

**TRUST BILL, 2021***(Bill No. 31 of 2021)***OBJECTS AND REASONS**

The International Trusts Act was one of the first piece of legislation enacted in 1994 to kick-start the offshore industry in Seychelles, together with the International Business Companies Act and the International Trade Zone Act. A number of deficiencies has been highlighted by international standard setting bodies, namely FATF and the Global Forum for Transparency and Exchange on Information Tax Matters under the ambit of the OECD, that requires to be rectified. Therefore, the aim of the new law is to provide a stronger basis for growth of Seychelles as a value-added financial centre while remaining compliant with international standards and best practices. Some of the notable new provisions being proposed in order to achieve these objectives are hereby mentioned.

2. Adding express provisions relating to trust “protectors”. A trust settlor (founder) may (but is not required to) appoint a protector to oversee operation of the Trust. While a protector should not control a trust, the protector can be given veto power on certain trust decisions, such as the power to approve or direct the addition or removal of a trustee or beneficiary.

3. Improving the provisions that provide for varieties of trusts, including trusts with beneficiaries, trusts for charitable purposes (without beneficiaries), trusts for non-charitable purposes (without beneficiaries) and hybrid trusts (i.e. a purpose trust which also has beneficiaries). Note that all these trusts are already provided for under the 1994 Act, but the new Trusts Act covers them more clearly and comprehensively.

4. Adding express provision for “enforcers” of trusts for non-charitable purposes (i.e. which trust will usually not have any beneficiaries).

5. Adding express provisions for settlor's reserved powers. This is provided for under the trust laws of all the major small island state financial centres including Jersey, Guernsey, Cayman Islands, Bermuda, British

Virgin Islands, etc. This means that the settlor (being the person who transfers his or her assets to establish a new trust) may retain certain powers in respect of the trust such as the power to add or remove beneficiaries or to add or remove trustees.

6. Removal of the existing 100-year limit on the duration of non-charitable trusts and allowing a trust, unless its terms provide otherwise, to continue in existence for an unlimited period (until final distribution of all trust property in accordance with the terms of the trust). This has been adopted in leading offshore trust jurisdictions, such as Jersey, Guernsey and Bermuda.

7. In order to reduce the risks of unavailability of accounting records, it is proposed to require all trustees to keep accounting records relating to each trust under their administration at either their registered office in Seychelles (in the case of a private trust company) or at their principal place of business in Seychelles (in the case of a licensed trustee).

8. In line with FATF's Recommendation 25 (including the recommendations made in the Seychelles' Mutual Evaluation Report), to introduce new obligation on trustees to disclose their status as a trustee to a financial institution or a designated non-financial business or profession when forming a business relationship or carrying out an occasional transaction in an amount equal to or above to the amount prescribed under Third Schedule of the Anti-Money Laundering and Countering the Financing of Terrorism Act.

9. In line with OECD and FATF standards, it is proposed to introduce an obligation on trustees to preserve for at least 7 years, the Trust Register pertaining to each trust, containing details of the trust's trustees, beneficiary or class of beneficiaries, settlors, protectors, etc. When a trustee ceases business, such records shall be provided to the FSA or to any other person approves by the FSA. This will ensure the availability of such information in Seychelles.

10. In line with FATF Recommendations, to expand the content of the Trusts Register to include the identity of regulated agents and service providers of the trust including, but not limited to, investment advisors, investment managers, accountants and tax advisors of the trust.

11. As a change to the 1994 Act, the new Trusts Act will require all Seychelles trusts to be in writing. This will add legal certainty and avoid potential confusion and litigation on oral trusts (which are permitted under the 1994 Act along with implied “constructive” trusts).

12. The new Trusts Act will permit non-resident or resident settlors. A settlor is the person who transfers his or her assets to establish a new trust (i.e. to a trustee to hold for the benefit of the beneficiaries).

13. Improvement and clarification of the provisions relating to court jurisdiction and conflict of laws, including addressing the current inappropriate definition of international trust which is problematic as regards foreign law trusts.

14. To provide that Seychelles law recognize (at least to some extent) foreign trusts. Non-recognition would undermine Seychelles' ability to become a successful trust jurisdiction. Trusts will typically be used for holding assets outside Seychelles. So, while the norm will be for Seychelles trustees to form Seychelles law trusts, there will always be niche situations where a foreign law trust is preferred (by a foreign client).

15. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

**FRANK D.R. ALLY  
ATTORNEY-GENERAL**

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**TRUSTS BILL, 2021**

*(Bill No. 31 of 2021)*

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**TRUST BILL, 2021**

*(Bill No. 31 of 2021)*



**A BILL**

**FOR**

**AN ACT to provide for the creation, registration, administration and regulation of trusts including the Seychelles trusts and foreign trusts and for matters connected therewith or incidental thereto.**

**ENACTED** by the President and the National Assembly.

**PART I  
PRELIMINARY**

**Short title and commencement**

**1.** This Act may be cited as the Trusts Act, 2021 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

## Interpretation

2. In this Act, unless the context otherwise requires —

“accounting records” in relation to a trust, means documents relating to —

- (a) the trust's assets and liabilities;
- (b) all receipts and expenditure of the trust; and
- (c) all sales, purchases and other transactions to which the trust is a party;

“approved trustee” in relation to —

- (a) a trust, other than a connected trust, means a licensed trustee; or
- (b) a connected trust means a private trust company or a licensed trustee.

*Explanation* — For the purposes of this definition, where —

- (i) the settlor of a trust (the first trust) is a connected person with respect to the settlor of another trust (the second trust), the first trust is connected to the second trust and both trusts are connected trusts;
- (ii) each trust in a group of two or more trusts are connected to each other, all the trusts in the group are connected trusts;

“assessable income” means the assessable income as defined in section 2 of the Business Tax Act;

“Authority” means the Financial Services Authority established under the Financial Services Authority Act;

“beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised;

“beneficial owner” in relation to property of a trust —

- (a) means a person who ultimately owns the property whether, directly or indirectly, alone or jointly with another person; and
- (b) does not include a nominee who holds the property on behalf of another person;

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

“charitable purpose” means a purpose defined in section 17;

“charitable trust” means a trust created for one or more charitable purposes;

“corporate trustee” means a trustee which is a corporation;

“corporation” means a company or other body corporate incorporated in Seychelles or any other jurisdiction;

“Court” means the Supreme Court of Seychelles;

“enforcer” shall be construed in accordance with Chapter 9 of Part II;

“foreign law” means the laws of any jurisdiction outside Seychelles;

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

“former trust” means a trust established under the repealed Act;

“incapacitated adult” means an individual, other than a minor, who has no capacity to contract under the law of Seychelles or under the law of the person's domicile;

“interest of a beneficiary” means the beneficiary's interest under a trust and references to the beneficiary's interest have a corresponding meaning;

“licensed trustee” means a company licensed to provide trustee services under the International Corporate Service Providers Act;

“Minister” means the Minister responsible for Finance;

“minor” means an individual under the age of eighteen;

“non-charitable purpose” means a purpose other than a charitable purpose;

“officer” in relation to a corporation, includes a director, manager or secretary;

“person” includes any individual, company or other body corporate;

“personal representative” means the executor or administrator for the time being of a deceased person and, in the context of a Seychelles trust, includes the principal heir;

“private trust company” means a private trust company as defined in the International Business Companies Act, 2016 (*Act 15 of 2016*);

“professional persons” means accountants, advocates, attorneys-at-law, bankers, brokers, custodians, investment advisors, investment managers, nominees, custodians, property agents, solicitors and other professional agents or persons;

“property” means property of any description wherever situated,

and in relation to rights and interests, includes the rights and interests whether vested, contingent, defeasible or future;

“protector” shall be construed in accordance with Chapter 8 of Part II;

“purpose trust” means a trust created for the fulfillment of one or more non-charitable purposes, whether or not it has any beneficiaries;

“Register” means the register of trusts to be kept by the Authority pursuant to section 13(1);

“registered trust” means a trust in respect of which a trustee appointment declaration has been registered under section 11(3);

“repealed Act” means the International Trusts Act (*Cap 275*);

“settlor” shall be construed in accordance with section 4;

“Seychelles trust” means a trust created or established under section 8;

“terms of the trust” means —

- (a) in the case of a Seychelles trust, the written terms of the trust and any other terms made applicable by this Act; and
- (b) in the case of a foreign trust, the written or oral terms of trust and any other terms made applicable by the proper law of the trust;

“trust” has the meaning as defined in section 3, and includes —

- (a) the trust property; and
- (b) the rights, powers, duties, interests, relationships and obligations under a trust;

“trustee appointment declaration” means a declaration by an approved trustee in accordance with section 11(2);

“trust property” means the property held in a trust.

### **Existence and recognition of a trust**

3.(1) Subject to section 8(2), a trust exists where a person known as a trustee, holds, or has vested in the person or is deemed to hold or have vested in the person, property —

- (a) for the benefit of one or more beneficiaries; or
- (b) for any charitable or non-charitable purpose which is not for the benefit only of the trustee; or
- (c) for both such benefit referred to in paragraph (a) and any such purpose referred to in paragraph (b).

(2) Subject to this Act, a trust shall be valid and enforceable under the laws of Seychelles.

### **The settlor**

4.(1) Subject to this Act, any person, known as a settlor, who has the legal capacity to contract may create a trust by providing trust property or by making a testamentary disposition on trust or to a trust.

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

(3) Subsection (2) is not contravened, if a settlor is the sole beneficiary of a trust during the settlor's lifetime, provided that the terms of the trust provide for the trust to have one or more persons as beneficiary upon the settlor's death.

(4) A settlor shall be deemed to have had the capacity to create a trust if, at the time he or she transfers or otherwise vests trust property in a trust, he or she is not a minor, is of sound mind and not incapacitated under —

- (a) the laws of Seychelles; or
- (b) the laws of his or her domicile or nationality; or
- (c) the proper law governing the transfer or disposition.

### **Proper law of a trust**

5.(1) Subject to section 48, the proper law of a trust shall be the law of the jurisdiction —

- (a) expressed by the terms of the trust as the proper law;
- (b) if not so expressed, implied from the terms of the trust; or
- (c) if paragraph (a) and (b) do not apply, with which the trust at the time it was created had the closest connection.

(2) For the purpose of subsection (1)(c), in ascertaining, the law with which a trust had the closest connection, reference shall be made in particular to —

- (a) the place of management and control of the trust;
- (b) the *location* of the property of the trust;
- (c) the place of residence or business of the trustee;
- (d) the places where the objects of the trust are to be fulfilled.

### **Jurisdiction of Court**

6. The Court has jurisdiction where —

- (a) the trust is a Seychelles trust;
- (b) a trustee of a foreign trust is resident in Seychelles;
- (c) management of trust property of a foreign trust is carried on in Seychelles or from Seychelles;

- (d) trust property of a foreign trust is situated in Seychelles; or
- (e) a beneficiary of a trust is resident in Seychelles.

## **PART II**

### **PROVISIONS APPLICABLE TO SEYCHELLES TRUSTS**

#### *Chapter 1 - Trust establishment and registration*

#### **Application of Part II**

7. This Part shall apply only to a Seychelles trust, except for sections 10, 11, 12 and 13 which shall apply to a Seychelles trust and a foreign trust.

#### **Trust to be in writing**

8.(1) Subject to subsection (2) and the other provisions of this Act, a Seychelles trust is created by a settlor providing trust property *inter vivos* or by will, to one or more trustees as contemplated in section 3.

(2) A Seychelles trust shall be of no effect, unless created or established in writing by —

- (a) a declaration of trust executed by the original trustees of the trust in which the trustees acknowledge that they hold the trust property in accordance with the terms of the trust; or
- (b) a trust deed executed by the settlor and the original trustees of the trust by which the trust property is transferred to the trustees and they acknowledge that they shall hold the trust property in accordance with the terms of the trust.

#### **Seychelles trusts**

9. Subject to this Act, the proper law of a Seychelles trust is the laws of Seychelles.

#### **Trust property, operation and restriction**

10.(1) Subject to subsection (2) and section 14(2) —



- (a) any property within or outside Seychelles may be held by or vested in the trust;
  - (b) subject to the terms of the trust, a trustee may accept from any person property to be added to the trust property.
- (2) A trust shall not —
- (a) carry on any activity which is unlawful, immoral or contrary to any public policy of Seychelles;
  - (b) own or otherwise hold an interest in —
    - (i) immovable property in Seychelles; or
    - (ii) shares or other interests in any company or other entity which owns or has any interest in immovable property in Seychelles.

### **Registration of trustee appointment declaration**

- 11.(1)** An approved trustee, on appointment as trustee of a trust, shall —
- (a) make a trustee appointment declaration; and
  - (b) apply for registration of the trustee appointment declaration by submitting to the Authority the trustee appointment declaration and the registration fee specified to in the First Schedule.
- (2) The trustee appointment declaration under subsection (1) shall be in writing and state —
- (a) the name of the trust;
  - (b) the date of formation of the trust;
  - (c) the name and address of each approved trustee of the trust;
  - (d) that the property of the trust does not include any —

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- (i) immovable property in Seychelles; or
  - (ii) shares or other interests in any company or other entity which owns or has any interest in immovable property in Seychelles;
- (e) that the instrument creating the trust is in writing; and
- (f) the proper law of the trust.
- (3) On receipt of a trustee appointment declaration accompanied by the registration fee, the Authority shall —
- (a) register the trustee appointment declaration in the Register;
  - (b) allocate a reference number to the trust; and
  - (c) issue, to the approved trustee who submitted the trustee appointment declaration, a letter stating —
    - (i) the name of the trust;
    - (ii) the reference number of the trust;
    - (iii) the date of registration of the trustee appointment declaration.
- (4) Upon registration of a trustee appointment declaration, the trust shall be a registered trust and a letter issued by the Authority under subsection (3)(c) shall be *prima facie* evidence of compliance by the approved trustee of the trust with all the requirements of this Act in respect of registration of a trustee appointment declaration.
- (5) An approved trustee who provides in a trustee appointment declaration any false or misleading information commits an offence and shall on conviction be liable to a fine not exceeding US\$25,000.
- (6) Failure to register a trustee appointment declaration under this section shall not invalidate the trust, but it shall not be entitled to the exemptions under section 88.

**Notice of appointment or termination of a trustee**

12.(1) If, subsequent to registration of a trust under section 11(3), a new approved trustee is appointed to a registered trust, the new trustee shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(2) Where an approved trustee of a registered trust ceases to be a trustee of the trust, the trustee shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(3) At any time after a trustee appointment declaration is registered, and the trust is terminated or otherwise ceases to exist, the last approved trustee of the trust shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(4) Where an approved trustee is required to file a notice under subsection (3) as a result of a trust terminating or otherwise ceasing to exist, the trustee shall not be required to file a notice under subsection (2).

(5) A trustee who contravenes subsection (1), (2) or (3) shall be liable to a penalty fee not exceeding US\$5,000.

**Register of trusts**

13.(1) The Authority shall keep a Register of all registered trusts, which shall state in respect of each trust —

- (a) the name of the trust;
- (b) the reference number of the trust allocated under section 11(3);
- (c) the name and address of each approved trustee of the trust;
- (d) the date of registration of the trustee appointment declaration relating to the trust (in the case of a trust

initially registered under the repealed Act, the date of registration of the declaration under section 75(1)(a) of the repealed Act);

- (e) the date of any notice of termination of trust filed pursuant to section 12(3);
- (f) the date of any order of a Court that the trust is set aside or otherwise ended.

(2) The Register shall be in such form as the Authority may determine and shall, together with the documents referred to in subsection (3), be open to inspection by any person during ordinary office hours on payment of the fee set out in the First Schedule.

(3) No document filed with or otherwise kept by the Authority in relation to a trust shall be open to inspection, except the Register and the trustee appointment declaration filed under section 11(1).

(4) Any person, on payment of the fee set out in the First Schedule, may request the Authority for a Certificate of Official Search under the official seal of the Authority in respect of any trust, which shall contain the information set out in subsection (1)(a) to (e).

### **Validity of a Seychelles trust**

**14.(1)** Subject to subsections (2), (3) and (4), a Seychelles trust shall be valid and enforceable in accordance with its terms.

(2) A Seychelles trust shall be invalid and unenforceable to the extent that —

- (a) it purports to do anything which is contrary to the law of Seychelles;
- (b) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Seychelles;

- (c) it purports to apply to immovable property situated in Seychelles in contravention of section 10(2)(b);
- (d) it is created for a purpose in relation to which there is no beneficiary identifiable or ascertainable, unless —
  - (i) it is a charitable trust; or
  - (ii) it is a purpose trust and if the terms of the trust provide for —
    - (A) the appointment of an enforcer in relation to the trust's non-charitable purposes; and
    - (B) the appointment of a new enforcer at any time when there is none; or
- (e) the Court declares that —
  - (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty;
  - (ii) the trust is immoral or contrary to public policy;
  - (iii) the terms of the trust are so uncertain that the performance is rendered impossible; or
  - (iv) the settlor was, at the time of its creation, incapable of creating the trust.

(3) Where a trust is created for two or more purposes of which some are lawful and others are unlawful —

- (a) if those 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 as to each purpose that is lawful.

(4) Where a trust is partially invalid, the Court may declare what property is trust property and what property is not trust property.

(5) Where subsection (2)(c) applies, any person in whom the title to such immovable property is vested shall not be, and shall not be deemed to be, a trustee of such immovable property.

(6) Any property to which a trust is wholly or partially invalid shall, subject to any order of the Court, be held by the trustees on trust for the settlor absolutely or, if he or she is dead, for his or her personal representative.

(7) An application may be made to the Court under this section by any person referred to in section 71(1).

### **Duration of a Seychelles trust**

**15.(1)** Unless its terms provide otherwise, a trust may continue in existence for an indefinite period.

(2) No rule against perpetuities or excessive accumulations shall apply to a trust or to any advancement, appointment, distribution or application of assets from a trust.

(3) Except where the terms of a trust provide to the contrary, any advancement, appointment, distribution or application of assets from that trust to another trust shall be valid even if the other trust may continue after the date by which the first trust may terminate.

### **Powers reserved by settlor**

**16.(1)** A trust is not invalidated by the reservation or grant by the settlor (whether to the settlor or to any other person) of all or any of the following powers or interests —

- (a) a power to revoke, vary or amend the terms of a trust or any trusts or powers arising wholly or partly under it;
- (b) a power to direct or approve the advancement, appointment,

distribution or application of income or capital of the trust property;

- (c) a power to act as, or to direct the appointment or removal of, a director or officer of any corporation wholly or partly owned by the trust;
- (d) a power to direct the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property;
- (e) a power to appoint or remove any trustee, enforcer, protector or beneficiary;
- (f) a power to appoint or remove a professional person acting in relation to the affairs of the trust or holding any trust property;
- (g) a power to change the proper law of the trust or the forum for the administration of the trust;
- (h) a power to restrict the exercise of any powers or discretions of trustee by requiring that such power shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust;
- (i) a beneficial interest in the trust property.

(2) The reservation, grant or exercise of a power or interest referred to in subsection (1) does not —

- (a) constitute the holder of the power or interest a trustee; or
- (b) subject to the terms of the trust, impose any fiduciary duty on the holder.

(3) A trustee who acts in compliance with the exercise of any power referred to in subsection (1) does not, by reason only of such compliance, act in breach of trust.

**Charitable purposes**

17.(1) Notwithstanding any other law of Seychelles or a foreign law, the following purposes of a trust shall be deemed to be charitable —

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of the arts, culture, heritage or science;
- (f) the advancement of amateur sport;
- (g) the advancement of animal welfare;
- (h) the protection of the environment;
- (i) the advancement of human rights and fundamental freedoms; or
- (j) any other charitable purpose beneficial to the public.

(2) A purpose referred to in subsection (1) shall be charitable, notwithstanding that —

- (a) the purpose may only benefit a section of the public or members of the public;
- (b) the trust may also benefit privately one or more persons or objects within a class of persons or objects;
- (c) the trust is liable to be modified or terminated whether by the exercise of the power of appointment or disposition of assets;
- (d) the trustee of the trust has power to defer the distribution of the property under the trust for a period not exceeding the duration of the trust;



- (e) the trust may be of a discretionary nature; or
- (f) the objects are pursued within or outside of Seychelles.

## *Chapter 2 - Beneficiaries*

### **Beneficiaries of a trust**

**18.(1)** A beneficiary shall be —

- (a) identifiable by name; or
- (b) ascertainable by reference to —
  - (i) a class, or
  - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.

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

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

(4) The interest of a beneficiary under a trust constitutes movable property.

(5) Subject to the terms of the trust, a beneficiary may sell, pledge, charge, transfer or otherwise deal with his or her interest in any manner.

(6) Subject to section 4(3), a settlor or trustee of a trust may also be a beneficiary of the trust, but not the sole beneficiary.

### **Entitlement of beneficiary to information**

**19.(1)** Subject to the terms of the trust, a beneficiary is entitled, on a written request to the trustee of the trust, to inspect or obtain —

- (a) a copy of the instrument creating the trust, any amendment thereto and any deed supplemental to the instrument creating the trust; and
- (b) a copy of the annual audited financial statements of the trust, if any, or, in the absence of annual audited financial statements, a summary of the financial position of the trust, with reference to the assets, liabilities, income and costs of the trust.

(2) Subject to the terms of the trust, on receipt of a written request to inspect or obtain documents under subsection (1), a trustee shall comply with such request within a reasonable time.

(3) Where a trustee does not make documents available for inspection under subsection (1) within a reasonable time, the beneficiary may apply to the Court for relief.

(4) The Court may, subject to the terms of the trust, make an order in relation to inspection by, or delivery of the documents to the beneficiary.

(5) Where the terms of the trust provide that a beneficiary shall not have the right to inspect or receive copy of any of the documents referred to in subsection (1), a trustee who does not comply with a written request under subsection (1) shall not have contravened subsection (2).

### **Disclaimer of interest**

**20.(1)** A beneficiary may, irrespective of the terms of a trust, disclaim in writing, either permanently or for such period as he or she may specify, the whole or any part of his or her interest under the trust.

(2) Subsection (1) applies irrespective of whether the beneficiary has received any benefit from the interest or not.

(3) Subject to the terms of the trust, if a disclaimer under subsection (1) so provides it may be revoked in accordance with its terms.

### ***Chapter 3 - Appointment, resignation and discharge of trustees***

#### **Number and type of trustees**

21.(1) Every trust shall have an approved trustee, and subject to this Act and the International Corporate Service Providers Act, may have one or more co-trustees who may be persons resident outside Seychelles.

(2) A trust shall not be invalidated on grounds of having fewer trustees than required by this Act or the terms of the trust.

(3) If the number of trustees falls below the minimum number required under subsection (1) or, if greater, by the terms of the trust, the required number of new trustees shall be appointed as soon as practically possible.

(4) If there are fewer trustees than are required under subsection (1) or, if greater, by the terms of the trust, the existing trustees may only act for the purpose of preserving the trust property.

#### **Appointment of new or additional trustee**

22.(1) Subsection (2) applies, if —

- (a) the terms of a trust do not provide for the appointment of new or additional trustee;
- (b) any such terms providing for any such appointment have lapsed or failed;
- (c) the person who has the power to make any such appointment is not capable of exercising the power; or
- (d) there is no other power to make the appointment.

(2) Without prejudice to the Court's power to appoint a new or additional trustee pursuant to an application made under section 71, a new or additional trustee may be appointed by —

- (a) the trustees for the time being;
- (b) the last remaining trustee; or
- (c) the personal representative or liquidator of the last remaining trustee.

(3) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the Court.

(4) Subject to the terms of the trust, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed a trustee.

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

### **Prohibition of renunciation after acceptance**

**23.**(1) No person shall be obliged to accept an appointment as a trustee and a person who knowingly does any act or thing in relation to the trust property consistent with the status of a trustee of that property shall be deemed to have accepted appointment as a trustee.

(2) A person who has not accepted and is not deemed to have accepted an appointment as trustee may disclaim such appointment within a reasonable period after becoming aware of it, by notice in writing to the settlor or trustees.

(3) If the settlor is deceased or otherwise unavailable and there are no trustees or persons to whom subsection (2) applies, may apply to the Court for relief from the person's appointment and the Court may make such order as it thinks fit.

### **Resignation or renewal of trustee**

**24.**(1) Subject to subsection (3), a trustee, not being a sole trustee, may resign from office by notice in writing delivered to the co-trustees.

(2) A resignation under subsection (1) shall take effect on the delivery of notice in accordance with subsection (1).

(3) If two or more trustees purport to resign simultaneously, the effect of which would mean that there would be no trustee, the resignations shall have no effect.

(4) A trustee shall cease to be a trustee of the trust immediately upon —

- (a) the trustee's removal from office by the Court; or
- (b) the trustee's resignation becoming effective; or
- (c) the coming into effect of a provision in the terms of a trust under which the trustee is removed from office or otherwise ceases to hold office.

(5) A person who ceases to be a trustee under this section shall execute all documents necessary for the vesting of the trust property in the new or continuing trustees.

#### ***Chapter 4 - Duties and general powers of trustees***

##### **Duties of trustees**

**25.**(1) A trustee shall in the execution of its duties and in the exercise of its powers and discretion —

- (a) act —
  - (i) with due diligence;
  - (ii) prudently;
  - (iii) to the best of the trustee's ability and skill; and
- (b) observe the utmost good faith.

(2) Subject to this Act, a trustee shall carry out its functions as trustee and administer the trust —

- 
- (a) in accordance with the terms of the trust; and
- (b) in the interest of the beneficiaries or in the fulfillment of the purpose of the trust as the case may be.
- (3) Subject to the terms of the trust, a trustee shall —
- (a) so far as is reasonable preserve the value of the trust property;
- (b) so far as is reasonable enhance the value of the trust property.
- (4) Except with the approval of the Court or as permitted by this Act or expressly provided by the terms of the trust, a trustee shall not —
- (i) directly or indirectly profit from the trustee's trusteeship;
- (ii) cause or permit any other person to profit directly or in directly from such trusteeship; or
- (iii) on the trustee's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.
- (5) A trustee shall keep trust property separate from its personal property and separately identifiable from any other property of which he or she is a trustee.
- (6) The trustee of a trust shall disclose its status as a trustee to a financial institution or a designated non-financial business or profession when forming a business relationship or carrying out an occasional transaction in an amount equal to or above to the amount prescribed under the Third Schedule of the Anti-Money Laundering and Countering the Financing of Terrorist Act, 2020 (*Act 5 of 2020*).
- (7) For the purposes of subsection (6), the terms “financial institution” and “designated non-financial business or profession” shall have the same meaning as defined under the Anti-Money Laundering and Countering the Financing of Terrorist Act, 2020 (*Act 5 of 2020*).

(8) A trustee who contravenes subsection (6) commits an offence and shall on conviction be liable to a penalty fee of US\$500 and to an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.

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

**26.(1)** A trustee shall, in relation to each trust of which it is trustee, keep or cause to be kept reliable accounting records that —

- (a) are sufficient to show and explain the trust's transactions;
- (b) enable the financial position of the trust to be determined with reasonable accuracy at any time; and
- (c) allow for financial statements of the trust to be prepared.

(2) For the purposes of subsection (1), accounting records shall be kept, depicting the true and fair view of the trust's financial position and explaining its transactions.

(3) The trustee shall, in respect of each trust (including a terminated trust) to which it was or is acting as trustee, preserve accounting records for at least 7 years from the completion of the transaction or operation to which it relates.

(4) Where a licensed trustee ceases to hold a licence under the International Corporate Service Providers Act (*Cap 275*), the licensed trustee shall handover all the records referred to in subsection (3) to the Authority or any other person approved by the Authority.

(5) All records to be handed over under subsection (4) shall be preferably in the digital form or in such form as agreed upon between the Authority and the licensed trustee.

(6) A trustee who contravenes subsection (1) or subsection (3) shall be liable to a penalty fee not exceeding US\$10,000.

**Location of accounting records**

**27.(1)** Where the approved trustee of a trust is —

(a) a licensed trustee, the trustee shall —

- (i) prepare an annual financial summary to be kept at the licensed trustee's principal place of business in Seychelles within 6 months from the end of the trust's financial year; and
- (ii) on a bi-annual basis, keep its accounting records at the licensed trustee's principal place of business in Seychelles.

(b) a private trust company, the trustee shall —

- (i) prepare an annual financial summary to be kept at the private trust company's registered office in Seychelles within 6 months from the end of the trust's financial year; and
- (ii) on a bi-annual basis, keep its accounting records at the private trust company's registered office in Seychelles.

(2) It shall be sufficient compliance with subsection (1), if a copy of the accounting records or financial summary is kept in electronic form at the approved trustee's principal place or business or registered office in Seychelles.

(3) Where an approved trustee keeps a copy of its accounting records at its principal place of business or registered office in Seychelles, the approved trustee shall keep a written record of the physical address of the place where the original accounting records are kept, and of any change thereto.

(4) The financial year of a trust shall be the calendar year, unless it is determined otherwise by the trustee.



(5) The Authority may issue written guidelines regarding the implementation of the obligations relating to accounting records.

(6) A trustee who contravenes this section shall be liable to a penalty fee not exceeding US\$10,000.

(7) The trustee of a former trust shall comply with the requirements of this section within a period of 6 months from the commencement of this Act.

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

**28.(1)** A trustee, in relation to each trust of which it is the trustee, shall keep a register to be known as the trust register specifying the information referred to in subsection (2) in respect of each —

- (a) trustee;
- (b) beneficiary or class of beneficiaries;
- (c) settlor;
- (d) protector (if any);
- (e) enforcer (if any); and
- (f) regulated agent and service provider of the trust including, but not limited to, investment advisors, investment managers, accountants and tax advisors of the trust.

(2) The trust register shall specify with respect to each person referred to in subsection (1) —

- (a) the person's full name and address;
- (b) the person's nationality or place of incorporation, as the case may be;
- (c) the date on which the person was appointed or otherwise became a trustee, beneficiary, settlor, protector, enforcer, agent or service provider to the trust as the case may be, and in

the case of a natural person identified under subsection (1), the date upon which such a person began exercising control over the trust;

- (d) the date on which the person ceased to be a trustee, beneficiary, settlor, protector, enforcer, agent or service provider to the trust as the case may be, and in the case of a natural person identified under subsection (1), the date upon which the person ceased to exercise control over the trust.

(3) Where the approved trustee of a trust is —

- (a) a licensed trustee, the register under subsection (1) shall be kept at the licensed trustee's principal place of business in Seychelles; or
- (b) a private trust company, the register under subsection (1) shall be kept at the private trust company's registered office in Seychelles.

(4) Subject to the terms of the trust, the trust register shall, during business hours, be open to inspection by any trustee, protector, enforcer, settlor or beneficiary of the trust, and shall be open for inspection for a period of not less than two hours on each business day.

(5) The trust register may be in such form as the approved trustee of the trust approves, but if it is in magnetic, electronic or other data storage form, the approved trustee shall be able to produce legible evidence of its content.

(6) The trust register is *prima facie* evidence of any matters directed or permitted by this Act to be contained therein.

(7) An approved trustee shall, in respect of each trust (including a terminated trust) to which it was or is a trustee, preserve the trust register specified under subsection (1) for at least 7 years from the date —

- (a) it ceases to be the trustee of the trust; or
- (b) the trust fails, lapses or terminates.

(8) Where an approved trustee ceases to hold a licence under the International Corporate Service Providers Act (*Cap 275*), the approved trustee shall handover all the records referred to in subsection (7) to the Authority or any other person approved by the Authority.

(9) All records to be handed over under subsection (8) shall be preferably in the digital form or in such form as agreed upon between the Authority and the approved trustee.

(10) A trustee who fails to comply with subsection (1), (2), (3), (4) or (5) shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues.

(11) A trustee who fails to comply with subsection (7) or (8) shall be liable to a penalty fee not exceeding US\$10,000.

(12) A trustee in a former trust shall be required to comply with the requirements of subsection (1)(f) within a period of 90 days from the commencement of this Act.

### **Furnishing of records**

**29.(1)** Where a trustee of a trust is requested pursuant to a written law of Seychelles to furnish all or any of the trust's records or copies thereof, including a request by —

- (a) the Authority under the Financial Services Authority Act or under the under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (*Act 5 of 2020*);
- (b) the Seychelles Revenue Commission; or
- (c) the Financial Intelligence Unit under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (*Act 5 of 2020*),

the trustee shall furnish the records or copies thereof to the requesting party within the time period specified in the request.

(2) For the purposes of this section, where a record is not in the English or French language, the party requesting the record may request a translation of the records in the English or French language.

(3) A trustee who fails to comply with this section shall be liable to a penalty not exceeding US\$5,000.

### **Duty of co-trustees to act together**

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

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

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

### **Impartiality of trustee**

**31.** Subject to the terms of the trust, where there is more than one beneficiary, or more than one purpose, or at least one beneficiary and at least one purpose, a trustee shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

### **Power of trustee**

**32.**(1) Subject to the terms of the trust and the trustee's duties under this Act, a trustee shall in relation to the trust property have the same powers as the beneficial owner of such property.

(2) A trustee shall exercise the trustee's powers only in the interests of the beneficiaries and in accordance with the terms of the trust.

(3) The terms of a trust may require a trustee to obtain the consent of other persons before exercising a power or discretion.

(4) A person who consents as provided in subsection (3) shall not by virtue of so doing be deemed to be a trustee.

**Delegation by trustee**

**33.**(1) Subject to the terms of the trust, a trustee may delegate the execution or exercise of any of its trusts or powers (both administrative and dispositive) and the delegatee may further delegate any such trusts or powers.

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

- (a) may delegate management of the trust property to a competent and qualified investment manager;
- (b) may employ professional persons to act in relation to any affairs of the trust or to hold any of the trust property; and
- (c) may consult professional persons in relation to any of the affairs of the trust.

(3) Where a trustee in good faith and without negligence makes such delegation, appointment or consultation under this section, the trustee shall not be liable for any loss to the trust arising from such delegation, appointment or consultation.

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

**Remuneration and expenses of trustee**

**34.**(1) A trustee shall be entitled for such remuneration as may be specified in the terms of the trust, for its services.

(2) Where the terms of a trust are silent as to the remuneration, a trustee shall be entitled to reasonable remuneration for services that it provides.

(3) A trustee may reimburse himself or herself out of the trust, all expenses and liabilities reasonably incurred by him or her in connection with the trust.

**Power to appropriate**

**35.** 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 as the trustee thinks fit.

**Corporate trustee acting by resolution**

**36.** A corporate trustee may —

- (a) act in connection with a trust by a resolution of such corporate trustee or of its board of directors or other governing body; or
- (b) by such a resolution appoint one or more of its officers or employees to act on its behalf in connection with the trust.

**Trustee disclosures**

**37.(1)** Subject to section 29 and an order of the Court, the terms of a trust may —

- (a) confer upon any person a right to request the disclosure of information or a document concerning the trust;
- (b) determine the extent of the right of any person to information or a document concerning the trust; or
- (c) impose a duty upon a trustee to disclose information or a document concerning the trust to any person.

(2) Subject to the terms of the trust and to any order of the Court —

- (a) a beneficiary under the trust not being a charity;
- (b) a charity which is referred to by name in the terms of the trust as a beneficiary under the trust; or
- (c) an enforcer,

may request disclosure by the trustee of documents which relate to or form part of the accounts of the trust.

(3) Subject to section 29 and any order of the Court, a trustee may refuse to comply with —

- (a) a request for disclosure of information or a document concerning the trust under subsection (1)(a) or any document which relates to or forms part of the accounts of the trust under subsection (2); or
- (b) any other request for disclosure of information or a document concerning the trust,

where the trustee in the exercise of its discretion is satisfied that it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole, to refuse the request.

(4) Notwithstanding subsections (1), (2) and (3), subject to the terms of the trust and to any order of the Court, a trustee shall not be required to disclose to any person information or a document which —

- (a) discloses the trustee's deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty conferred or imposed upon the trustee;
- (b) discloses the reason for any particular exercise of a power or discretion or performance of a duty referred to in paragraph (a), or the material upon which such reason shall or might have been based; or
- (c) relates to the exercise or proposed exercise of a power or discretion, or the performance or proposed performance of a duty, referred to in paragraph (a).

(5) Notwithstanding the terms of the trust, on the application of the trustee, an enforcer, a beneficiary or, with leave of the court any other person, the court may make such order as it thinks fit determining the extent to which any person may request or receive information or a document concerning the trust, whether generally or in any particular instance.

## *Chapter 5 - Liability of trustee*

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

**38.**(1) Subject to this Act and to the terms of the trust, a trustee shall be liable for a breach of trust committed by the trustee or in which the trustee has concurred.

(2) A trustee who is liable for a breach of trust shall be liable for —

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

(3) Where there are two or more breaches of trust, a trustee shall not set off a gain from one breach of trust against a loss resulting from another breach of trust.

(4) A trustee who resigns in order to facilitate a breach of trust shall be liable for that breach as if it had not resigned.

(5) A trustee shall not be liable for a breach of trust committed prior to the trustee's appointment.

(6) A trustee shall not be liable for a breach of trust committed by a co-trustee unless —

- (a) the trustee becomes aware or ought reasonably to have become aware of the commission of such breach or of the intention of its co-trustee to commit a breach of trust; and
- (b) the trustee actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent such breach.

(7) Where two or more trustees are liable in respect of a breach of trust, they shall be liable jointly and severally.



(8) A trustee who becomes aware of a breach of trust to which subsection (5) relates shall take reasonable steps to have such breach remedied.

(9) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from the trustee's own actual fraud, dishonesty or willful misconduct.

### **Beneficiary may relieve or indemnify trustee**

**39.**(1) A beneficiary may —

- (a) relieve a trustee of liability to the beneficiary for a breach of trust;
- (b) indemnify a trustee against liability for a breach of trust.

(2) Subsection (1) shall not apply, unless the beneficiary —

- (a) has capacity to contract;
- (b) has full knowledge of all material facts; and
- (c) is not improperly induced by the trustee to take action under subsection (1).

### **Trustee acting in respect of more than one trust**

**40.**(1) A trustee of a particular trust who acts for more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any other trust, had the trustee obtained notice by reason of the trustee's acting or having acted for the purposes of the other trust.

(2) A trustee of a trust shall disclose to its co-trustee any interest which it has as a trustee of another trust, if any transaction in relation to the first mentioned trust is to be entered into with the trustee of such other trust.

### **Liability of trustee to third parties**

**41.**(1) Where a trustee is a party to any transaction or matter affecting the trust —

- (a) if the other party knows that the trustee is acting as trustee, any claim by the other party shall be against the trustee as trustee of the trust and shall extend only to the trust property;
- (b) if the other party does not know that the trustee is acting as trustee, any claim by the other party may be made against the trustee personally:

(2) In a case to which paragraph (b) applies, the trustee shall, without prejudice to its personal liability, have a right of recourse to the trust property by way of indemnity.

(3) Subsection (1) or (2) shall not affect any liability the trustee may have for breach of trust.

### **Constructive trustee**

42.(1) Subject to subsection (2) and section 8(2), where a person makes or receives a profit, gain or advantage from a breach of trust the person shall be deemed to be a trustee (in this section referred to as a “constructive trustee”) of that profit, gain, or advantage.

(2) Subsection (1) shall not apply to a *bona fide* purchaser of property for value and without notice of a breach of trust.

(3) Subject to any order of the Court to the contrary, a constructive trustee shall deliver the property of which it is a constructive trustee to the person entitled to it.

### **Position of outgoing trustee**

43.(1) Subject to subsection (2), when a trustee resigns, retires or is removed, it shall duly surrender the trust property in its possession or under its control.

(2) A trustee who resigns, retires or is removed may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before surrendering trust property.

(3) If the provision for security to which subsection (2) refers is extended or renewed by a contract, or other arrangement, to which the trustee who resigns, retires or is removed is not a party, and —

- (a) the contract or other arrangement expressly provides that the trustee may in its own right enforce a term of the contract or other arrangement; or
- (b) a term of the contract or other arrangement purports to confer a benefit on the trustee,

and in either case the contract or other arrangement expressly identifies the trustee, the trustee may enforce that term in its own right.

(4) A trustee who resigns, retires or is removed and has complied with subsection (1) shall be released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or the trustee's duty as a trustee except for liability —

- (a) arising from any breach of trust to which such trustee (or in the case of a corporate trustee any of its officers or employees) was a party or to which the trustee was privy;
- (b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees; or
- (c) arising from the trustee's fraud, dishonesty or willful misconduct.

### ***Chapter 6 - Variation of trusts, certain powers and class interests***

#### **Variation of terms of a trust**

**44.** Without prejudice to the power of the Court to vary the terms of a trust, a trust may be varied in any manner provided by its terms.

**Power of accumulation and advancement**

**45.(1)** Subject to section 15, the terms of a 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 the trust which is not accumulated under subsection (1) shall be distributed.

(3) Subject to the terms of the trust and subject to any prior interests or charges in relation to the trust property, where a beneficiary is a minor and whether or not the beneficiary's interest —

- (a) is a vested interest; or
- (b) is an interest which will become vested —
  - (i) on attaining the age of majority,
  - (ii) at any specific 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 specific 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.

(4) A written receipt by a parent or lawful guardian of a beneficiary who is a minor shall be a sufficient discharge to the trustee for a distribution made under subsection (3).

(5) 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 happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.

(6) Any part of the trust property advanced or applied under subsection (5) shall be brought into account in determining from time to time the interest of the beneficiary in the trust property.

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

### **Power of trustee to appoint or assign**

**46.** The terms of a trust may confer on the trustee or any other person power to appoint or assign all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person, whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

### **Power of revocation**

**47.(1)** A trust and any exercise of a power under a trust may be expressed to be —

- (a) revocable whether wholly or partly; or
- (b) capable of variation.

(2) No revocation or variation under subsection (1) shall prejudice anything lawfully done by a trustee in relation to a trust before the trustee receives notice of such revocation or variation.

(3) Subject to the terms of the trust, where the trust is revoked the trustee shall hold the trust property on trust for the settlor absolutely.

(4) Where a trust is partly revoked, subsection (3) shall apply to the property which is the subject of such revocation.

(5) In subsection (3) “settlor” means the particular person who provided the property which is the subject of revocation.

### **Power to provide for change of proper law**

**48.** The terms of a trust may provide for the proper law of the trust to be changed to the law of another jurisdiction.

### **Class interests**

**49.(1)** Subject to the terms of a trust, the following rules shall apply where a trust or an interest under a trust is in favour of a class of persons —

- (a) a class ceases when it is no longer possible for any other person to become a member of the class;
- (b) where any class interest relates to income and for any period there is no member of the class in existence the income shall be accumulated and, subject to section 15, shall be retained until there is a member of the class in existence or the class closes.

(2) In this section “class interest” means a trust or an interest which is in favour of a class of persons.

## ***Chapter 7 - Failure, lapse and termination of trusts***

### **Failure or lapse of interest**

**50.(1)** Subject to the terms of a trust and subject to any order of the Court, where —

- (a) an interest lapses;
- (b) a trust terminates;
- (c) other than in the case of a trust for a charitable or non-charitable purpose, there is no beneficiary and no person may become a beneficiary in accordance with the terms of the trust; or

- (d) property is vested in a person which is not for his or her sole benefit and the trusts upon which it is to hold the property are not declared or communicated to the person,

the interest or property affected by such lapse, termination, lack of beneficiary or lack of declaration or communication of trusts shall be held by the trustee or the person referred to in sub-paragraph (d), in trust for the settlor absolutely or if he or she is dead for his or her personal representative.

(2) An application to the Court under this section may be made by any person referred to in section 71(1).

(3) In subsection (1) “settlor” means the particular person who provided the interest or property affected as mentioned in that subsection.

### **Termination of a trust**

**51.(1)** On the termination of a trust, the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the beneficiaries entitled thereto.

(2) Notwithstanding subsection (1), the trustee may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before distributing trust property.

(3) Without prejudice to the powers of the Court under subsection (4) and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are incapacitated adults or minors who may require the trustee to terminate the trust and distribute the trust property among them.

(4) The Court may —

- (a) require the trustee to distribute the trust property;
- (b) direct the trustee not to distribute the trust property; or
- (c) make such other order as it thinks fit.

(5) In this section, “liabilities” includes contingent liabilities.

(6) An application to the Court under this section may be made by any person referred to in section 71(1).

### ***Chapter 8 - Protector***

#### **Appointment of protector**

**52.**(1) The terms of a trust may provide for the appointment of a person as a protector of the trust.

(2) A protector of a trust may be a settler or an enforcer of the trust, but not a trustee of the trust.

(3) A protector of a trust may be a beneficiary of the trust, but not a sole beneficiary.

#### **Powers of a protector**

**53.**(1) Subject to the terms of the trust, powers vested in the protector may include —

- (a) the power to remove, or appoint new trustee or additional trustee;
- (b) power to add or exclude a beneficiary;
- (c) power to approve or change the proper law of the trust;
- (d) power to approve proposed trust distributions;
- (e) power to approve proposed trust investments;
- (f) power to appoint replacement protectors;
- (g) power to approve the termination of the trust upon distribution of all of the trust's property; and
- (h) such further powers as are conferred on the protector by the terms of the trust or the provisions of this Act.



(2) Subsection (1)(b) shall not apply to —

- (a) charitable trust; and
- (b) a purpose trust where the terms of the trust do not provide for the trust to have beneficiaries.

### **Remuneration and expense of protector**

**54.**(1) Unless authorised by —

- (a) the terms of the trust;
- (b) consent in writing of all of the beneficiaries; or
- (c) an order of the Court,

a protector shall not be entitled to remuneration for his or her services.

(2) Subject to the terms of the trust, a protector shall be reimbursed by the trustee from the trust property all expenses and liabilities reasonably incurred in connection with the trust.

### **Entitlement of protector to documents**

**55.**(1) A protector of a trust shall be entitled, on a written request to the trustee of the trust, to —

- (a) a copy of the instrument creating the trust, any amendment thereto and any additional deed supplemental to the instrument creating the trust; and
- (b) access to and copies of the accounting records of the trust.

(2) A protector shall not disclose information or document referred to in subsection (1) to a beneficiary, if any, or to any third party unless such beneficiary or other party is entitled under the terms of the trust.

### **Duty of co-protectors to act together**

**56.**(1) Subject to the terms of the trust, where there is more than one

protector, all the protectors shall join in the performance of their duties and powers in relation to the trust.

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

(3) The terms of a trust may empower protectors to act by a majority and a protector who dissents from a decision of the majority of the protectors shall record his or her dissent in writing.

### **Liability of a protector**

**57.** A protector or a person acting as an officer, employee or agent of the protector or performing any duty on behalf of the protector shall not be liable for damages done or omitted to be done in the discharge of the duties of the protector under this Act or under the terms of the trust, unless it is proved that the act or omission constituted or arose from the person's own fraud, dishonesty or willful misconduct.

### **Cessation of appointment of protector**

**58.(1)** Subject to the terms of the trust and subsection (3), a protector may resign from his or her office by giving reasonable notice in writing delivered to the trustee.

(2) Subject to the terms of the trust and subsection (3), a resignation under subsection (1) shall take effect —

- (a) upon delivery of the notice to the trustee; or
- (b) on such date or contingent event as may be specified in the notice.

(3) A resignation given in order to facilitate a breach of this Act or any duty imposed on the enforcer under the terms of the trust shall be of no effect.

(4) A protector shall cease to be a protector of a trust immediately upon —

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

### *Chapter 9 - Enforcer*

#### **Enforcer**

**59.**(1) The terms of the trust in the case of a purpose trust shall provide for —

- (a) the appointment of one or more persons as an enforcer in relation to the trust's non-charitable purposes; and
- (b) the appointment of one or more persons as enforcer at any time when there is none.

(2) A charitable trust can have an enforcer, in which case the terms of the trust shall provide for the appointment of one or more persons as enforcer in relation to the trust's charitable purposes.

(3) An enforcer of a trust can also be a settlor, a beneficiary or a protector of the trust, but the appointment of a person as enforcer of the trust shall not have effect if the person is also a trustee of the trust.

(4) A trustee of a purpose trust shall, at any time when there is no enforcer in relation to those purposes, take such steps as maybe necessary to secure the appointment of an enforcer in accordance with the terms of the trust.

#### **Duties of enforcer**

**60.**(1) Subject to the terms of a trust, it shall be the duty of an enforcer of a purpose trust to enforce the trust in relation to its non-charitable purposes.

(2) In the case of a charitable trust which has an enforcer, it shall be the duty of the enforcer to enforce the trust in relation to its charitable purposes.

(3) Except with the approval of the Court or as permitted by this Act or expressly provided by the terms of the trust, an enforcer shall not —

- (i) directly or indirectly profit from the enforcer's appointment;
- (ii) cause or permit any other person to profit directly or indirectly from the enforcer's appointment; or
- (iii) on the enforcer's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.

### **Remuneration and expense of enforcer**

**61.**(1) An enforcer shall not be entitled to remuneration for his or her services, unless authorised by —

- (a) the terms of the trust;
- (b) a consent in writing of all of the beneficiaries; or
- (c) an order of the Court.

(2) Subject to the terms of the trust, an enforcer shall be reimbursed by the trustee from the trust property all expenses and liabilities reasonably incurred in connection with the trust.

### **Entitlement of enforcer to documents**

**62.**(1) An enforcer of a trust shall be entitled, on a written request to the trustee of the trust, to —

- (a) a copy of the instrument creating the trust, any amendment thereto and any deed supplemental to the instrument creating the trust; and
- (b) access to and copies of the accounting records of the trust.

(2) An enforcer shall not disclose any information or document referred to in subsection (1) to a beneficiary, or to any other person unless such

beneficiary or other person is entitled to receive such information or document under the terms of the trust or any written law.

### **Duty of co-enforcers to act together**

**63.**(1) Subject to the terms of the trust, where there is more than one enforcer all the enforcers shall join in enforcing the trust.

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

(3) The terms of a trust may empower enforcers to act by a majority and an enforcer who dissents from a decision of the majority of the enforcers may require his or her dissent to be recorded in writing.

### **Liability of enforcer**

**64.** An enforcer or a person acting as an officer, employee or agent of the enforcer or performing any duty on behalf of the enforcer shall not be liable in damages for anything done or omitted to be done in the discharge or of the duties of the enforcer under this Act or under the terms of the trust, unless it is proved that the act or omission constituted or arose from the person's own fraud, dishonesty or willful misconduct.

### **Cessation of appointment of enforcer**

**65.**(1) Subject to the terms of the trust and subsection (3), an enforcer may resign from office by notice in writing delivered to the trustee.

(2) Subject to the terms of the trust and subsection (3), a resignation under subsection (1) shall take effect —

- (a) on delivery of the notice to the trustee; or
- (b) on such date or contingent event as may be specified in the notice.

(3) A resignation given in order to facilitate a breach of this Act or any duty imposed on the enforcer under the terms of the trust shall be of no effect.

- (4) An enforcer shall cease to be an enforcer of a trust immediately upon —
- (a) his or her resignation becoming effective;
  - (b) his or her removal from office by the Court;
  - (c) the coming into effect of a provision in the terms of the trust under which the enforcer is removed from office or otherwise ceases to hold office; or
  - (d) his or her appointment as a trustee of the trust.

### ***Chapter 10 - Trust protection provisions***

#### **Application of Laws of Seychelles to a Seychelles trust**

**66.**(1) In this section —

“foreign” refers to any jurisdiction outside Seychelles;

“heirship rights” means rights, claims or interests in, against or to property of a person arising or accruing in consequence of his or her death, other than rights, claims or interests created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of property;

“personal relationship” includes the situation where there exists, or has in the past existed, any of the following relationships between a person and the settlor —

- (a) any relationship by blood, marriage or adoption (whether or not the marriage or adoption is recognised by law);
- (b) any arrangement between the person and settlor such as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to parent and child or husband and wife; or

- (c) any relationship between the person or the settlor and a third person who has a personal relationship;

“trust” includes a former trust.

(2) Subject to subsection (4), any question in respect of —

- (a) the validity or interpretation of a trust;
- (b) the validity or effect of any transfer or other disposition of property to a trust;
- (c) the capacity of a settlor;
- (d) the administration of the trust, whether the administration be conducted in Seychelles or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment or removal; or
- (e) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment and the validity of any exercise of such powers,

shall be determined in accordance with the law of Seychelles and no rule of foreign law shall apply.

(3) Without prejudice to the generality of subsection (2), any question mentioned therein shall be determined without consideration of whether or not —

- (a) any foreign law prohibits or does not recognise the concept of a trust; or
- (b) the trust or disposition avoids or defeats rights, claims, or interests conferred by any foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any

foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests.

(4) No foreign judgment with respect to a trust shall be enforceable to the extent that it is inconsistent with this section.

### **Protection of trust property**

**67.(1)** In this section —

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

“disposition” means any disposition, or series thereof, effected and includes, any transaction, gift, grant or transfer of property of any nature whatsoever;

“intent to defraud” means an intention of a transferor willfully to defeat an obligation owed to a creditor;

“obligation” means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had actual notice;

“relevant disposition” means a disposition to which subsection (3) applies;

“transferor” means the person who as owner of property makes a relevant disposition or causes it to be made;

“transferee” means the person to whom a relevant disposition is made and shall include a successor in title;

“trust” includes reference to the trustee of the trust, in his or her capacity as trustee;

“undervalue”, in relation to a disposition of property, means —

(a) the provision of no consideration for the disposition; or



- (b) a consideration for the disposition the value of which is significantly less than the value of the property.

(2) Subject to subsection (3), a disposition of property to a trust shall not be void, voidable or otherwise liable to be set aside, or subject to any implied condition, by reason of —

- (a) bankruptcy or liquidation of the settlor; or
- (b) any action, proceeding or other claim by a creditor of the settlor.

(3) If the Court, in respect of a claim by a creditor is satisfied beyond reasonable doubt that the disposition of property to the trust was made —

- (a) with an intent to defraud and at an undervalue; or
- (b) the transferor was insolvent or became insolvent as a result of the disposition,

the Court shall declare the disposition void and set aside to the extent necessary to satisfy the obligation of the claimant creditor together with such costs as the Court may direct.

(4) The burden of proof for an intent to defraud for the purposes of subsection (3) shall be upon the creditor seeking to set aside the disposition.

(5) No action or proceedings shall be commenced under this section unless initiated within two years of the date of the relevant disposition.

(6) If the Court sets aside a disposition under subsection (3) —

- (a) where the Court is satisfied that the transferee has acted in bad faith —
  - (i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by

the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the Court); and

(ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee, (and of any predecessor transferee which has not acted in bad faith); and

(b) unless the Court is satisfied that a beneficiary of a trust has acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust or any other person, and otherwise properly exercised.

(7) The burden of proof that a transferee or beneficiary has acted in bad faith for the purposes of subsection (6) shall be upon the person making the allegation.

### **Spendthrift or protective trust**

**68.(1)** The terms of a trust may make the interest of a beneficiary liable to termination.

(2) Without prejudice to subsection (1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to —

- (a) a restriction on alienation or disposal; or
- (b) diminution or termination in the event of the beneficiary becoming bankrupt or any of his or her property becoming liable to sequestration for the benefit of his or her creditors.

## **PART III POWERS OF COURT**

### **Application of Part III**

**69.** This Part shall apply in relation to a Seychelles trust and, to the extent that the context admits, shall apply to a foreign trust.

### **Application for directions**

**70.** A trustee may apply to the Court for direction in respect of the manner in which the trustee may act in connection with any matter relating to the trust and the Court may make such order, as it thinks fit.

### **Application and certain powers of Court**

**71.(1)** An application to the Court for an order or declaration under subsection (2) may be made by the Authority or by the trustee, the settlor, the enforcer, a protector or a beneficiary or, with leave of the Court, by any other person.

(2) The Court may —

(a) make an order concerning —

- (i) the execution or the administration of a trust;
- (ii) the trustee of a trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and distribution of property;
- (iii) a beneficiary or a person having a connection with the trust;
- (iv) the appointment or removal of an enforcer in relation to a non-charitable purpose of the trust; or
- (v) the appointment or removal of a protector;

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

(c) rescind or vary any order or declaration made under this Act, or make any new order or declaration.

(3) Where the Court makes an order for the appointment of a trustee, it may impose such conditions, including the vesting of the trust property, as it may consider necessary.

(4) Subject to any order of the Court, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed.

### **Variation of terms of a Seychelles trust by Court and approval of transactions**

72.(1) Subject to subsection (2), the Court may, by order approve on behalf of —

- (a) a minor or incapacitated adult having, directly or indirectly, an interest, whether vested or contingent, under the trust;
- (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the trust at a future date or on a contingent event of any specified description;
- (c) any person unborn; or
- (d) any person in respect of an interest that may arise by reason of a discretionary power given to a person on the failure or determination of an existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of a Seychelles trust or enlarging the powers of the trustee of managing or administering any of the trust property.

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

(3) Where in the management or administration of a Seychelles trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any

purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient and the same may not be effected by reason of the absence of any power vested in the trustee by the terms of the trust or by proper law, the Court may confer upon the trustee generally or in any particular circumstances a power for such purpose on such terms and conditions as the Court thinks fit and may direct in any manner and from the property any cost authorised to be expended and the cost of any transaction to be paid or borne.

(4) An application to the Court under this section may be made by any person referred to in section 71 (1).

### **Charitable trusts or purpose trusts**

73.(1) Where trust property of a Seychelles trust is held for a charitable purpose or non-charitable purpose and any of the circumstances referred to in subsection (2) apply, the Court may, on the application of a trustee, the Authority, an enforcer or a protector, declare that the property or the remainder of the property, shall be held for such other charitable purpose or non-charitable purpose, as the Court considers to be consistent with the original intention of the settlor.

- (2) The circumstances referred to in subsection (1) are that —
- (a) the purpose has, as far as is reasonably possible, been fulfilled, has ceased to exist or is no longer applicable;
  - (b) the purpose cannot be carried out having regard to the directions given by the settlor or the spirit of the gift;
  - (c) the purpose provides a use for only part of the trust property;
  - (d) the property, and any other property applicable for a similar purpose, may more effectively be applied to a common purpose, with regard to the spirit of the gift;
  - (e) the purpose was laid down by reference to an area that is no longer a unit for that purpose, or by reference to a class of persons or to an area that is no longer appropriate, with regard to the spirit of the gift or the practicality of administering the gift;

- (f) the purpose has been adequately provided for by other means;
- (g) in the case of a trust for charitable purposes, the purpose has ceased for whatever reason to be charitable; or
- (h) the purpose has ceased to provide a suitable and effective method of managing the property, with regard to the spirit of the gift.

(3) Where trust property of a Seychelles trust is held for a charitable purpose or non-charitable purpose the Court may, on the application of a trustee, the Authority, an enforcer or a protector, approve any arrangement that varies or revokes the purposes of the trust or enlarges or modifies the powers of management or administration of the trustees, if it is satisfied that the arrangement is —

- (i) suitable and expedient; and
- (ii) consistent with the original intention of the settlor and the spirit of the gift.

(4) The Court shall not approve an arrangement under subsection (3) unless it is satisfied that any person with a material interest in the trust has had an opportunity to be heard.

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

74.(1) The Court may relieve a trustee either wholly or partly from personal liability for a breach of trust where it appears to the Court that —

- (a) the trustee is or may be personally liable for the breach of trust;
- (b) the trustee has acted honestly and reasonably;
- (c) the trustee ought fairly to be excused —
  - (i) for the breach of trust, or

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

(2) Subsection (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act.

### **Execution of instruments by order of Court**

75. Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the Court may by order impound all or part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through the trustee.

### **Power to indemnify beneficiary for breach of trust**

76.(1) Where any person neglects or refuses to comply with an order of the Court, directing the person to execute or make, any conveyance, assignment, document, instrument or endorsement, the Court may, on such terms and conditions, order that the conveyance, assignment, document, instrument or endorsement, be executed or made by such other person as the Court nominates for the purpose at the cost of the person in default, or otherwise as the Court directs.

(2) A conveyance, assignment, document, instrument or endorsement executed or made by such other person as the Court may nominate under subsection (1) shall be valid and be for all purposes available whether or not it had been executed or made by the person originally directed to execute or make it.

### **Payment of costs**

77. The Court may order the costs and expenses and incidental to an application to the Court under this Act to be paid out of the trust property or to be paid in such manner by such persons as the Court may direct.

### **Interpretation and general provisions relating to sections 79 and 80**

78.(1) In sections 79 and 80 —

- 
- (a) references to a transfer or other disposition of property to a trust, do not include a testamentary disposition;
  - (b) “power” includes a discretion as to the way in which an obligation is performed.
  - (c) “mistake” includes —
    - (i) a mistake as to the effect of, any consequences of, or any of the advantages to be gained by, a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property;
    - (ii) a mistake as to a fact existing either before or at the time of, a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property; or
    - (iii) a mistake of law including a law of a foreign jurisdiction.

(2) Without prejudice to section 71 and subject to subsection (4), the Court may, consequential upon a declaration made under section 79 or 80, make such order or orders as it thinks fit.

(3) No order may be made under subsection (2) which would prejudice any bona fide purchaser for value of any trust property without notice of the matters which render the transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or trust property, voidable.

(4) Nothing in section 79 or 80 shall prejudice —

- (a) any application for a declaration by the Court that a transfer or other disposition of property to a trust, or the exercise of any power in relation to a trust is void or voidable on grounds other than those specified in 79 or 80; or
- (b) any personal remedy which may be available against a trustee or any other person.



**Power to set aside a transfer or disposition of property to a trust due to mistake**

**79.(1)** In this section, “person exercising a power” means a person who exercises a power to transfer or make other disposition of property to a trust on behalf of a settlor.

(2) The Court may on the application of a settlor or any of his or her personal representatives or successors in title, and in the circumstances set out in subsection (3), declare that a transfer or other disposition of property to a trust —

- (a) by a settlor acting in person (whether alone or with any other settlor); or
- (b) through a person exercising a power,

is voidable and has such effect, if any, as the Court may determine.

(3) The circumstances referred to in subsection (2) are where the settlor or person exercising a power —

- (a) made a mistake in relation to the transfer or other disposition of property to a trust; and
- (b) would not have made the transfer or other disposition but for that mistake,

and the mistake is serious as to render it just for the Court to make a declaration under this section.

**Power to set aside the exercise of powers in relation to a trust or trust property due to mistake**

**80.(1)** In this section, “person exercising a power” means a person who, otherwise than in the capacity of trustee, exercises a power over, or in relation to a trust, or trust property.

(2) The Court may on the application of any person specified in subsection (4), and in the circumstances set out in subsection (3), declare that

the exercise of a power by a trustee or a person exercising a power in relation to a trust or trust property is voidable and —

- (a) has such effect as the Court may determine; or
- (b) is of no effect from the time of its exercise.

(3) The circumstances referred to in subsection (2) are where the trustee or person exercising a power —

- (a) made a mistake in relation to the exercise of its power; and
- (b) would not have exercised the power, or would not have exercised the power in the way it was exercised, but for that mistake,

and the mistake is serious as to render it just for the Court to make a declaration under this section.

- (4) An application under subsection (2) may be made by —
  - (a) the trustee who exercised the power concerned, or the person exercising a power (as the case may be);
  - (b) any other trustee;
  - (c) a beneficiary, protector or enforcer; or
  - (d) any other person with leave of the Court.

## PART IV FOREIGN TRUSTS

### Provisions relating to foreign trusts

**81.**(1) This section shall apply to a foreign trust.

(2) Subject to subsections (3) and (5), a foreign trust shall be regarded as being governed by and shall be interpreted in accordance with its proper law.

- (3) A foreign trust shall not be enforceable in Seychelles —
- (a) to the extent that it purports —
    - (i) to do anything which is contrary to the law of Seychelles;
    - (ii) to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Seychelles;
    - (iii) to hold, directly or indirectly, immovable property in contravention of section 10(2)(b)(i) or (ii) in Seychelles; or
  - (b) to the extent that the Court declares that the trust or any activity carried on is immoral or contrary to public policy.
- (4) Where subsection (3)(a)(iii) applies, any person in whom the title to such immovable property is vested shall not be a trustee of such immovable property.
- (5) Sections 26 to 29 shall apply in the case of a foreign trust with a trustee in Seychelles.

## **PART V**

### **PROVISIONS OF GENERAL APPLICATION**

#### **Application of Part V**

**82.** This Part shall apply to a Seychelles trust and, to the extent that the context admits, shall apply to a foreign trust.

#### **Nature of interest of trustee in trust property**

**83.(1)** Subject to subsection (2) —

- (a) legal title to trust property shall be in the name of the trustee or in the name of another person on behalf of the trustee;

- (b) the interest of a trustee in trust property is limited to that which is necessary for the proper administration of the trust; and
- (c) trust property shall constitute a separate fund and shall not form part of the trustee's own property.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1)(c) shall not apply to the trustee's interest in the trust property as a beneficiary.

### **Following of trust property**

**84.** Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered from of a *bona fide* purchaser for value without notice of a breach of trust or a person (other than the trustee) deriving title through such a person.

### **Limitation of interest of trustee in trust property**

**85.(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) such property shall not be deemed to form part of the trustee's assets.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1) shall not apply to the trustee's interest in the trust property as a beneficiary.

(3) Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered unless it is in the hands of a *bona fide* purchaser for value without notice of a breach of trust or a person (other than the trustee) deriving title through such a person.

(4) Where a trustee becomes insolvent or upon distraint, execution or any similar process of a written law being made, taken or used against any property of the trustee, the creditors of the trustee shall have no right or claim against the trust property except to the extent that the trustee itself has a claim against the trust or has a beneficial interest in the trust.

### **Protection of persons dealing with trustee**

**86.**(1) A *bona fide* purchaser for value without actual notice of any breach of trust —

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

(2) No person paying or advancing money to a trustee shall be concerned to the use of the money, or that no more than is necessary is raised, or otherwise as to the propriety of the transaction or the application of the money.

### **Limitation of actions or prescription**

**87.**(1) Notwithstanding any other written law, no period of limitation or prescription shall apply to an action brought against a trustee in respect of any fraud to which the trustee was a party or to which the trustee was privy.

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

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

whichever period shall first begin to run.

(3) Where the beneficiary is a minor the period referred to in subsection (2) shall not begin to run until the day on which the beneficiary ceases to be a minor.

(4) Where subsection (1) does not apply —

- (a) the period within which an action founded on breach of trust may be brought against a trustee by an enforcer or protector is three years from —
  - (i) the date of delivery of the final accounts to the enforcer or protector; or
  - (ii) the date on which the enforcer or protector first has knowledge of the breach of trust,

whichever is earlier; and

- (b) the period within which an action founded on breach of trust may be brought against a former trustee by a current trustee is three years from the date on which the former trustee ceased to be a trustee of the trust.

(5) This section does not apply to a foreign trust whose proper law is the law of a jurisdiction to which the Hague Convention on the Law Applicable to Trusts and on their Recognition concluded on 1 July 1985, for the time being extends.

### **Fiscal matters**

**88.**(1) Notwithstanding any other provisions of this Act, where a trust derives assessable income in Seychelles, its trustees shall —

- (a) within one month of deriving the first assessable income, notify the Authority in writing that the trust is deriving assessable income and the nature of the activities giving rise to this assessable income; and

- (b) within one year of deriving the first assessable income, submit to the Authority an annual return, in a form prescribed by the Authority and accompanied by the annual financial statements complying with the requirements of sections 142 and 144 and the Sixth Schedule of the Companies Act.

(2) The Authority shall send a copy of the notice in subsection (1)(a) to the Seychelles Revenue Commission.

(3) Subject to subsection (4) and notwithstanding anything in the Stamp Duty Act, all instruments relating to —

- (a) the formation of a trust;
- (b) transfers of property to or by a trust (acting by its trustees);
- (c) transactions in respect of beneficiaries' interests in a trust;
- (d) the creation, variation or discharge of a charge or other security interests over any property of a trust; and
- (e) other transactions relating to the business or assets of a trust (acting by its trustees),

are exempt from the payment of stamp duty.

(4) Subsection (3) does not apply to an instrument relating to —

- (a) the transfer to or by a trust (acting by its trustees) of an interest in immovable property in Seychelles; or
- (b) the transfer to or by a trust (acting by its trustees) of shares or other interests in a company or other legal person which owns or has any interest in immovable property in Seychelles.

(5) A trustee who fails to comply with subsection (1) shall be liable to a penalty fee not exceeding US\$5,000.

## PART VI MISCELLANEOUS

### Immunity

**89.** No action, prosecution or other proceedings shall be brought against the Authority or an employee or agent of the Authority, in respect of an act done or omitted to be done in good faith by such person in the performance of functions under this Act.

### Compliance inspections

**90.(1)** Any person authorised by the Authority in writing may, for the purpose of monitoring and assessing compliance with this Act, during normal business hours and after giving a notice to the approved trustee of a trust —

- (a) access the principal place of business in Seychelles of the approved trustee;
- (b) inspect the documents required by this Act to be kept in relation to the trust, including, the register to be kept by the approved trustee under section 28(1);
- (c) during or after inspection request explanations pertaining to the trust from the directors or managerial staff of the approved trustee.

(2) Any person who impedes, prevents or obstructs any person acting under the authority of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding SCR 300,000.

### Limitation of actions or prescription

**91.(1)** Subject to subsection (2), the Authority and each officer, employee and agent of the Authority, shall not disclose to a third party any information acquired in the performance of the functions of the Authority.

(2) Subsection (1) shall not apply to any disclosure —

- (a) pursuant to an order of the Court;



- (b) required under this Act or any other written law of Seychelles;
- (c) having the prior written consent of the approved trustee of the relevant trust; or
- (d) where the information disclosed is in statistical form or is otherwise disclosed in such a manner that does not enable the identity of any trust or other person, to which the information relates, to be ascertained.

(3) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding SCR 300,000.

### **Punishment for contravening any provision for which no fine is provided**

**92.** Any person who contravenes any provisions of this Act, for which no fine is provided for in this Act, commits an offence and shall on conviction be liable to a fine not exceeding SCR500,000.

### **Power of Authority to refuse to take action in certain cases**

**93.(1)** The Authority may refuse to take any action required under this Act for which a fee is prescribed until such fee is paid.

(2) Before imposing any penalty fee under this Act by the Authority, the person concerned shall be given an opportunity of being heard.

(3) The Authority may, for good cause and reason to be recorded in writing, waive all or any part of any penalty fee imposed under this Act.

### **Act to prevail over other laws**

**94.** Where there is any inconsistency between this Act and the Civil Code of Seychelles Act or the Commercial Code of Seychelles Act, this Act shall prevail.

## Regulations

95. The Minister may make regulations for carrying out and giving effect to the provisions of this Act and may by regulations amend the Schedule.

## PART VII REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

### Repeal, savings and transitional provisions of International Trust Act 1994

96.(1) The International Trusts Act (*Cap 276*) is hereby repealed.

(2) Notwithstanding the repeal under subsection (1) —

- (a) any statutory instruments made under the repealed Act, shall to the extent that they are not inconsistent with this Act, shall continue to have effect until they are amended or repealed under the provisions of this Act;
- (b) all suits, prosecutions, appeals or other legal proceedings instituted in any Court or tribunal under the repealed Act and pending before such Court or tribunal prior to the commencement of this Act shall, with effect from such commencement, be deemed to have been instituted under this Act and may be continued accordingly;
- (c) all decrees, orders and judgments made by a court under the repealed Act and remaining unsatisfied prior to the commencement of this Act, shall be enforced under the repealed Act as if this Act has not been enacted;
- (d) anything done or any action taken under the repealed Act shall be deemed to have been done or taken under this Act.

(3) The repeal under subsection (1) shall not affect the legality or validity of —

- (a) anything done in relation to a trust existing before the commencement of this Act; or

- (b) any trust arising from a document or deposition executed or taken effect before the commencement of this Act.

### **Re-registration of former trusts**

**97.**(1) For the purposes of this section,

- (a) a “former trust” means a trust —
  - (i) in respect of which a declaration has been registered under section 75 of the repealed Act; and
  - (ii) subsisting as such on the commencement of this Act;
- (b) “repealed Act” means the International Trusts Act (*Cap 276*) repealed by section 96.

(2) A former trust shall be deemed to be re-registered as a registered trust under this Act with effect from the date of the commencement of this Act, and the Authority shall as soon as is practicable —

- (a) allot a reference number to the trust; and
- (b) enter in the Register the name and other particulars referred to in section 13(1).

(3) The reference number allotted to a trust under subsection (2) may be the number previously allotted to the trust under the repealed Act.

(4) The approved trustee of a former trust shall be deemed to be re-registered under subsection (2), and may request from the Authority, a letter confirming the re-registration and the Authority shall issue at no cost, a letter to that effect.

(5) The letter of re-registration referred to in subsection (5) shall state —

- (a) the name and unique registration number of the trust;
- (b) that the former trust was re-registered under this Act on the commencement of this Act; and
- (c) the date of registration under section 75 of the repealed Act.

(6) Except as otherwise provided, the provisions of this Act shall apply to a trust that is deemed to be registered under this section as it such trust is registered under this Act.

## SCHEDULE

### (Sections 11, 12 and 13)

#### FEES

1	2	3
Sl. No.	Provisions of the Act and purpose	Amount (in US\$)
1.	<i>section 11(1)(b)</i> Trustee appointment declaration registration fee (one off)	\$200
2.	<i>section 12(1)</i> Filing of a notice of appointment of a Seychelles trustee	\$50
3.	<i>section 12(2)</i> Filing of a notice of cessation of a Seychelles trustee	\$50
4.	<i>section 12(3)</i> Filing of a notice of termination of a registered trust	\$50
5.	<i>section 13(2)</i> An inspection of the Register (per trust)	\$50
6.	<i>section 13(2)</i> Obtaining a copy of any document available on inspection (per page)	\$1
7.	<i>section 13(4)</i> Request of official search	\$75
8.	Filing of any document (as required or permitted under this Act) relating to a registered trust, other than as set out above in this Schedule	\$75