) any person, ascertained or not, who may become entitled, directly or indirectly, to an interest under an international trust, as being (at a future date or on the happening of a future event) a person of any specified description or a member of any specified class; or
- (d) any person, in respect of an interest that may accrue to the person 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 or revokes the terms of an international 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 the person's benefit.

### **Approval of transactions.**

**63.** Where in the management or administration of an international 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 interested –

- (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.

### **Special provisions on charitable international trust.**

**64.** 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, or cannot be carried out 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 suitably, be applied to a common purpose, having regard to the spirit of the gift;

- (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, regard being had to the spirit of the gift, 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, regard being had to the spirit of the gift,

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

#### **General power to vary.**

**65.** Where the trust property is held for a charitable or other purpose, the court, on the application of a person interested, 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 trustees, if it is satisfied that the arrangement is –

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

#### **Notification of person with material interest.**

**66.** The court shall not approve an arrangement under section 65 unless the court is satisfied that any person with a material interest in the trust has been, where practicable, notified of the application.

### **PART XI – APPLICATION TO FOREIGN TRUST**

#### **Enforceability of foreign trust.**

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

### **PART XI – MISCELLANEOUS PROVISIONS**

#### **Application to Court.**

**68.(1)** On the application of any person interested, the court may –

- (a) make an order in respect of –
  - (i) the execution, administration or enforcement of an international trust;
  - (ii) a trustee, including an order as to the exercise of 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 an international trust;
  - (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 enforceable of a trust;
- (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 the trustee had been originally appointed a trustee.

#### **General powers of Court in case of default.**

**69.** Where a person does not comply with an order of the court under this Act requiring the person 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, 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.

#### **Payment of costs.**

**70.** 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.

#### **Nature of trustee's interest.**

**71.(1)** Subject to subsection (2) –

- (a) the interest of a trustee 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 trustee's estate.

(2) Where a trustee of a trust is also a beneficiary thereof, subsection (1) does not apply to the trustee's interest as a beneficiary.

#### **Following trust property.**

72. Without prejudice to the personal liability of a trustee, trust property which has been charged or dealt with in breach of trust, or the property into which the trust property 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 rights therein for value and without notice of the breach of trust or of any other defect in the title;
- (d) a person, other than the trustee, derived title therein through a bona fide purchaser or chargeholder for value without notice of the breach of trust or the defect.

#### **Bankruptcy of trustees.**

73. Where a trustee becomes bankrupt or upon the property of a trustee becoming liable to arrest, seizure, forfeiture, expropriation or similar process of law, the trustee's creditors shall have no recourse against the trust property except to the extent that the trustee has a claim against or a beneficial interest in the trust property.

#### **Protection of person dealing with trustees.**

74.(1) A bona fide purchaser for value without notice of a breach of trust –

- (a) may deal with a trustee in relation to the trust property as if the trustee were the beneficial owner of the property; and
- (b) is not affected by the trust on which the property is held.

(2) A person paying or advancing money to a trustee is not concerned to see –

- (a) that the money is wanted;
- (b) that no more than is wanted is raised; or
- (c) that the transaction or the application of the money is proper.

#### **Declaration and its registration.**

**75.(1)** On appointment, a resident trustee of an international trust shall submit to the Authority –

- (a) a declaration that –
  - (i) the settlor of the trust is not a resident of Seychelles;
  - (ii) the trust property does not include any immovable property situated in Seychelles;
  - (iii) the trust the trustee holds qualifies as an international trust.
- (b) the prescribed fees.

**(2)** The Authority shall –

- (a) file the declaration in a Register of International Trusts;
- (b) give the declaration a reference number;
- (c) notify the resident trustee of the registration of the declaration and of the registration number, and

**(16)** The registration number of a declaration of trust under this section of an international trust shall be the reference by which the international trust shall be identified and may be used officially to refer to the international trust.

#### **Particulars of declaration.**

**76.** A declaration of trust shall not contain any mention of –

- (a) the name of the settlor
- (b) the name of the beneficiary, unless the beneficiary is a Seychellois or a body corporate resident in Seychelles.

#### **Offence in relation to declaration.**

**77.** A resident trustee who –

- (a) provides in a declaration of trust any false information, or information misleading in any material particular;
- (b) fails to submit a declaration in respect of an international trust;
- (c) knowingly declares that a trust qualifies as an international trust when it does not by reason of –
  - (i) the domicile of the settlor;
  - (ii) the location of the trust property,

is guilty of an offence and on conviction liable to a fine of R200,000 and to imprisonment for 10 years.

#### **Authority.**

**78.(1)** The Authority for the purposes of this Act shall be –

- (a) a person designated by the Minister by notice published in the Gazette; or
- (b) a body corporate constituted under subsection (2).

**(2)** The Minister may by Order published in the Gazette constitute an Authority which shall be a body corporate consisting of such number of persons as may be specified in the Order.

**(3)** An order under subsection (2) may provide for the name, registered address, meetings, finance, staff, administration, management and any other matter necessary for carrying out the functions of the Authority.

**(4)** Where under subsection (1)(a) the Minister designates an individual as the Authority, the Minister shall provide the Authority with the necessary staff, office accommodation and other matter necessary for carrying out the functions of the Authority.

#### **Licensing of trustees.**

**78A.(1)** The Authority shall, with effect from the date of coming into operation of this section, be responsible for the licensing of persons performing services as trustees appointed under section 4(1)(b).

**(17)** For the purposes of this section, the Licences Act shall apply to the licensing of trustees referred to in subsection (1) subject to the substitution for the words “the Authority” in sections 6, 7 and 8 of that Act and in the Licences (Professional Services) Regulations 1996, of the words “the Authority within the meaning of the International Trust Act”.

**(18)** The Authority shall, in discharging and exercising the functions and powers under this section, act as far as may be, in accordance with the provisions of the Licences Act.

#### **Limitation period for action against trustees.**

**79.(1)** Notwithstanding any other written law but subject to subsection (2), the period of limitation or prescription shall not apply to an action brought by a person interested 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 the trustee or otherwise in the trustee’s possession or under the trustee’s control; or
  - (ii) previously received by the trustee and converted to the trustee’s use.

**(2)** Subject to subsection (3), the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is –

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

whichever period first begins to run.

**(19)** 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 the beneficiary's minority or disability, as the case may be, ceases.

### **Compliance inspection**

**79A.(1)** Subsection to section 79B, the Authority for the sole purpose of monitoring and assessing compliance with this Act, may during business hours and after giving reasonable notice to the trustee –

- (a) access the principal place of business of the trustee;
- (b) inspect the documents to be kept by the trustee in relation to the international trust;
- (c) during or after a compliance inspection request for explanation from the directors of the trustee.

**(2)** A person who impedes, prevents or obstructs the Authority, its officers, employees or authorised agent in the conduct of a compliance inspection commits an offence and is liable on conviction to a fine not exceeding SR 300,000.

### **Non-disclosure of information**

**79B.** The Authority, its officers, employees or authorised agent, shall not disclose to a third party any information acquired in the performance of their functions, unless –

- (a) there is a Court order;
- (b) a requirement under this Act or any other written laws of Seychelles;
- (c) the information disclosed is in statistical form or otherwise disclosed in such a manner that does not disclose the identity of an international trust or person to which the information relates to.

### **Regulations.**

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

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

**(3)** Where the Minister amends any regulations made under subsection (1) for the purposes of increasing any fees or charges, the increased fees or charges shall not have effect with respect to a trust in respect of which a declaration has been registered under section 75 at the time of the coming into force of the amendment.