

ARRANGEMENT OF SECTIONS**PART I – PRELIMINARY MATTERS**

1. Short title and commencement.
2. Interpretation.

PART II – NATURE OF AN INTERNATIONAL TRUST

3. Validity of international trusts.
4. Governing law of international trusts.
5. Unlimited duration of international trusts and accumulation of income.

**PART III – SPENDTHRIFT, CHARITABLE AND NON-CHARITABLE
INTERNATIONAL TRUSTS**

6. Spendthrift trusts.
7. Charitable trusts.
8. Trusts for non-charitable purposes.
9. Discretionary interests in international trusts.
10. Mandatory rights in international trusts.
11. Protector of a trust.
12. General power of appointment granted to a beneficiary.
13. Right of revocation retained by settlor.

PART IV – TERMINATION OR FAILURE OF INTERNATIONAL TRUSTS

14. Failure or lapse of interest.
15. Failure of charitable trusts.
16. Termination of international trusts.
17. Duress.
18. Termination by beneficiaries.

PART V – BREACH OF TRUST

19. Liability for breach of trust.
20. Constructive trusts.

21. Tracing trust property.
22. Beneficiary may relieve or indemnify trustee.
23. Power to relieve trustee from personal liability.
24. Power to make beneficiaries indemnify.

PART VI – POWERS OF THE HIGH COURT

25. Jurisdiction of the High Court.
26. General powers of the High Court.
27. High Court's determination of validity.
28. Avoidance of fraud.
29. Saving of certain rights.
30. Extent of invalidity.
31. No validation of property not vested in settlor.
32. Foreign judgments not enforceable.
33. Exclusion of foreign laws.
34. Application for directions.
35. Payment of costs.
36. Commencement of proceedings.
37. Bond.
38. Heirship rights.
39. Confidential Relationships Act.

PART VII– TRUSTEES, PROTECTORS AND BENEFICIARIES

40. Beneficiaries of trusts.
41. Disclaimer of beneficial interest.
42. Number of trustees.
43. Appointment of new or additional trustees.
44. Notice to Registrar of change in trusteeship.
45. Removal and resignation of trustees.
46. Nature of trustee's estate and insolvency of trustee.
47. Removal and resignation of protectors.
48. Combination and division of trusts.
49. Effect of terms of the trust instrument.

- 50. Trustee resolutions.
- 51. Trustee books and records.
- 52. Investments.
- 53. Community property and tenancy by the entirety property.

PART VIII – REGISTRATION OF INTERNATIONAL TRUSTS

- 54. Registration of trusts.
- 55. Annual Certificate of Registration.
- 56. Removal and reinstatement of trust.
- 57. Notification of termination.
- 58. Search of Register.
- 59. Translations.
- 60. Prohibition by Minister.

PART IX – REGISTERED AGENT

- 61. Registered agent for service of process.

PART X – EXEMPTION FROM TAXES

- 62. Exemption from taxes and duties.

PART XI – SETTLORS

- 63. Bankruptcy.
- 64. Retention of control by settlor.

PART XII – MISCELLANEOUS SECTIONS

- 65. Immunity from suit.
- 66. Ordinance Advisory Committee.
- 67. Regulations.
- 68. Repeal and savings.

No. [] of 2016

Nevis International Exempt Trust
Ordinance 2016

Island of Nevis

I assent,

Eustace John, C.M.G
Deputy Governor-General

Dated this day of , 2016

ISLAND OF NEVIS

No. [] of 2016

A BILL FOR

AN ORDINANCE to repeal and replace the Nevis International Exempt Trust Ordinance, with the Nevis International Exempt Trust Ordinance, 2016 to make provisions for the law relating to international trusts and for matters incidental thereto or connected therewith.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Nevis Island Assembly and by the authority of the same, as follows:

PART 1 – PRELIMINARY MATTERS

1. Short Title and commencement.

(1) This Ordinance may be cited as the Nevis International Exempt Trust Ordinance, 2016.

(2) This Ordinance shall come into force on a date to be appointed by the Minister by Order published in the Gazette.

2. Interpretation.

In this Ordinance, unless the context otherwise requires,

“*attorney-at-law*” means a person whose name has been entered on the Roll of attorneys at law pursuant to the Legal Professions Act, 2008, as amended;

“*ascertainable standard*” means generally accepted norms or criteria relating to a natural person's health, education, support, or maintenance;

“*authenticated translation*” means a translation into the English language of an instrument which was drafted in a language other than the English language or a language which does not use Latin alphabet characters and was prepared by a professional translator who is accredited by a court of law, a government agency or an international organization;

“*bankrupt*” means a situation where a person, known as a “*debtor*”, has been adjudged insolvent by a court of law or an administrative body and whose property is administered and divided between such debtor’s creditors, and the term “*bankruptcy*” shall be construed accordingly;

“*beneficiary*” means a person entitled to receive the constructive enjoyment of trust property of which a trustee holds legal title, or in whose favour a power to distribute trust property may be exercised;

“*cause of action*” means the facts and circumstances which entitles a person to bring legal action against another;

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

“*charitable remainder annuity trust*” means a trust:

- (a) from which a sum certain is to be paid, not less often than annually,
- (b) to one (1) or more persons (at least one (1) of which is not a charity and, in the case of natural persons, only to a natural person who is living at the creation of the trust),
- (c) for a term of years or for the life or lives of such natural persons or natural persons (herein called the “*lead term*”),
- (d) from which no amount other than the payments described herein and other than qualified gratuitous transfers described herein may be paid to or for the use of any person other than a charity, following the termination of the lead term,
- (e) the remainder interest in the trust is to be transferred to, or for the use of, a charity or is to be retained by the trust for such a use, and
- (f) the value of such remainder interest (determined by applying generally accepted actuarial principles) is at least one percent (1%) of the initial net fair market value of all property transferred in the trust;

“*charitable remainder unitrust*” means a trust:

- (a) from which a fixed percentage of the net fair market value of its assets, valued annually, is to be paid, not less often than annually (herein called the “*lead payment*”),
- (b) to one (1) or more persons (known as an “*income beneficiary*”) (at least one (1) of which is not a charity and, in the case of natural persons, only to a natural person who is living at the creation of the trust),
- (c) for a term of years or for the life or lives of such natural person or natural persons (herein called the “*lead term*”),
- (d) from which no amount other than the payments described herein and other than qualified gratuitous transfers described herein may be paid to or for the use of any person other than a charity, following the termination of the lead term,
- (e) the remainder interest in the trust is to be transferred to, or for the use of, a charity or is to be retained by the trust for such a use, and

(f) the value of such remainder interest (determined by applying generally accepted actuarial principles) is at least one percent (1%) of the initial net fair market value of all property transferred in the trust;

Notwithstanding the foregoing, the trust deed may provide that the trustee shall pay the income beneficiary for any year the amount of the trust income, if such amount is less than the amount required to be distributed as the lead payment and any amount of the trust income which is in excess of the amount required to be distributed as the lead payment, to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

“*claim*” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, un-matured, disputed, undisputed, legal, equitable, secured, or unsecured;

“*creditor*” means a person to whom an obligation or debt is owed, and includes the assignee of such person;

“*Deputy Registrar of Trusts*” means the person or persons appointed by the Minister to assist the Registrar of Trusts in performing the duties of registrar under this Ordinance;

“*determining event*” means the occurrence of any event, act or omission on the part of a beneficiary that would result in a trust becoming payable to any person other than the beneficiary;

“*discretionary interest*” means a beneficiary’s interest in a trust if the beneficiary’s entitlement to a distribution is within the discretion of the trustee or the protector;

“*Dollars*” or “*\$*” means Eastern Caribbean Dollars unless expressly stated otherwise in this Ordinance;

“*endorsement*” means the seal, stamp or handwritten signature of the Registrar of Trusts, or any other method, known or hereinafter invented or adopted which may be used to indicate the approval of the Registrar of Trusts;

“*foreign court*” means any court which is located outside of Saint Christopher and Nevis, any court other than the High Court, or any court which assumes jurisdiction over any person or property which is governed by this Ordinance without the permission of the High Court;

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

“*general power of appointment*” means a power of appointment exercisable in favour of the holder of the power, the power holder’s creditors, the power holder’s estate, or the creditors of the power holder’s estate;

“*governing law*” means the law controlling or directing a trust registered in Nevis or elsewhere;

“*grantor retained annuity trust*” means a trust:

- (a) from which a sum certain is to be paid, not less often than annually,
- (b) to one (1) or more persons (and, in the case of natural persons, only to a natural person who is living at the creation of the trust), and
- (c) for a term of years or for the life or lives of such natural person or natural persons;

“*grantor retained unitrust*” means a trust:

- (a) from which a fixed percentage of the net fair market value of its assets, valued annually, is to be paid, not less often than annually,
- (b) to one (1) or more persons (and, in the case of natural persons, only to a natural person who is living at the creation of the trust), and
- (c) for a term of years or for the life or lives of such individual or individuals;

“*heirship rights*” means any right claim or interest in, against or to property of a person arising or accruing in consequence of such persons death, other than any such right, claim or interest created by will or other voluntary disposition or resulting from an express limitation in the disposition of the property of such person;

“*High Court*” means the High Court of Saint Christopher and Nevis;

“*insolvency*” means a condition when a person, known as a debtor, is unable to pay their debts as such debts become due, and the term “*insolvency*” shall be construed accordingly;

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

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

- (a) at least one (1) of the trustees is either
 - (i) a corporation incorporated under the Nevis Business Corporation ordinance; or
 - (ii) a registered agent
- (b) the settlor and beneficiaries are at all times non-resident; and
- (c) trust property does not include any property situated in Saint Christopher and Nevis;

“*mandatory right*” means a beneficiary’s share in a trust if the beneficiary’s entitlement to a distribution is not within the discretion of the trustee or any other person;

“*Minister*” means the Minister for the time being charged with the responsibility of finance in the Nevis Island Administration;

“*minor*” means a person who has not attained legal age of full responsibility under the law of their domicile;

“*Nevis Company*” means a company incorporated under the Companies Ordinance, 1999;

“*person*” means a natural person or a business entity;

“*personal representative*” means the executor or administrator of the estate of a deceased natural person;

“*power of withdrawal*” means a presently exercisable general power of appointment other than a power exercisable by: (a) a trustee and limited by an ascertainable standard; or (b) another person only upon consent of the trustee or a person holding an adverse interest;

“*profit*” means to obtain financial gain, benefit or pecuniary advantage which equals an excess of income over expenses;

“*property*” means

- (a) property of any description, wherever situated, including any shares or interest therein, but excluding any real property situated in Saint Christopher and Nevis, and
- (b) includes any rights, whether vested, contingent, defeasible or future;

“*protective trust*” means a trust described in section 6 of this Ordinance;

“*protector*” means a person described in section 11 of this Ordinance;

“*provisions of this Ordinance*” includes the provisions of any Order hereunder;

“*purpose*” means an aim or goal, charitable or non-charitable which is sought to be achieved under a trust, and in furtherance of which, a power to distribute trust property may be exercised by the trustee;

“*qualified foreign trust*” means a trust described in section 53 (3) of this Ordinance;

“*registered agent*” means

- (a) an attorney-at-law or a law firm; or
- (b) a Nevis Company,

which has been duly licensed by the Nevis Island Administration to carry the business of registered agent of trusts;

“*registered office*” means the location described in section 57 (2) of this Ordinance;

“*Registrar of Trusts*” means the person appointed by the Minister to perform the duties of Registrar under this Ordinance;

“*settlor*” means any person, including a testator, who gratuitously contributes trust property to a trust or makes a testamentary disposition of trust property on trust. If more than one person gratuitously contributes trust property to a trust or makes a testamentary disposition on trust, each person is considered a settlor of the portion of the trust property attributable to that person’s contribution or testamentary transfer only;

“*spendthrift trust*” means a trust that is subject to a provision that restrains both voluntary and involuntary transfer of a beneficiary’s interest.

“*spouses*” mean two (2) natural persons who are lawfully wedded together in a union recognized under the laws of the jurisdiction where the marriage took place or where the marriage license was issued;

“*trust*” includes an international trust and a qualified foreign trust

“*trustee*” means

- (a) a registered agent;
- (b) a corporation incorporated and registered under the Nevis Business Corporations Ordinance and acting as a trustee of an international trust;

(c) a limited liability company formed and registered under the Nevis Limited Liability Company Ordinance and acting as a trustee of an international trust; and

(d) a multiform foundation established and registered under the Multiform Foundations Ordinance and whose multiform is a company foundation.

“*trust property*” means property which is held on trust.

PART II – NATURE OF AN INTERNATIONAL TRUST

3. Validity of international trusts.

(1) An international trust registered under this Ordinance shall be valid and enforceable notwithstanding that it may be invalid or not enforceable in whole or in part according to the law of the settlor’s domicile or residence or place of current incorporation, formation or establishment.

(2) An international trust shall be invalid and unenforceable to the extent that:

(a) it purports to do anything contrary to the laws of Saint Christopher and Nevis or the laws of Nevis;

(b) it purports to confer any right or power or impose any obligation the exercise of which or the carrying out of which is contrary to the laws of Saint Christopher and Nevis or the laws of Nevis; or

(c) the property of the trust, or any part thereof, are the proceeds of a crime for which the settlor has been convicted.

4. Governing law of international trusts.

(1) The governing law of an international trust shall be:

(a) the law expressed by the terms of the trust to be the governing law;

(b) if no such law is expressed, the governing law shall be this Ordinance.

(2) The terms of an international trust may provide for a severable aspect of the trust (particularly the administration of the trust) to be governed by a different law from the governing law of the trust.

(3) The terms of an international trust may provide for the governing law of the trust or the law governing a severable aspect of the trust to be changed from the law of one (1) jurisdiction to the law of another jurisdiction.

(4) Where the governing law of an international trust or the law governing a severable aspect of international trust is changed from the law of another jurisdiction (herein called the “*old law*”) to the law of Nevis, then no provision of the old law shall operate so as to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on a trustee under the law of Nevis.

(5) Where the governing law of an international trust or the law governing a severable aspect of international trust is changed from the law of one (1) jurisdiction to the law of another jurisdiction (herein called the “*new law*”) no provision of the law of Nevis shall operate as to render

the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the new law.

5. Unlimited duration of international trusts and accumulation of income.

(1) Under this Ordinance no:

- (a) rule of law against perpetuities; or
- (b) suspension of the power of alienation of the title to property; or
- (c) other existing law against perpetuities; or
- (d) law restricting or limiting the duration of an international trust,

shall apply with respect to any interest in real or personal property held in trust if the terms of an international trust specifically state that the trustee of the trust has the unlimited power to sell all trust assets or if one or more persons, one of whom may be the trustee, has the unlimited power to terminate the entire trust.

(2) The rule of law known as the rule against perpetuities shall not apply to an international trust and unless otherwise provided in its terms, an international trust shall have an unlimited duration.

(3) Notwithstanding any rule of law or equity to the contrary, where a trust deed empowers a trustee to accumulate income, or to refrain from making any distribution of capital or income until a specified date or event, or where any provision of the instrument otherwise prevents any distribution of capital or income, notwithstanding that a beneficiary may, but for this section, otherwise be entitled to that accumulation or distribution, the trustee may, in its absolute discretion, subject to any other terms of the instrument, give effect to that direction as such trustee thinks fit notwithstanding that a beneficiary shall request the trustee to immediately distribute the accumulation or distribution and will give a valid discharge to the trustee for such distribution.

(4) The income arising from any international trust may be accumulated in accordance with the terms of the trust for as long a time as is necessary to accomplish the purposes for which the trust was created, notwithstanding any law limiting the period during which trust income may be accumulated.

PART III - SPENDTHRIFT, CHARITABLE AND NON-CHARITABLE INTERNATIONAL TRUSTS

6. Spendthrift trusts.

(1) The terms of an international trust may make the interest of a beneficiary:

- (a) subject to termination;
- (b) subject to diminution or termination if the beneficiary becomes insolvent or any of the property becomes liable to seizure or sequestration for the benefit of the beneficiary's creditors; or
- (c) subject to a restriction on alienation of or dealing in the interest or any part of that interest,

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

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

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

(b) if a determining event occurs while the interest of the beneficiary continues in trust, to pay the interest to such of the following (and including more than one in such shares) as the trustee in its absolute discretion shall appoint:

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

(ii) such person or persons who would be entitled to the estate of the beneficiary if such person or persons had then died intestate while domiciled in Nevis if there is no such spouse or child of the beneficiary then in being.

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

7. Charitable trusts.

(1) For the purposes of this Ordinance and subject to subsections (2) and (3), the following purposes shall be regarded as charitable:

(a) relief of poverty;

(b) advancement of education;

(c) advancement of religion;

(d) protection of the environment;

(e) advancement of human rights and fundamental freedoms;

(f) advancement of scientific research;

(g) advancement of medical treatment and the delivery of health care services; and

(h) any other purpose which is beneficial to the community.

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

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

(4) The enactment titled 13 Elizabeth I Ch. 5 (1571) shall not apply to an international trust that is governed by this Ordinance or any provision thereof or to any transfer into such trust.

8. Trusts for non-charitable purposes.

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

(a) purpose is specific, reasonable and capable of fulfilment;

(b) purpose is not immoral, unlawful or contrary to the public policy of Saint Christopher and Nevis; and

(c) terms of the trust shall provide for the appointment of a protector who is capable of enforcing the trust and for the appointment of a successor to the protector.

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

9. Discretionary interests in international trusts.

(1) This section:

(a) applies to a creditor's claim with respect to a discretionary interest of any beneficiary (including a settlor) in an international trust unless the trust deed provides explicitly otherwise;

(b) shall not prevent a creditor from obtaining relief from under section 29 of this Ordinance that is consistent with this section; and

(c) shall not be construed to limit the application of section 6 of this Ordinance in any manner.

(2) A discretionary interest in an international trust is not a property interest or an enforceable right but rather, it is a mere expectancy that a creditor of a beneficiary (including the settlor) may not attach, garnish or otherwise reach.

(3) A creditor of a beneficiary (including the settlor) may not:

(a) compel or force a distribution with regard to a discretionary interest in an international trust; or

(b) compel or force a trustee to exercise the trustee's discretion to make a distribution with regard to a discretionary interest in an international trust.

(4) A creditor of a beneficiary (including the settlor) may not compel or force a protector to exercise a power to direct a trustee to make a distribution to any beneficiary of an international trust.

(5) In the case of a discretionary interest in an international trust, a trustee who has the authority to pay income or principal to a beneficiary (including the settlor) may pay it to a third party if the payment is for the benefit of the beneficiary (including the settlor), and the trustee of that international trust shall not be liable to any creditor of a beneficiary (including the settlor) for paying income or principal on behalf of that beneficiary.

(6) A creditor of a beneficiary (including the settlor) may not maintain an action or a proceeding in the High Court that interferes with the trustee's discretion to apply income or principal on behalf of the beneficiary of an international trust.

(7) A creditor of a beneficiary (including the settlor) may not obtain an order of attachment, garnishment or similar relief that would prevent a trustee from making a discretionary payment to a third party on behalf of the beneficiary (including the settlor) of an international trust.

(8) In this section, a beneficiary's entitlement (or lack thereof) to a distribution is within the discretion of a trustee, whether or not the trust deed states the purposes for the distribution, is expressed in the form of a standard of distribution or uses the terms "*may*", "*shall*", "*sole*", "*absolute*", "*sole and absolute*", "*uncontrolled*", "*unfettered*", or similar words and whether or not the trustee has abused the discretion.

(9) A trustee of an international trust that includes a discretionary interest may directly pay any expense on behalf of a beneficiary and may exhaust the income and principal of the trust for the benefit of that beneficiary regardless of whether the beneficiary has any outstanding creditors.

(10) A trustee shall not be liable to any creditor for paying the expenses of a beneficiary (including the settlor) who holds a discretionary interest in an international trust.

10. Mandatory rights in international trusts.

(1) A creditor of a beneficiary may not attach, garnish or otherwise reach a mandatory right under any circumstance unless that right to attach, garnish or otherwise reach a mandatory right is explicitly stated in the trust deed.

(2) In the case of a mandatory right in an international trust, unless the trust deed provides explicitly otherwise a trustee who is directed to pay income or principal to a beneficiary may pay it to a third party if the payment is for the benefit of the beneficiary, and the trustee of an international trust shall not be liable to any creditor of a beneficiary for paying income or principal on behalf of such beneficiary.

(3) A creditor of a beneficiary may not maintain an action or a proceeding in the High Court that interferes with the trustee's authority to apply income or principal on behalf of the beneficiary of an international trust.

(4) A creditor of a beneficiary may not obtain an order of attachment, garnishment or similar relief that would prevent a trustee from making a mandatory payment to a third party on behalf of the beneficiary of an international trust.

(5) A trustee of an international trust that includes a mandatory right may directly pay any expense on behalf of the beneficiary of that trust regardless of whether the beneficiary has any outstanding creditors.

(6) A trustee shall not be liable to any creditor for paying the expenses of a beneficiary who holds a mandatory right.

(7) This section shall not prevent a creditor from obtaining relief under section 29 that is not inconsistent with this section, and shall not be construed to limit the application of section 6 in any manner.

11. Protector of a trust.

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

(2) Where a person is given authority by the terms of an international trust to direct, consent to or disapprove a trustee's actual or proposed investment decisions, distribution decisions or other decision of the trustee, that person shall be considered to be a protector when exercising such authority, unless the terms of the trust provide otherwise.

(3) The protector of an international trust shall have the power to:

(a) remove a trustee and appoint a new or additional trustee, unless the terms of the trust provide otherwise; and

(b) exercise such further powers as are conferred on the protector by the terms of the international trust or by the provisions of this Ordinance.

(4) The terms of an international trust may grant the protector the power to:

(a) direct the trustee to make distributions from the trust;

(b) consent to or approve any distributions made by the trustee from the trust; and

(c) direct the trustee regarding any or all investment decisions of the trust, which includes the power to direct a trustee to retain, purchase, sell, transfer, dispose of or exchange trust property or to engage in any other transaction affecting the ownership or rights over such property.

(5) If the terms of an international trust provide that a trustee shall follow the direction of the protector and the trustee acts in accordance with such a direction, then except in cases of wilful misconduct or gross negligence on the part of the trustee so directed, the trustee shall not be liable for any loss resulting directly or indirectly from any such act.

(6) If the terms of an international trust provide that a trustee shall make decisions with the consent of the protector, then except in cases of wilful misconduct or gross negligence on the part of the trustee, the trustee shall not be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of such protector's failure to provide such consent after having been requested to do so by the trustee.

(7) When the terms of an international trust provide that a trustee shall follow the direction of the protector with respect to investment decisions of the trustee, then, except to the extent that the international trust provides otherwise, the trustee shall have no duty to:

(a) monitor the conduct of the protector;

(b) provide advice to the protector or consult with the protector; or

(c) communicate with or warn or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee's discretion in a manner different from the manner directed by the protector.

(8) Absent clear and convincing evidence to the contrary, the actions of the trustee pertaining to matters within the scope of the protector's authority (such as confirming that the protector's directions have been carried out and recording and reporting actions taken at the protector's direction), shall be presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee under the governing instrument and such administrative actions shall not be deemed to constitute an undertaking by the trustee to monitor the protector or otherwise participate in actions within the scope of the protector's authority.

(9) The protector of an international trust may also be a settlor or a beneficiary of a trust, unless the terms of the trust provide otherwise.

(10) Subject to the terms of the international trust, in the exercise of their office, a protector shall owe a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust is created.

(11) Where there is more than one protector of a trust then, subject to the terms of the trust, any functions, power or authority conferred on the protectors may be exercised if a majority of the protectors for the time being agree on its exercise.

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

(13) A protector may delegate duties and powers with regard to investment decisions.

(14) A protector shall exercise reasonable care, skill, and caution in relation to:

(a) selecting an agent such as an investment advisor;

(b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(c) reviewing the agent's actions periodically to monitor the agent's performance and compliance with the terms of the delegation.

(15) In performing a delegated function, power or authority, an agent owes a duty to the protector, trustee, beneficiary or purpose for which the trust was created to exercise reasonable care to comply with the terms of the delegation.

(16) A protector who complies with subsection (14) and, when investment functions are delegated, is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

12. General power of appointment granted to beneficiary.

A creditor shall have no right against the interest of a beneficiary of an international trust or against the beneficiary or trustee of the trust with respect to such interest unless:

(a) the beneficiary (other than the settlor) has a power to appoint all or part of the trust property to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate by will or other instrument such that the appointment would take effect only upon the beneficiary's death and the beneficiary actually exercises such power in favour of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate, however, only to the extent of such exercise.

(b) the beneficiary (other than the settlor) has a power, including a power of withdrawal, to appoint all or part of the trust property to the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate during the beneficiary's lifetime and the beneficiary actually exercises such power in favour of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate, however, only to the extent of such exercise.

13. Right of revocation retained by settlor.

A creditor shall have no right against the interest of a beneficiary of an international trust who is the settlor or against the settlor or trustee of the trust with respect to such interest unless the settlor has a power to revoke the trust and appoint all or part of the trust property to the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate during the settlor's lifetime and the settlor actually exercises such power in favour of the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate, however, only to the extent of such exercise.

PART IV - TERMINATION OR FAILURE OF INTERNATIONAL TRUST

14. Failure or lapse of interest.

- (1) Subject to the terms of the international trust and to any Order of the High Court, where:
- (a) an interest lapses;
 - (b) a trust terminates; or

(c) there is no beneficiary and no person (whether or not then living) who has become a beneficiary in accordance with the terms of the trust,

the interest in the property concerned shall be held by the trustee in trust for the settlor absolutely or, if they are dead, as if it formed part of their estate at death.

(2) Subsection (1) shall not apply to an international trust established for a charitable purpose to which section 15 applies.

15. Failure of charitable trusts.

(1) Where property under an international trust is held for a charitable purpose and:

- (a) the purpose has been, as far as it may be, fulfilled;
- (b) the purpose cannot be carried out according to the directions of and in the spirit of the gift;
- (c) the purpose provides a use for part of the property;
- (d) the purpose was laid down by reference to an area which was then, but has since ceased to be, a unit for some other purpose, or by reference to a class of persons or to an area which has for a reason ceased to be suitable or to be practicable in administering the gift;
- (e) the purpose has been adequately provided for by other means;
- (f) the purpose has ceased to be charitable (by being useless or harmful to the community or otherwise);
- (g) the property and other property applicable for a similar purpose can be effectively used in conjunction, and that end can more suitably be applied to a common purpose; or
- (h) the purpose has ceased in any other way to provide a suitable and effective means of using the property;

then the property or the remainder of the property, as the case may be, shall be held for such other charitable purposes as the High Court, on the application of the trustee with the consent of the protector, declares to be consistent with the original intention of the settlor.

(2) Where international trust property is held for a charitable purpose, the High Court, on the application of the trustee and with the consent of the protector, may approve any arrangement which varies or revokes the purposes or terms of the trust or enlarges or modifies the powers of management or administration of the trustee, if it is satisfied that the arrangement is:

- (a) now suitable or expedient; and

(b) consistent with the original intention of the settlor.

(3) The High Court shall not make a declaration under subsection (1) or approve an arrangement under subsection (2) unless it is satisfied that any person with a material interest in the trust has received notice of the application of the trustee, which has been made with the consent of the protector and has had an opportunity of being heard.

16. Termination of international trusts.

(1) On the termination of an international trust the trustee shall, within a reasonable time and subject to subsection (2), distribute the trust property in accordance with the terms of the trust to the beneficiaries or purposes entitled thereto.

(2) The trustee may retain sufficient trust property on account to make a reasonable provision for any existing, future or contingent liabilities or any other expenses.

17. Duress.

To the extent any person (including the settlor) is granted the power under the terms of a trust to demand or request any act on the part of a settlor, beneficiary, trustee, protector, or other person, or has the authority to approve, veto, or compel any action or exercise any power which affects or will affect an international trust or any interest therein, each such person is directed, to the extent such person would not be subject to personal liability or personal exposure to:

(a) accept or recognize only demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, which are given by or are the result of persons acting of their own free will and not under compulsion or pursuant to any legal process, directive, order, or like decree of any foreign court, administrative body, or other tribunal or like authority, with the exception of an Order of the High Court; and

(b) ignore any demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any function, power or authority, where the person attempting to demand, request, approve, veto, compel the act, or exercise the function, power or authority is not a person either appointed or so authorised pursuant to the terms of such trust.

18. Termination by beneficiaries.

(1) Without prejudice to any power of the High Court and unless expressly prohibited by the terms of any international trust, where all beneficiaries are in existence and have been ascertained, and none is a person under legal disability or a minor, and all beneficiaries are in

agreement so to do, they may require the trustee to terminate the trust and distribute the trust property as the beneficiaries direct.

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

(3) The rule in *Saunders v. Vautier* [1841] EWHC Ch. J82 shall have no application to any international trust nor any provision thereof nor to any transfer to such trust.

PART V - BREACH OF TRUST

19. Liability for breach of trust.

(1) Subject to the provisions of this Ordinance and to the terms of the trust, a person who commits or concurs in a breach of trust is liable for:

(a) any loss or depreciation in value of the trust property resulting from the breach: and

(b) any profit which would have accrued to the trust had there been a breach.

(2) A trustee may not set-off a loss accruing from one (1) breach of trust against a loss or depreciation in value resulting from another breach.

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

(a) the trustee becomes or ought to have become aware of the breach; and

(b) the trustee actively conceals the breach or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent the breach.

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

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

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

20. Constructive trusts.

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

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

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

21. Tracing trust property.

Without prejudice to the personal liability of a trustee, trust property which has been charged or dealt with in breach of trust into any property into which it has been converted may be traced and recovered unless:

- (a) it is no longer identifiable;
- (b) it is in the hands of a *bona fide* purchaser for value without actual constructive or implied notice of the breach of trust.

22. Beneficiary may relieve or indemnify trustee.

(1) A beneficiary may relieve a trustee of liability for a breach of trust or indemnify a trustee against liability for a breach of trust and the terms of the trust may relieve a trustee of liability for a breach of trust or indemnify a trustee against liability for a breach of trust.

(2) Subsection (1) does not apply if the beneficiary:

- (a) is a minor or a person under a legal disability;
- (b) does not have full knowledge of the material facts; or
- (c) is improperly induced by the trustee to act under subsection (1).

23. Power to relieve trustee from personal liability.

The High Court may relieve a trustee wholly or partly of liability for a breach of trust where it appears to the High Court that the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust or for omitting to obtain the directions of the High Court in the matter in which the breach arose.

24. Power to make beneficiaries indemnify.

Where a trustee commits a breach of trust:

- (a) at the instigation of a beneficiary;
- (b) at the request of a beneficiary; or
- (c) with the concurrence of a beneficiary,

the High Court (whether or not the beneficiary is a minor or a person under a legal disability) may impound all or part of the beneficiary's interest by way of indemnity to the trustee or a person claiming through such beneficiary.

PART VI – POWERS OF THE HIGH COURT

25. Jurisdiction of the High Court.

The High Court has jurisdiction in respect of any matters concerning an international trust where:

- (a) the governing law of the trust is this Ordinance;
- (b) a trustee of the trust is resident in Saint Christopher and Nevis or is registered in Nevis; and
- (c) any part of the administration of the trust is carried on in Saint Christopher and Nevis.

26. General powers of the High Court.

(1) On the application of a trustee, a beneficiary, a settlor or the settlor's personal representatives, a protector, or with the leave of the High Court, any other person, the High Court may:

- (a) make an Order in respect of
 - (i) the execution, administration or enforcement of a trust;
 - (ii) a trustee, including an Order as to the exercise of any power by a trustee, the appointment, remuneration or conduct of a trustee, the keeping or submission of accounts, and the making of payments, whether in High Court or otherwise;
 - (iii) a protector, including an Order appointing a protector;
 - (iv) a beneficiary, or a person connected to the trust;
 - (v) any trust property including an Order for the vesting, preservation, application, surrender and recovery thereof;
- (b) make a declaration as to the variation or enforceability of a trust;
- (c) direct the trustee to distribute or not to distribute the trust property;
- (c) make such Order in respect of the termination of the trust and distribution of the property as it thinks fit;
- (e) rescind or vary an Order or declaration under this Ordinance or make a new or further Order or declaration.

(2) Where the High Court appoints or removes a trustee under this section:

- (a) it may impose such requirements and conditions as it thinks fit, including provisions as to remuneration and requirements or conditions as to the vesting of the property;
- (b) subject to the Order, a trustee appointed by the High Court shall perform the same functions, and may act in all respects, as if such new trustee had been originally appointed a trustee.

(3) If a person does not comply with an Order of the High Court under this Ordinance requiring such person to act, the High Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person nominated for the purpose by the High Court, (at the expense of the person in default or otherwise, as the High Court directs) and the thing so done has effect in all respects as if done by the person in default.

(4) No action or proceeding (whether substantive or interlocutory in nature) shall be heard, and no injunction, Order of any kind, or any other relief or remedy, whether legal or equitable, shall be made, issued, granted or ordered, by the High Court concerning an international trust where the purpose of such action or proceeding would be to detain, inspect, garnish, attach or otherwise interfere in any manner whatsoever or possible with:

- (a) any trust property wherever situated whether in Saint Christopher and Nevis or elsewhere, or
- (b) any right, duty, discretion, obligation, authority or power which a trustee may have in respect of any trust property.

27. High Court's determination of validity.

(1) The High Court may declare an international trust to be invalid if:

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

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

- (a) if those purposes cannot be separated or the terms cannot be separated, the trust is invalid;

(b) if those purposes can be separated and the terms can be separated, the High Court may declare that the trust is valid as to the terms which are valid and as to the purposes which are lawful.

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

(4) Property provided by a settlor and as to which a trust is invalid shall, subject to any Order of the High Court, be held by the trustee in trust for the settlor absolutely or, if the settlor is dead, as if it had formed part of the settlor's estate at death.

(5) In determining the existence and validity of an international trust registered under this Ordinance, the High Court shall apply:

- (a) the provisions of this Ordinance;
- (b) the Regulations to this Ordinance;
- (c) any other Ordinance of Nevis;
- (d) any Act of Saint Christopher and Nevis; and
- (e) any other law which may be applied;

if to do so would validate the trust.

28. Avoidance of fraud.

(1) Where a creditor proves beyond a reasonable doubt that a trust settled or established, or property disposed or transferred to a trust:

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

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

(2) In determining whether a trust settled or established or a disposition rendered the settlor insolvent or with property by which a creditor's claim (if successful) may be satisfied, the High Court shall have regard to the fair market value of the settlement or property, (not being property of or relating to the trust) at the time immediately after the settlement, establishment or the disposition referred to in subsection (1) (b), and if the fair market value of the property exceeded

the value of the creditor's claim, at that time, after the settlement, establishment or disposition, then the trust which is settled or established or the disposition shall for the purposes of this Ordinance be deemed not to have been so settled or established as the property disposed of with intent to defraud the creditor.

(3) A trust settled or established, or a disposition or transfer of property to such trust, shall not be fraudulent as against a creditor of a settlor if such settlement, establishment, disposition or transfer occurs after the expiration of one year from the date that such creditor's cause of action accrued or originated.

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

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

- (a) has settled or established a trust or has disposed of property to such trust within two (2) years from the date of the creditor's cause of action accruing; or
- (b) has retained, possesses or acquires any of the powers or benefits referred to in section 60 (1) (a) to (i); or
- (c) is a beneficiary.

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

(7) The burden of proof regarding the settlor's intent to defraud the creditor shall be borne by the creditor.

(8) The date of the cause of action accruing shall be the date of that act or omission which shall be relied upon to either partly or wholly establish the cause of action, and if there is more than one act or the omission shall be a continuing one, the date of the first act or the date that the omission shall have first occurred, as the case may be, shall be the date that the cause of action shall have accrued.

(9) The entry of judgment in any action or proceeding under this section shall not constitute a separate cause of action.

(10) The provisions of this section shall apply to all actions and proceedings brought in any court, however described, against the person (whether a party to the action or proceedings or not) with regard to:

- (a) the settlement or establishment of an international trust; or
- (b) the disposition of property to such a trust; or

(c) receipt of property by or for such a trust,

and the remedy conferred by subsection (1) shall be the sole remedy available in such an action or proceedings to the exclusion of any other relief or remedy against any party to the action or proceeding.

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

(12) Proof by one creditor that a transfer of property was fraudulent or wrongful shall not constitute proof as to any other creditor and proof of a fraudulent or wrongful transfer of property as to one creditor shall not invalidate any other transfer of property.

(13) For the purposes of this section the term “*creditor*” means a creditor of the settlor, including a judgment creditor or his assignee and any person who alleges a cause of action against a settlor.

(14) If a disposition to an international trust is avoided under this section and the High Court concludes that a trustee did not act in bad faith in accepting or administering property that is the subject of the disposition, the High Court may make an order which it determines appropriate in the circumstances.

(15) For purposes of the Ordinance it is presumed that a trustee did not act in bad faith by merely accepting property that is the subject of a disposition.

(16) If a disposition to an international trust is avoided under this section and the High Court determines that a beneficiary did not act in bad faith, the beneficiary will be permitted to retain any distribution received by the beneficiary as a result of the exercise of discretion granted to the trustee provided such power or discretion was properly exercised before the creditor commenced an action to avoid the disposition to the international trust.

(17) For purposes of this Ordinance it is presumed that a beneficiary (including a settlor) did not act in bad faith in settling the trust or accepting a distribution permitted by the trust.

(18) If more than one transfer is made to an international trust:

(a) the subsequent transfer to the international trust must be disregarded for the purpose of determining whether a person may bring an action pursuant to this section with respect to a prior transfer to the international trust; and

(b) any distribution to a beneficiary from an international trust shall be deemed to have been made first from the portion of the international trust which is attributable to the most recent transfer made to the international trust.

(19) Notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by the High Court may be brought against the trustee of an international trust if, as of the date the action is commenced, an action by a creditor with respect to a transfer to the international trust would be barred pursuant to this section.

29. Saving of certain rights.

If a trust shall be declared invalid pursuant to this Ordinance and the High Court is satisfied that the beneficiary has not acted in bad faith:

(a) the beneficiary shall have a first and paramount charge over the trust property of an amount equal to the entire costs properly incurred by such beneficiary in the defence of the action or proceedings (and not merely such costs as might otherwise be allowed by the High Court); and

(b) the trust shall be declared invalid subject to the proper fees, costs, pre-existing rights, claims and interests of the beneficiary.

30. Extent of invalidity.

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

31. No validation of property not vested in settlor.

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

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

32. Foreign judgments not enforceable.

Notwithstanding the provisions of any treaty or convention, the provisions of any statute, any rule of law or equity, to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgment obtained in a jurisdiction other than Saint Christopher and Nevis against:

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

shall be entertained by the High Court if:

- (i) that judgment is based upon the application of any law inconsistent with the provisions of this Ordinance; or
- (ii) that judgment relates to a matter or particular aspect that is governed by this Ordinance, the laws of Nevis and the laws of Saint Christopher and Nevis.

33. Exclusion of foreign laws.

No international trust governed by this Ordinance, and no disposition of property to be held upon such trust shall be declared void, voidable, liable to be set aside or defective in any fashion or manner, nor is the capacity of any settlor to be questioned by reason that:

- (a) the laws of any foreign jurisdiction prohibit or do not recognize the concept of a trust either in part or in whole;
- (b) the international trust or disposition avoids or defeats rights, claims or interests conferred by the law of a foreign jurisdiction upon any person, or contravenes any rules, law, judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests; or
- (c) this Ordinance, the laws of Nevis, and the laws of Saint Christopher and Nevis are inconsistent with any foreign law.

34. Application for directions.

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

35. Payment of costs.

The High Court may order the cost and expenses of and incidental to any legal action before the High Court under this Ordinance be paid from the trust property or in such manner and by such persons as it thinks fit.

36. Commencement of proceedings

(1) No action or proceeding whether pursuant to this Ordinance or at common law or in equity shall be commenced to set aside the settlement or disposition of an international trust or against a trustee or trustees for breach of trust, unless such action or proceeding is commenced in the High Court before the expiration of two (2) years from:

- (a) the date of the settlement of the international trust that is sought to be set aside; or
- (b) the disposition to the international trust that is sought to be set aside; or
- (c) the breach of trust by the trustee or trustees;

as the case may be.

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

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

(b) seeking to derive a legal or equitable interest in that property,

unless such action or proceeding is commenced in the High Court before the expiration of two (2) years from the date that the property referred to in paragraphs (a) and (b) was settled upon or disposed to an international trust.

(3) No action or proceeding to which subsections (1) or (2) of this section or to which section 28 shall apply, whether substantive or interlocutory in nature, shall be determined and no Order shall be made, or granted by the High Court (including any injunction that shall have the effect of preventing the exercise of, or restoring to a person any rights, duties, obligations or powers or preserving, granting custody of, detaining or inspecting any property) unless the applicant shall first satisfy the High Court, by affidavit, that:

(a) the action or proceeding has been commenced in accordance with subsections (1) or (2) of this section;

(b) where the action or proceeding shall allege fraud or be founded upon some other action or proceeding alleging fraud, the determination or order sought would not be contrary to the provisions of section 28;

(c) that the requirements of section 37 have been fulfilled.

(4) An affidavit required to be filed pursuant to subsection (3) shall be made by the person on whose behalf the action or proceeding is brought or, in the case of a legal person, a director, a manager or management board member thereof, shall depose as to:

(a) the circumstances of the cause of action in respect of which the action or proceedings are brought;

(b) the date upon which the cause of action shall have accrued;

(c) the date upon which the property, in respect of which the action or proceeding is brought, was settled on or disposed to the international trust; and

(d) whether an action or proceeding have been commenced in respect of the cause of action and if so, the date upon which that action or those proceedings were commenced.

(5) The provisions of this section shall apply to every trust expressed to be governed by this Ordinance and, if a qualified foreign trust shall change the law by which it is governed to this Ordinance, then every action or proceeding after the change in registration:

(a) by a person claiming to be interested in or to be prejudiced by the settlement of property upon such a trust; or

(b) concerning any disposition of property to such a trust;

shall be commenced subject to subsections (1) and (2) and every determination and order shall be made subject to subsection (3) as if upon the date that such settlement or disposition was made the trust was registered as an international trust governed by this Ordinance.

37. Bond.

A creditor, before commencing any action or proceeding against any person or trust property governed by this Ordinance, shall first deposit with the Permanent Secretary in the Ministry of Finance a bond in the sum of Two Hundred and Seventy Thousand Dollars from a financial institution in Nevis for securing the payment of all costs as may become payable by the creditor should such creditor not succeed in such action or proceeding against the person or trust property.

38. Heirship rights.

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

39. Confidential Relationships Act.

(1) The Confidential Relationships Act shall apply to every trust registered under this Ordinance.

(2) All proceedings brought under this Ordinance, other than criminal proceedings relating to international trusts, shall be heard *in camera*.

(3) Subject to subsection (4) the full details of any proceedings brought under this Ordinance may only be published with leave of the High Court.

(4) The details of any proceedings brought under this Ordinance may be published without leave of the High Court if the names and any other information which may be used to identify the settlor, the beneficiaries, the trustee, the protector, any parties to the proceedings, any person with a material interest in the trust or any persons involved in the circumstances of the proceedings (other than the judge and the attorneys at law) are redacted.

PART VII - TRUSTEES, PROTECTORS AND BENEFICIARIES

40. Beneficiaries of trusts.

(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 one or both of the following:

(a) the addition of a person as a beneficiary; or

(b) the exclusion, elimination or suspension of any part of all of a beneficiary's interest in the trust.

(3) The terms of a trust may impose restrictions, obligations or duties upon a beneficiary as a condition of the beneficiary receiving a benefit or distribution from the trust, including any restrictions, obligations or duties which infringe upon a beneficiary's basic, essential and fundamental rights.

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

(5) A Nevis Company, a corporation, a limited liability company or a company multiform foundation may also be a beneficiary of the trust.

41. Disclaimer of beneficial interest.

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

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

(3) A disclaimer is not effective until received and acknowledged in writing by a trustee.

(4) An acknowledgement required to be given under subsection (3) shall not be unreasonably withheld by a trustee.

42. Number of trustees.

(1) Unless the terms of the trust provide for a greater number, the minimum number of trustees shall be one.

(2) A trust shall not terminate by reason only that there is no trustee or fewer than the number of trustees required by the terms of the trust.

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

43. Appointment of new or additional trustees.

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

- (a) the protector (if any);
- (b) the trustees for the time being (but so that a trustee shall not be required to join in the appointment of their successor);
- (c) the last remaining trustee;
- (d) the personal representative or the liquidator of the last remaining trustee; or
- (e) if there is no such person (or no such person willing to act) then the High Court;

may appoint a new or additional trustee.

(2) Subject to the terms of the trust, a trustee appointed under this section shall have the same functions and may act as if they had been originally appointed a trustee.

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

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

44. Notice to Registrar of change in trusteeship

(1) Where there is a change in trusteeship by way of addition, removal or resignation of a trustee, the registered agent shall file a written notice with the Registrar of such change.

(2) A notice required to be filed in accordance with subsection (1) unless otherwise expressly stated in this Ordinance, shall be filed by the registered agent within 10 days of the occurrence of the event giving rise to the filing requirement.

(3) A change in trusteeship by way of addition, removal or resignation of a trustee shall be effective as of the date the notice under subsection (1) is received by the Registrar.

(4) A registered agent who fails to comply with this section shall be liable to a penalty prescribed by the Minister or as otherwise specified under this Ordinance.

45. Removal and resignation of trustees.

(1) If, in any action brought against a trustee of an international trust in a High Court, the High Court:

- (a) fails to dismiss that action; or
- (b) orders the trustee to take any action in regards to such trust,

the trustee shall immediately upon the court's action and without the further order of any court, cease in all respects to be trustee of such trust and a successor trustee shall succeed as trustee in accordance with the terms of the trust deed.

(2) If the trust deed does not provide for a successor trustee and the trust would otherwise be without a trustee, the High Court, upon the application of any beneficiary of such trust, shall appoint a successor trustee upon terms and conditions as it determines to be consistent with the objectives of the trust and this Ordinance.

(3) Where a trustee ceases being a trustee under this section, that trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust deed under subsection (1) or appointed by the High Court in accordance with subsection (2).

(4) A trustee, not being a sole trustee, may resign his office by notice in writing delivered to his co-trustees.

(5) A resignation by a trustee under this section takes effect on the delivery of notice to the Registrar in accordance with section 44.

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

(7) A trustee shall cease to be a trustee of the trust immediately upon that trustee's resignation becoming effective.

(8) Where a trustee ceases being a trustee on account of his resignation taking effect, that trustee shall have no power or authority other than to convey the trust property to the successor or continuing trustee.

(9) Where a trustee resigns, that trustee shall immediately give notice in writing to the registered agent of such resignation and the registered agent shall inform the Registrar of Trusts in accordance with section 44.

46. Nature of trustee's estate and insolvency of trustee

(1) Subject to subsection (2), the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust and such property shall not 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 that trustee's interest in the trust property as a beneficiary.

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

47. Removal and resignation of protector

(1) If, in any action brought against a protector of an international trust (or a person who possesses any function, power or authority of a protector of an international trust) in a foreign court, the foreign court:

(a) fails to dismiss such action; or

(b) orders such protector (or such person, as the case may be) to take any action in regards to such trust,

the protector (or such person, as the case may be) shall immediately upon such court's action and without the further order of any court, cease in all respects to be a protector of such trust (or cease to possess such function, power or authority in regards to such trust in the case of a person other than a protector).

(2) Upon such protector (or other person) ceasing to be a protector (or ceasing to possess such function, power or authority), that protector (or such person, as the case may be) shall have no power or authority in regards to the trust.

(3) A protector (or such other person, as the case may be) who ceases to be a protector under this section shall, immediately following his removal, give notice in writing to the trustee of the international trust of such removal.

(4) A protector of a trust may resign his office by notice in writing delivered to the trustee.

(5) A resignation by a protector under subsection (4) takes effect on the delivery of notice in accordance with that subsection.

(6) A resignation given by a protector in order to facilitate a breach of trust shall be of no effect.

(7) A protector shall cease to be the protector of the trust in relation to that trust's non-charitable purposes immediately upon:

(a) the protector's resignation becoming effective;

(b) the coming into effect of a provision in the terms of a trust under which the protector is removed from office or otherwise ceases to hold office; or

(c) the protector's appointment as a trustee of the trust.

(8) Where a protector resigns as a protector and his resignation becomes effective that protector shall have no power or authority in regards to the trust.

(9) A protector (or such other person, as the case may be) who resigns as protector shall, immediately following his resignation, give notice in writing to the trustee of the international trust of such resignation.

48. Combination and division of trusts.

(1) Unless otherwise provided in the trust deed, after notice has been provided to the beneficiaries, a trustee may combine two (2) or more trusts into a single trust or divide a trust into two (2) or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trusts or trust, respectively.

(2) A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective, including, but not limited to any and all issues related to the liability of a trustee or the trust assets pursuant to a contract, in tort or otherwise.

(3) The effective date of the severance may be retroactive to a date before the date on which the trustee exercises such power and any such action under this provision shall be made only pursuant to a written instrument filed with the records of the trust.

(4) In dividing a trust into two (2) or more separate trusts, a trustee shall accomplish the division by severing the trusts on a fractional basis and funding the separate trusts either:

- (a) with a pro rata portion of each asset held by the undivided trust; or
- (b) on a non-pro rata basis based on either the fair market value of the assets on the date of funding; or
- (c) in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

(5) An international trust may be established to simultaneously benefit beneficiaries and to fulfill a purpose.

49. Effect of terms of the trust instrument.

(1) Notwithstanding any other provision of this Ordinance or other law, the terms of a governing instrument may expand, restrict, eliminate, or otherwise vary the rights and interests of beneficiaries, including, but not limited to:

- (a) the right to be informed of the beneficiary's interest for any period;
- (b) the grounds for removal of a trustee;
- (c) the circumstances, if any, in which the trustee must diversify investments; and
- (d) a trustee's powers, duties, standard of care, rights of indemnification and liability to persons whose interests arise from that instrument.

(2) The terms of a governing instrument may outline the duties of trustees that shall be observed by trustees in the execution of his duties and exercise of powers and discretions and those duties may include but not be limited to the following:

(a) power to act:

(i) with due diligence,

(ii) as would a prudent person,

(iii) to the best of the his ability and skill; and

(b) to observe the utmost good faith.

(3) Subject to the provisions of this Ordinance, a trustee shall execute and administer the trust and exercise the functions of the office of trustee:

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

(b) in the interest of the beneficiaries; and

(c) in the fulfilment of the purpose of the trust.

(4) A trustee shall, subject to the terms of the trust, so far as is reasonable, preserve the value of the trust property and enhance the value of the trust property.

(5) A trustee shall not, except with the approval of the Court or as permitted by this Ordinance or expressly provided by the terms of the trust:

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

(b) cause or permit any other person to profit directly or indirectly from such trusteeship; or

(c) on his own account, enter into any transaction with a co-trustee or relating to the trust property which may result in such profit.

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

(7) A trustee of a trust for non-charitable purposes shall, at any time when there is no protector of that trust in relation to them, take such steps as may be necessary to secure the appointment of a new protector.

(8) Where the trustee of a trust for non-charitable purposes has reason to believe that the protector in relation to them is unwilling or refuses to act, or is unfit to act or incapable of acting, the trustee shall apply to the Court for the removal of the protector and the appointment of a replacement.

(9) Nothing contained in this section shall be construed to permit the exculpation or indemnification of a trustee for the trustee's own wilful misconduct or preclude the High Court from removing a trustee on account of the trustee's wilful misconduct.

(10) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this provision.

(11) This section shall give maximum effect to the principle of freedom of disposition and to the enforceability of governing instruments.

50. Trustee resolutions.

A trustee may:

- (a) act in connection with a trust pursuant to its board of directors, board of managers, management board or other governing body; and
- (b) appoint an officer, employee or agent to act on its behalf in connection with the trust.

51. Trustee books and records.

(1) The trustee of a trust shall maintain proper and accurate books and records in respect of the trust including, where applicable, material underlying documentation including contracts and invoices and should reflect the details of all:

- (a) funds received and expended by the trustee on behalf of the trust and the matters in respect of which the receipt and expenditure occurs; and
- (b) sales, purchases and other transactions by the trustees and the assets and liabilities of the trust property.

(2) The books and records required to be maintained by the trustee under subsection (1) shall:

- (a) correctly explain all transactions;
- (b) enable the financial position of the trust to be determined with reasonable accuracy at any time; and
- (c) allow financial statements to be prepared.

(3) The books and records that a trustee is required to maintain shall be preserved by the trustee for a minimum period of five years from the date that such books and records are prepared and those books and records shall be maintained at the registered office of the trustee or at such other place or places as the trustee thinks fit.

(4) A trustee who contravenes this section shall be liable to a penalty fine prescribed by the Minister or as otherwise specified by this Ordinance.

52. Investments.

(1) Subject to any terms of the trust and the provisions of this Ordinance, a trustee may at any time invest any portion of the trust funds in any kind of investment, whether or not the funds are already invested and the trustee may vary the investment or retain it in its original state.

(2) In making an investment under subsection (1), a trustee shall exercise the judgement that a prudent person would with reasonable care, skill and caution.

53. Community property and tenancy by the entirety property.

(1) Where spouses transfer property to one or more trusts established as an international trust or a trust that subsequently becomes an international trust and, immediately before being transferred, such property or any part thereof or any accumulation thereto is, pursuant to the law of its location or the law of either of the transferring spouses' domicile or residence, determined to be community property, then notwithstanding such transfer and except where the terms of the trust deed may provide to the contrary, that property and any accumulation thereto shall, for the purpose of giving effect to that law, when the trust deed expressly declares the property to be community property, shall be deemed to be community property and be dealt with in a manner consistent with that law but in every other respect shall be dealt with in accordance with the trust deed and the governing law of that deed.

(2) Where spouses transfer property to one or more trusts established under an international trust or a trust that subsequently becomes an international trust and, immediately before such transfer, such property or any part thereof or any accumulation thereto was, pursuant to applicable law, owned by them as tenants by the entirety, then notwithstanding such transfer and except where the terms of the trust deed may provide to the contrary, that property and any accumulation thereto shall when the trust deed expressly declares the property to be tenancy by the entirety property, it shall be tenancy by the entirety property while held in trust during the lifetime of both spouses and shall be dealt with in a manner consistent with that applicable law however in every other respect shall be dealt with in accordance with the terms of the trust deed.

(3) An instrument which creates an international trust or a trust which subsequently becomes an international trust, that holds trust property as community property or tenancy by the entirety property shall be executed by both spouses.

(4) Any settlement, establishment or disposition of community property or tenancy by the entirety property to an international trust shall be void, if the spouse against whom enforcement is sought proves by a preponderance of the evidence that such spouse:

- (a) was not provided with complete and full disclosure of the financial obligations of the other spouse;
- (b) was not provided with a complete and accurate valuation of the community property or the tenancy by the entirety property; or
- (c) did not execute the instrument voluntarily.

(5) In any legal action brought by a creditor of either or both spouses seeking to recover a debt from the trust, the sole remedy available to the creditor with respect to trust property that is community property or tenancy by the entirety property shall be an Order directing the trustee to transfer the property to both spouses to be held as community property or as tenants by the entirety property, as the case may be.

PART VIII – REGISTRATION OF INTERNATIONAL TRUSTS

54. Registration of trusts.

(1) The Registrar of Trusts shall maintain a register of international trusts and a register of qualified foreign trusts.

(2) Where a trust provides for this Ordinance to be the governing law of all or any aspects of that trust then the registered agent shall make an application to the Registrar of Trusts for entry on the register as an international trust.

(3) Where a trust provides for the law of a jurisdiction other than Nevis to be the governing law of all aspects of that trust then the registered agent of the trust shall make an application to the Registrar of Trusts for entry on the register as a qualified foreign trust.

(4) Where a trust provides for the law of a jurisdiction other than Nevis to be the governing law of all aspects of that trust and the governing law of all or any aspects of the trust is changed to this Ordinance, then the registered agent of the trust shall make an application to the Registrar of Trusts for entry on the register as an international trust provided that the Registrar of Trusts shall not accept such an application if the trust is not registered as a qualified foreign trust.

(5) An application for entry on the register of international trusts or on the register of qualified foreign trusts shall be made by the registered agent of the trust in the manner and form prescribed by the Registrar of Trusts.

(6) An application under subsection (5) shall be accompanied by:

- (a) the prescribed fee;
- (b) the name of the trust and its authenticated translation, if any;
- (c) the name of the trustee;
- (d) the name of the registered agent;
- (e) the address of the registered office of the trust which shall be the office of the registered agent;
- (f) a certificate from the trustee certifying:
 - (i) that the trust upon registration will be an international trust or a qualified foreign trust;
 - (ii) the date on which the trust was created, settled or established;

(iii) in the case of a qualified foreign trust, the law under which the trust was settled;

(iv) that there has been no changes made to the international trust;

(v) that there is no pending litigation against the trust;

(vi) where the governing law is changed to this Ordinance, that the trust is registered as a qualified foreign trust and the date of its registration.

(vii) where the governing law is changed to this Ordinance, where the trust is reinstated that there is no illegal activity perpetrated by the trust; and

(viii) where the governing law is changed to this Ordinance, where the trust is reinstated and/or where a trust is established after a period of one year from the date of registration, that there is no pending litigation against the trust.

(7) The Registrar of Trusts shall, on receipt of the prescribed fee, the notice and certificate required under subsection (6):

(a) enter on the appropriate register:

(i) the name of the trust and its authenticated translation, if any;

(ii) the date of creation, settlement or establishment of the trust;

(iii) the name of the registered agent of the trust; and

(iv) the address of the registered office of the trust; and

(b) issue a Certificate of Registration in the prescribed form.

(8) A Certificate of Registration under the endorsement of the Registrar of Trusts shall be conclusive evidence of compliance with all of the requirements of this Ordinance in respect of registration of the trust.

55. Annual Certificate of Registration.

(1) A Certificate of Registration issued in accordance with sections 52 (2), (3) or (4) shall be valid and effective for a period of one (1) year from the date of registration specified in that certificate.

(2) An application for renewal of registration shall be made by the registered agent by:

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

(b) payment of the prescribed fee.

(3) An application for renewal of registration shall be made no later than 90 days after the date of expiry of the last Certificate of Registration and no application for renewal of registration shall be granted unless such application is in accordance with subsection (2).

(4) A renewal of registration shall take effect from the date of expiry of the last Certificate of Registration and shall be valid for a period of one (1) year.

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

56. Removal and reinstatement of trust

(1) The Registrar of Trust shall remove a trust from the register if that trust fails to pay the annual registration fee or fails to maintain a registered agent for a period of one year.

(2) An application for reinstatement of a trust, after its removal under subsection (1), shall be made by the registered agent by:

(a) filing with the Registrar of Trusts an application for reinstatement in the prescribed form; and

(b) payment of the prescribed fee.

57. Notification of termination.

(1) Where a trust which has been registered under this Ordinance terminates, the trustee shall notify the registered agent, who shall then notify the Registrar of Trusts and return the Certificate of Registration and request that the trust be terminated from the Register.

(2) Where the Registrar of Trust receives a notice of termination of the trust and payment of the prescribed fee, the Registrar of Trust shall cancel the entry on the register and issue an endorsement certificate certifying such termination.

58. Search of Register.

The register of international trusts and the register of qualified foreign trust shall not be open for public inspection except that the Registrar of Trusts shall upon request by the registered agent for that specific trust for which the search is requested, issue a trust search under his endorsement

59. Translations.

(1) An instrument which is filed with the Registrar of Trusts, which was not drafted in the English language, shall be accompanied by an authenticated translation.

(2) When a trust has been established under this Ordinance with a name accompanied with an authenticated translation, the Registrar of Trusts shall issue a certificate with trust's name and its authenticated translation.

(3) An instrument which was not drafted in the English language and is not accompanied by an authenticated translation at the time of filing shall not be accepted for registration by the Registrar.

60. Prohibition by Minister.

(1) The Minister may, by Order published in the Gazette:

(a) prohibit the registration or the renewal of registration of an international trust or a qualified foreign trust;

(b) direct a trustee to cease carrying on its business or any part of its business immediately or within such time as may be specified in the Order.

(2) An Order made under this section may be revoked or varied at any time by the Minister.

PART IX – REGISTERED AGENT

61. Registered agent for service of process.

(1) A trust which is governed by this Ordinance shall at all times have a registered agent in Nevis.

(2) The registered office of a trust shall be the office of the registered agent of the trust.

(3) The address for service of process of any documents upon a trustee in its capacity as trustee of an international trust or a qualified foreign trust shall be the registered office of that trust.

(4) Whenever a trust which is subject to this Ordinance fails to maintain a registered agent or whenever such registered agent cannot with reasonable diligence be located at their registered office, the Registrar of Trusts shall be the agent of such trustee in its capacity as trustee for service of process.

(5) Service of documents on the Registrar of Trusts under this section shall be made by personally delivering to any person authorized by the Registrar to receive such service, at the office of the Registrar, duplicate copies of such process together with the prescribed fee.

(6) The Registrar shall keep a record of each process served upon him under this section, including the date of service.

(7) The Registrar or any person authorized by him shall promptly send one of such copies of documents served on him under this section by registered mail, return receipt requested, to the registered agent, or if there is no such office, then the Registrar shall mail such copy to the last known address of a person at whose request the trust was registered.

PART X – EXEMPTION FROM TAXES

62. Exemption from taxes and duties.

Notwithstanding any provision to the contrary in any enactment, a trust registered under this Ordinance shall be exempt from:

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

PART XI – SETTLORS

63. Bankruptcy.

Notwithstanding any provision of the law of the settlor's domicile or place of ordinary residence or the settlor's current place of incorporation, formation or establishment and notwithstanding further that an international trust is voluntary and without valuable consideration being given for the same or is made for the benefit of the settlor's spouse or children, an international trust shall not be void or voidable in the event of:

- (a) the settlor's bankruptcy;
- (b) insolvency or liquidation; or
- (c) any action or proceeding at the suit of creditors of the settlor,

but shall remain valid and subsisting and take effect according to its tenor subject to sections 27 and 28 of this Ordinance.

64. Retention of control by settlor.

(1) An international trust shall not be declared invalid or otherwise be affected in any manner if the settlor, and if more than one, any of them either retains, possesses or acquires:

- (a) the power to revoke the trust;
- (b) the power to veto a distribution of income or principal by the trustee;
- (c) the power to amend the trust;
- (d) any benefit, interest or property from the trust, including, but not limited to the following:
 - (i) the settlor's potential or actual receipt of income or principal from the trust, including rights to such income or principal retained in the trust deed;
 - (ii) the settlor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust and the settlor's right, at any time and from time to time by written instrument delivered to the trustee, to release such settlor's retained interest in such a trust, in whole or in part, in favour of a charity that has or charities that have a succeeding beneficial interest in such trust;

- (iii) the settlor's potential or actual receipt of income or principal from a grantor retained annuity trust or grantor retained unitrust;
- (iv) the settlor's receipt each year of a percentage (as specified in the trust deed) of the initial value of the trust assets (which may be described either as a percentage or a fixed amount) or the value determined from time to time pursuant to the trust deed;
- (v) the settlor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a trustee acting in such trustee's discretion or pursuant to a standard that governs the distribution of principal and does not confer upon the settlor a substantially unfettered right to the receipt or use of the principal or at the direction of a protector who is acting in such protector's discretion or pursuant to a standard that governs the distribution of principal and does not confer upon the settlor a substantially unfettered right to the receipt of or use of principal;
- (vi) a settlor's potential or actual use of real property, chattels or tangible assets held either directly or indirectly in the trust;
- (vii) the settlor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes or other levies due on income or principal of the trust to any taxing authority located in any jurisdiction if such potential or actual receipt of income or principal is pursuant to a provision in the trust deed that expressly provides for the payment of such taxes and if such potential or actual receipt of income or principal would be the result of a trustee acting in such trustee's discretion or pursuant to a mandatory direction in the trust deed, or at the direction of a protector who is acting in such protector's discretion. Distributions to pay income taxes made under a discretionary or mandatory provision included in a settlement establishing an international trust may be made by direct payment to a taxing authorities;
- (e) the power to remove or appoint a trustee or protector;
- (f) the power to direct a trustee or protector on any matter;
- (g) except as provided in subsection (1) (h), an *inter vivos* or testamentary power of appointment (other than a power to appoint to the settlor, the settlor's creditors, the settlor's estate or the creditors of the settlor's estate) exercisable by will or other written instrument of the settlor;
- (h) the ability, whether pursuant to discretion granted to the trustee, a direction in the trust deed or the settlor's exercise of a testamentary power of appointment, of a trustee to pay, after the death of the settlor, all or any part of the debts of the settlor outstanding

at the settlor's death, the expenses of administering the settlor's estate, or any estate or inheritance tax or other levies imposed on or with respect to the settlor's estate; and

(i) the ability to serve as investment adviser to the trust.

(2) An international trust is not invalid even though the settlor may be the only beneficiary of the trust or the settlor is one (1) of multiple beneficiaries.

(3) Except as provided in this section, a settlor shall have no other rights or authority with respect to property held in an international trust or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void and of no effect.

PART XII – MISCELLANEOUS SECTIONS

65. Immunity from suit

(1) No personal liability, action or other proceeding shall attach to or lie against the Registrar of Trusts, Deputy Registrar or any other officer authorized to administer this Ordinance in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Ordinance.

(2) No action shall lie against the Administration, the Registrar, Deputy Registrar or any other authorized officer for any sums of money, damages or legal costs in respect of any act or failure to act or in respect of any act or thing done in good faith for the purpose of carrying the provisions of this Ordinance into effect.

66. Ordinance Advisory Committee.

(1) The Minister may establish the Nevis International Exempt Trust Ordinance Advisory Committee as an advisory body for matters affecting this Ordinance and that body shall consist of such members as the Minister may from time to time appoint.

(2) In establishing the Ordinance Advisory Committee under subsection (1), the Minister shall have regard to the desirability of having members who have the expertise and knowledge of the Ordinance and the law of trusts.

(3) It shall be the duty of the Ordinance Advisory Committee established under this section to:

- (a) advise the Minister on any matter that the Ordinance Advisory Committee believes that the Minister should be aware of, on an annual basis by September 30th or on such more frequent occasions as may be necessary;
- (b) provide recommendation regarding possible amendments to this Ordinance; and
- (c) advise the Minister on any matter which is referred to it by the Minister.

(4) The Minister may defray or contribute towards the expenses of an advisory body established under this section.

67. Regulations.

(1) The Minister may issue such regulations for the purpose of carrying out and effectively administering the provisions of this Ordinance and for prescribing anything that needs to be prescribed.

(2) The Minister shall prescribe all fees under this Ordinance.

68. Repeal and savings.

(1) The Nevis International Exempt Trust Ordinance is hereby repealed.

(2) Any existing trust which at the commencement of this Ordinance is validly registered under the Nevis International Exempt Trust Ordinance shall continue to be registered until its next renewal.

(3) A registered agent of trusts which at the commencement of this Ordinance is validly licenced under the Nevis International Exempt Trust Ordinance shall continue to be registered until its next renewal.

.....
HON. FARREL SMITHEN
President

Passed in the Nevis Island Assembly this [DATE], 2016.

.....
[NAME]
Clerk of the Nevis Island Assembly

No. [] of 2016

Nevis International Exempt Trust
Ordinance 2016

Island of Nevis

OBJECTS AND REASONS

AN ORDINANCE to repeal and replace the Nevis International Exempt Trust Ordinance, with the Nevis International Exempt Trust Ordinance, 2016 to make provisions for the law relating to international trusts and for matters incidental thereto or connected therewith.

.....
Hon. Vance Amory
Minister of Finance