



ST. CHRISTOPHER AND NEVIS

CHAPTER 5.19

TRUSTS ACT and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2017

This is a revised edition of the law, prepared by the Law Commission under the authority of the Law Commission Act, Cap. 1.03.

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Published in
2019
Consolidated, Revised and Prepared under the Authority of the Law Commission Act,
on behalf of the Government of Saint Christopher and Nevis
by
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P.O. Box 1626, 5 Mar Building,
The Valley, AI-2640, Anguilla,
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CHAPTER 5.19

TRUSTS ACT

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CHAPTER 5.19
TRUSTS ACT

AN ACT TO MAKE PROVISIONS WITH REGARD TO TRUSTS, TRUSTEES AND PERSONS INTERESTED UNDER TRUSTS AND GENERALLY TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Trusts Act.

Interpretation.

2. (1) In this Act unless the context otherwise requires—
 - “annual statement” means the statement to be made by a trust under section 60;
 - “attestation” means the attestation delivered to the Registrar under section 5 and includes all amendments made to the attestation;
 - “auditor” means a person who is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a practising member in good standing of one of those institutes or is otherwise approved by any supervisory body of the accounting profession recognised under the law of the Federation;
 - “bankruptcy” includes any proceedings of a similar nature in a place outside the Federation;
 - “beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised;
 - “body corporate” includes a body corporate wherever or however incorporated, other than a corporate sole;
 - “breach of trust” means a breach of any duty imposed on a trustee by this Act or by the terms of the trust;
 - “business” includes any trade, occupation or profession;
 - “corporate trustee” means a trustee which is a body corporate;
 - “Court” means the Eastern Caribbean Supreme Court or any Court with similar jurisdiction established in succession to that Court;
 - “exempt trust” means a trust the beneficiary of which are exempt from taxes under section 71;
 - “existing trust” means a trust constituted or created before the commencement of this Act;
 - “the Federation” means the Federation of Saint Christopher and Nevis;

“interdict” means a person in respect of whom a curator has been appointed by any court having jurisdiction (whether in the Federation or elsewhere) in matters concerning mental disorder;

“lawyer” means a barrister or solicitor of the Court;

“Minister” means the Minister responsible for finance;

“minor” means a person who under the law of the Federation or under the law of his or her domicile has not reached the age of legal capacity;

“Order” means an Order made by the Minister;

“ordinary trust” means a trust which is not an exempt trust;

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

“prescribed” means prescribed by Order;

“property” means property of any description wherever situated, and, in relation to rights and interests includes those rights and interests whether vested, contingent, defeasible or futures;

“prospectus” has the meaning assigned to it by paragraph (a) of subsection (4) of section 69;

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

“Registrar” means the Registrar of trusts appointed pursuant to section 86 and “his or her seal” in relation to the Registrar means a seal prepared under that section;

“resident trustee” means a trustee who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation;

“securities” includes any certificate or other instrument representing the right to any unit;

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

“terms of a trust” means the written or oral terms of a trust, and also means any other terms made applicable by the proper law;

“trust” means a trust established in accordance with this Act and includes—

(a) the trust property; and

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

“trustee” means a person who is named as such in the attestation and if more than one shall mean each trustee;

“trust property” means the property for the time being held in a trust;

“unit” has the meaning assigned to it by paragraph (b) of subsection (4) of section 69;

“unit trust” has the meaning assigned to it by subsection (1) of section 12.

(2) A reference in this Act to a section by number only, and without further identification, is a reference to the section of that number contained in this Act.

(3) A reference in a section or other division of this Act to a subsection or paragraph or sub-paragraph by number or letter only, and without further identification, is a reference to the subsection or paragraph or sub-paragraph of that number or letter contained in the section or other division of this Act in which that reference occurs.

(4) A reference in this Act to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

(5) A reference to dollars in this Act is a reference to the currency of the Eastern Caribbean Central Bank.

Meaning of “trust”.

3. A trust exists where a person (known as a trustee) holds or has vested in him or her or is deemed to hold or have vested in him or her property of which he or she is not the owner in his or her own right—

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

PART II

CREATION AND ESTABLISHMENT OF TRUSTS

Creation of a trust.

4. (1) Any person (who is not a minor or an interdict or a bankrupt) may create a trust for any lawful purpose, and, subject to subsection (2) of section 16—

- (a) any property may be held by or vested in a trustee upon trust; and
- (b) a trustee may accept from any person property to be added to the trust property.

(2) A trust shall have at least one resident trustee.

(3) A body corporate may be the settlor or a trustee or a beneficiary of a trust and the settlor or a trustee of a trust may be a beneficiary at the same time of the same trust.

(4) A trust shall not be recognised by the law of the Federation as valid and enforceable until the requirement of subsection (2) has been satisfied and the Registrar has issued a certificate under subsection (2) of section 7.

Attestation of existence of a trust.

5. (1) Any of the trustees of a trust or a person acting on their behalf may, on delivering to the Registrar an attestation and on payment of the prescribed registration fee, apply for the registration of the attestation under this Act.

(2) An attestation delivered to the Registrar under subsection (1) shall be in the English language, shall be printed and shall state—

- (a) the name by which the trust is to be referred;
- (b) if the trust is a charitable trust or unit trust, that it is such a trust; and
- (c) the full name and address of each trustee who is an individual, or in the case of a body corporate its full name, the place where it is incorporated and the address of its registered or principal office.

(3) The attestation shall be signed by each person who is, on the creation of the trust, to be a trustee.

Documents to be delivered to the Registrar.

6. (1) With the attestation there shall be delivered to the Registrar a statement signed by or on behalf of each of the trustees setting out—

- (a) the trust's name and the address of its office for service;
- (b) whether the trust is an ordinary or an exempt trust;
- (c) in the case of an exempt trust, an undertaking that the trustees of the trust will forthwith notify the Minister by notice in writing if the trust should no longer qualify as an exempt trust; and
- (d) any other prescribed particulars.

(2) Where an attestation is delivered by a person as agent for the trustees, the statement shall specify that fact and the person's name and address.

Registration of attestation.

7. (1) If the Registrar is satisfied that all requirements of this Act in respect of the registration of an attestation have been complied with, he or she shall register the attestation delivered to him or her under section 5.

(2) On the registration of an attestation, the Registrar shall—

- (a) allocate a registration number to the attestation in accordance with section 88; and
- (b) give a certificate of registration in respect of the attestation stating—
 - (i) the name of the trust;
 - (ii) the registration number of its attestation;
 - (iii) the date of the registration of its attestation; and
 - (iv) that it is a charitable trust or unit trust, if its attestation so states.

(3) Every certificate of registration shall be signed by the Registrar and sealed with his or her seal.

(4) A certificate of registration is conclusive evidence of the registration of the attestation and, if the certificate of registration states that the trust is a charitable trust or unit trust, that the trust is such a trust.

Amendment of attestation.

8. (1) If during the continuance of a trust any change is made or occurs in any of the particulars delivered pursuant to section 5, a statement signed by a trustee, specifying the nature of the change shall within 21 days be delivered to the Registrar.

(2) On the registration of a statement under this section the Registrar shall issue a certificate to that effect.

(3) The certificate shall be signed by the Registrar and sealed with his or her seal.

(4) If default is made in compliance with subsection (1) of this section every trustee who is in default commits an offence and is liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

Names.

9. (1) No attestation of a trust shall be registered if the trust has any name which indicates or may reasonably be understood to indicate (whether in English or any other language) that it is a unit trust unless its resident trustee has in respect of the trust first obtained the permission of the Minister to use any such name.

(2) The Registrar may refuse to register—

(a) an attestation; or

(b) a statement under subsection (1) of section 8 changing the name of a trust,

where the name to be registered is in his or her opinion in any way misleading or otherwise undesirable.

PART III

TYPES OF TRUSTS

Charitable trusts.

10. (1) A trust under which the income or capital or the income and capital of the trust property is applied for a purpose regarded as charitable under this section is a charitable trust.

(2) The Minister shall, by Order, issue a list containing the purposes which, subject to subsection (4), are regarded as charitable under this section.

(3) The Minister may prescribe alterations to the list mentioned in subsection (2); but no alteration of the list shall affect a charitable trust established before the alteration takes effect.

(4) Notwithstanding any rule of law or equity to the contrary, a purpose shall be regarded as charitable notwithstanding that such purpose may not be of a public nature or for the benefit of the public, but may be for the benefit of a section of the public or members of the public, or that it may also benefit privately one or more persons within a class of persons or is liable to be defeated whether by the exercise of a power of appointment or disposition or that the trustee has the power to defer the enjoyment of any charity or other beneficiary of the trust for any period not exceeding the perpetuity period applying or expressed to apply to the trust, and notwithstanding further that the trust may be discretionary or contingent upon the happening of any event.

(5) A charitable trust may be created only by an instrument in writing.

Spendthrift or protective trusts.

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

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

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

(3) A trust under which the interest of a beneficiary is subject to restriction, diminution or termination under paragraph (2) is a spendthrift or protective trust.

(4) A provision in the terms of a trust requiring the interest of a beneficiary in trust property to be held upon a spendthrift or protective trust shall be construed as a requirement that the interest of the beneficiary be subject to restriction, diminution or termination as mentioned in subsection (2).

(5) A spendthrift or protective trust may be created only by an instrument in writing.

Unit trusts.

12. (1) A trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition of any property whatsoever is a unit trust.

(2) A unit trust may be created only by an instrument in writing.

Common trusts.

13. (1) A trust which is not—

- (a) a charitable trust;
- (b) a spendthrift or protective trust; or
- (c) a unit trust,

is a common trust.

(2) A common trust may come into existence in any manner.

(3) Without prejudice to the generality of subsection (2), a common trust may come into existence by oral declaration, or by an instrument in writing (including a will or codicil) or arise by conduct.

(4) Notwithstanding any rule of law or equity to the contrary, a common trust shall not be void or voidable by virtue of the fact that the trust is created for a purpose which is not a charitable purpose, provided that the trust must vest in natural persons within the perpetuity period applying or expressed to apply to the trust; and any trust so created shall be enforceable by the settlor or his or her personal representative or by a person named in the terms of the trust as the person appointed to enforce the trust and the trust shall be enforceable at the instance of the person so named notwithstanding that such person may not be a beneficiary under the trust.

PART IV

PROPER LAW, JURISDICTION OF THE COURT, VALIDITY AND DURATION OF TRUSTS

Proper law.

14. (1) Subject to subsection (4), the proper law of a trust shall be the law of the jurisdiction—

- (a) expressed by the terms of the trust as the proper law; or failing that;
- (b) to be implied from the terms of the trust; or failing either;
- (c) with which the trust at the time it was created had the closest connection.

(2) The references in subsection (1) to “failing that” or “failing either” include references to cases—

- (a) where no law is expressed or implied under paragraph (a) or (b) of that subsection; and
- (b) where a law is so expressed or implied, but that law does not provide for trusts or the type of trusts concerned.

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

- (a) the place of administration of the trust designated by the settlor;
- (b) the *situs* of the assets of the trust;
- (c) the place of residence or business of the trustee;
- (d) the objects of the trust and the places where they are to be fulfilled.

(4) Where the terms of a trust so provide—

- (a) a severable aspect of the trust may be governed by a law different from that applicable to another aspect;
- (b) the proper law of the trust or the law governing a severable aspect of the trust may be changed to or from the law of the Federation if—
 - (i) in the case of a change to the law of the Federation, the law of the other jurisdiction recognises such change; and
 - (ii) in the case of a change from the law of the Federation, the law of the other jurisdiction recognises the validity of the trust and the respective interests of the beneficiaries.

(5) A change in the proper law of a trust or in the law governing a severable aspect of a trust shall not affect the legality or validity of, or render any person liable for, anything done before the change.

Jurisdiction of the Court.

15. (1) The Court has jurisdiction in respect of any matters concerning a trust where—

- (a) the proper law of the trust is the law of the Federation;
- (b) a trustee of the trust is resident in the Federation;

- (c) any trust property of the trust is situated in the Federation; or
- (d) any part of the administration of the trust is carried on in the Federation.

(2) Where the Court has jurisdiction in respect of a trust, no proceedings for or in relation to the enforcement or recognition of a judgement obtained in a jurisdiction other than the Federation against—

- (a) a trust;
- (b) a settlor of a trust;
- (c) a trustee of a trust;
- (d) a protector of a trust;
- (e) a beneficiary of a 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 a trust; or
- (g) property of either a trust or of a trustee or a beneficiary thereof,

shall be entertained by the Court if that judgement is based upon the application of any law inconsistent with the law of the Federation or if that judgement relates to a matter or particular aspect that is governed by the law of the Federation.

(3) Subsection (2) shall apply notwithstanding—

- (a) the provisions of any treaty or convention;
- (b) the provisions of any statute; or
- (c) any rule of law or equity,

to the contrary.

(4) Subject to subsection (5), all questions arising in regard to a trust which is for the time being subject to the jurisdiction of the Court or in regard to any disposition of property upon the trusts thereof including, but without prejudice to the generality of the foregoing, questions as to—

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

are to be determined according to the law of the Federation, without reference to the law of any other jurisdiction with which the trust or disposition may be connected.

(5) Subsection (4) takes effect subject to any express contrary terms of the trust or disposition and does not—

- (a) 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, nor does that subsection affect the recognition of foreign laws in determining whether the settlor is the owner of such property or the holder of such a power;
 - (b) as regards the capacity of a body corporate, affect the recognition of the law of its place of incorporation;
 - (c) affect the recognition of foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property;
 - (d) validate any trust or disposition of real property situate in a jurisdiction other than the Federation which is invalid according to the laws of such jurisdiction;
 - (e) validate any testamentary trust or disposition which is invalid according to the laws of the testator's domicile.
- (6) Without limiting the generality of subsections (4) and (5), it is expressly declared that no trust which is subject to the jurisdiction of the Court and no disposition of property to be held upon the trusts thereof is void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of any settlor to be questioned by reason that—
- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust; or
 - (b) the trust or disposition avoids or defeats rights, claims or interests conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests.

Validity.

- 16.** (1) Subject to this Act, a trust shall be recognised by the law of the Federation as valid and enforceable in accordance with its terms.
- (2) A trust shall be invalid—
- (a) to the extent that—
 - (i) it purports to do anything the doing of which is contrary to the law of the Federation;
 - (ii) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of the Federation; or
 - (iii) it has no beneficiary or purpose;
 - (b) to the extent that the Court declares that—
 - (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty;
 - (ii) the trust is immoral or contrary to public policy; or
 - (iii) the terms of the trust are so uncertain that its performance is rendered impossible.

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

- (a) if those purposes cannot be separated, the trust shall be invalid;
- (b) where those purposes can be separated, the Court may declare that the trust is valid as to the purposes which are lawful.

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

(5) Property as to which a trust is wholly or partially invalid shall, subject to any order of the Court, be held by the trustee in trust for the settlor absolutely or if he or she is dead for his or her personal representative.

(6) In subsection (5) “settlor”, means the particular person who provided the property as to which the trust is wholly or partially invalid.

(7) An application to the Court under this section may be made by the Attorney-General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

Duration.

17. (1) Subject to subsection (2), a trust may continue until the one hundredth anniversary of the date on which it came into existence and if not sooner terminated shall then terminate.

(2) Subsection (1) shall not apply to a trust established as a charitable trust.

PART V

SETTLOR

Capacity of settlor.

18. (1) If a person transfers or disposes of property during his or her lifetime to a trust—

- (a) he or she shall be deemed to have had capacity to do so if he or she is at the time of such transfer or disposition not a minor or interdict under the law of his or her domicile; and
- (b) no rule relating to inheritance or succession (including, but without prejudice to the generality of the foregoing, forced heirship or similar rights) of the law of his or her domicile or any other system of law shall affect any such transfer or disposition or otherwise affect the validity of such trust.

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

(3) Nothing contained in subsection (2) shall be construed so as to cause the trust or any of its trustees to be liable or obliged for any debt or responsibility of the settlor merely by reason of that subsection.

(4) For the avoidance of doubt, it is declared that the provisions of this section shall apply notwithstanding any other provisions of this Act and shall apply to transfers or dispositions of property made to a trust after the commencement of this Act, but this declaration shall be without prejudice to the validity or otherwise of transfers or dispositions made before that time.

(5) In this section, a reference to forced heirship is a reference to a legal rule restricting the right of a person to dispose of his or her property during his or her lifetime so as to preserve such property for distribution at his or her death, or having similar effect.

Retention of control and benefits by settlor.

19. A trust shall not be declared invalid or be affected in any way by reason of the fact that the settlor, and if more than one, any one of them, either—

- (a) retains, possesses or acquires any benefit, interest or property from the trust;
- (b) retains, possesses or acquires the power to remove or appoint a trustee or protector;
- (c) is a beneficiary of the trust either solely or together with others.

Bankruptcy of settlor.

20. Notwithstanding any provision of the law of the settlor's domicile or place of ordinary residence or the settlor's current place of incorporation and notwithstanding further that a trust is voluntary and without valuable consideration being given for the same, or is made on or for the benefit of the settlor's spouse or children or any of them, a trust and a disposition to a trust shall not be void or voidable in the event of the settlor's bankruptcy, insolvency or liquidation other than in the case of a company registered pursuant to the Companies Act, Cap. 21:03, that is in liquidation or in any action or proceedings at the suit of creditors of the settlor but shall remain valid and subsisting and take effect according to its tenor subject to the provisions of section 21.

Fraud on settlor's creditors.

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

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

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

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

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

- (a) if settled, established or the disposition takes place after the expiration of 2 years from the date that creditor's cause of action accrued; or
- (b) where settled, established or the disposition takes place before the expiration of 2 years from the date that the creditor's cause of action accrued,

that creditor fails to commence such action before the expiration of 1 year from the date such settlement or establishment or disposition took place.

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

(5) A settlor shall not have imputed to him or her 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 2 years from the date of that creditor's cause of action accruing;
- (b) has retained, possesses or acquires any of the powers or benefits referred to in section 19;
- (c) is a beneficiary.

(6) Where a trust is liable to satisfy a creditor's claim in the manner provided for in subsection (1) but is unable to do so by reason of the fact that the property has been disposed of, other than to a *bona fide* purchaser for value, then any such disposition shall be void.

(7) Every creditor, before bringing any action or proceeding against any trust property, shall first deposit with the Minister a bond in the sum of twenty-five thousand dollars from a financial institution in the Federation, for securing the payment of all costs as may become payable by the creditor in the event of the creditor not succeeding in such action or proceeding against the trust property.

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

(9) For the purpose of this section—

- (a) the date of the cause of action accruing shall be, the date of that act or omission which shall be relied upon to either party 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;

- (b) in the case of an action upon a judgement, the date of the cause of action accruing shall be, the date of that act or omission or where 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, which gave rise to the judgement itself.

(10) The provisions of this section shall apply to all proceedings by every creditor alleging fraud against a settlor or a trust, or against any person who shall settle property upon, or dispose of property to, or establish a trust on behalf of the settlor, to the exclusion of any other remedy, principle or rule of law whether provided by statute or founded in equity or common law.

(11) In this section, the term “creditor” includes any person who alleges a cause of action.

PART VI

BENEFICIARIES AND PROTECTOR

Beneficiaries.

22. (1) A beneficiary shall be—

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

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

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

(4) The interest of a beneficiary shall constitute moveable property.

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

(6) The settlor or a trustee of a trust may also be a beneficiary of the trust.

Disclaimer of a beneficial interest.

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

(2) A disclaimer shall be in writing and, subject to the terms of the trust, may be temporary and, if so provided in the writing effecting the disclaimer, shall be capable of revocation in the manner and under the circumstances therein mentioned or referred to.

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

Class interests.

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

- (a) a class closes when it is no longer possible for any other person to become a member of the class;
- (b) a woman who is over the age of 55 years shall be deemed to be no longer capable of bearing a child;
- (c) where any class interest relates to income and for any period there is no member of the class in existence the income shall be accumulated and, subject to section 17 shall be retained until there is a member of the class in existence or the class closes.

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

Protector.

25. (1) The terms of a trust may provide for the appointment of a person to the office of protector of the trust.

(2) No person is qualified for appointment as protector of a trust if he or she is a person who is—

- (a) a trustee of the trust;
- (b) a shareholder or member of the governing body of or is an officer or employee or servant of a body corporate which is a trustee of the trust; or
- (c) is a partner or associate of or in the employment of any person mentioned in paragraph (a) or (b).

(3) Except in the case of a common trust, no person shall be appointed as protector of the trust unless he or she is—

- (a) a lawyer;
- (b) an auditor; or
- (c) a member in good standing of such other professional bodies as the Minister may, by Order, designate,

who is not disqualified for appointment to that office under subsection (2).

(4) Notwithstanding subsection (3)—

- (a) a body corporate; or
- (b) a partnership,

is so qualified if, but only if, each director (in the case of a body corporate) or each partner (in the case of a partnership) is a person so qualified under subsection (3).

(5) Subject to subsections (2), (3) and (4), a person who is the settlor or a beneficiary of a trust may be the protector of the trust.

(6) No person shall act as protector of a trust at a time when he or she knows that he or she is disqualified for appointment to that office, and if a protector of a trust to his or her knowledge becomes so disqualified during his or her term of office he or

she shall thereupon vacate his or her office and give notice in writing to the trustees that he or she has vacated it by reason of that disqualification.

(7) A person who acts as protector in contravention of subsection (6), or fails without reasonable excuse to give notice of vacating his or her office as required by that subsection, commits an offence and is liable to imprisonment for a term not exceeding 2 years or a fine or both.

(8) The protector shall have the powers—

- (a) of directing a trustee in such matters relating to the trust as are specified in the terms of the trust and in respect of which matters the trustee has discretion; and
- (b) subject to the terms of the trust, of—
 - (i) removing a trustee; and
 - (ii) appointing a new or additional trustee.

(9) A protector, in the exercise of his or her office, shall—

- (a) act honestly and in good faith with a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust is created; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(10) Subject to the terms of the trust, a protector shall be entitled to remuneration for his or her services and to reimbursement out of the trust of all expenses and liabilities reasonably incurred in connection with the exercise of his or her office.

(11) Where the terms of a trust provide for the appointment of a protector but contain no provision for the appointment of a new protector, then—

- (a) the beneficiaries for the time being; or failing them;
- (b) the last remaining beneficiary; or failing him or her;
- (c) the personal representative or the liquidator of the last remaining beneficiary; or
- (d) if such person does not exist or is unwilling to act,

the Court may appoint a new protector.

(12) Neither the protector nor any person who is or is acting as an officer, servant or agent of the protector or performing any duty on behalf of the protector, shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the protector under this Act or any Order made or purportedly made, under this Act, unless it is shown that the act or omission was in bad faith.

PART VII

TRUSTEES

Number of trustees.

26. (1) Subject to the terms of the trust, the number of trustees shall be not less than two, unless only one trustee was originally appointed or the sole trustee is a corporate trustee.

(2) Where there is no trustee or less than the number required under subsection (1) a trust shall not fail on that account.

New or additional trustee.

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

- (a) the protector (if any); or failing him or her,
- (b) the trustees for the time being; or failing them,
- (c) the last remaining trustee; or failing him or her,
- (d) the personal representative or the liquidator of the last remaining trustee; or
- (e) if such person does not exist or is unwilling to act,

the Court may appoint a new or additional trustee.

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

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

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

Prohibition of renunciation after acceptance.

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

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

(3) If the settlor is dead or cannot be found and there is neither any other trustee nor a protector a person to whom subsection (2) applies may apply to the Court for relief from his or her appointment and the Court may make such order as it thinks fit.

Resignation or removal of trustee.

29. (1) Subject to subsection (3), a trustee, not being a sole trustee, may resign his or her office by notice in writing delivered to his or her co-trustees.

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

(3) A resignation—

- (a) given in order to facilitate a breach of trust; or
- (b) which would result in there being no trustee or fewer than the number of trustees required under subsection (1) of section 26,

shall have no effect.

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

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

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

Position of continuing trustee on reduction in number of trustees.

30. Subject to the terms of the trust, where the number of trustees falls below the minimum number required under subsection (1) of section 26, the required number of new trustees shall be appointed and until such minimum number is reached the surviving or continuing trustees shall act only for the purpose of preserving the trust property.

Duties of trustee.

31. (1) A trustee shall, in the execution of his or her duties and in the exercise of his or her powers and discretion—

- (a) act—
 - (i) with due diligence;
 - (ii) as would a prudent person;
 - (iii) to the best of his or her ability; and
- (b) observe the utmost good faith.

(2) Subject to this Act, a trustee shall carry out and administer the trust in accordance with its terms.

(3) Subject to the terms of the trust, a trustee shall—

- (a) so far as is reasonable, preserve the value of the trust property;
- (b) so far as is reasonable, enhance the value of the trust property.

(4) Except—

- (a) with the approval of the Court; or
- (b) as permitted by this Act or expressly provided by the terms of the trust,

a trustee shall not directly or indirectly profit from his or her trusteeship, or cause or permit any other person to profit directly or indirectly from such trusteeship, or on his or her own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.

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

Duty of co-trustees to act together.

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

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

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

Duty of confidentiality.

33. (1) Subject to the provisions of this Act and except as is necessary for the proper administration of the trust, the trustees of a trust shall keep confidential all information regarding the state and amount of the trust property or the conduct of the trust administration.

(2) A trustee shall, so far as is reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the trust property and the conduct of the trust administration to—

- (a) the Court;
- (b) the inspectors appointed under section 74; and
- (c) subject to the terms of the trust—
 - (i) the settlor;
 - (ii) the protector of the trust (if any);
 - (iii) any beneficiary of the trust who is not a minor or interdict; and
 - (iv) any charity for the benefit of which the trust was established.

(3) Subject to the terms of the trust and subject to any order of the Court, a trustee shall not be required to produce and make available to any person, any document which—

- (a) discloses his or her deliberation as to the manner in which he or she has exercised a power or discretion or performed a duty conferred or imposed upon him or her; or
- (b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based; or
- (c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.

Impartiality of trustee.

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

General powers of trustee.

35. (1) Subject to the terms of the trust and subject to his or her duties under this Act, a trustee shall, in relation to the trust property, have all the same powers as an individual acting as the beneficial owner of such property.

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

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

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

Delegation by trustee.

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

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

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

(b) may employ accountants, attorneys, bankers, brokers, custodians, investment advisers, lawyers, nominees, property agents, solicitors and other professional agents or persons to act in relation to any of the affairs of the trust or to hold any of the trust property.

(3) A trustee shall not be liable for any loss to the trust arising from a delegation or appointment under subsection (2) who, in good faith and without neglect, makes such delegation or appointment or permits the continuation thereof.

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

Remuneration and expenses of trustee.

37. (1) Unless authorised by—

(a) the term of the trust;

(b) the consent in writing of all of the beneficiaries; or

(c) any order of the Court,

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

(2) A trustee may reimburse himself or herself out of the trust for or pay out of the trust all expenses and liabilities reasonably incurred in connection with the trust.

Corporate trustee acting by resolution.

38. A corporate trustee may—

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

PART VIII

LIABILITY FOR BREACH OF TRUST

Liability for breach of trust.

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

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

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

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

(4) A trustee shall not be liable for a breach of trust committed prior to his or her appointment, if such breach of trust was committed by some other person.

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

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

(6) A beneficiary may—

- (a) relieve a trustee of liability to him or her for a breach of trust;
- (b) indemnify a trustee against liability for a breach of trust.

(7) Subsection (6) shall not apply unless the beneficiary—

- (a) has legal capacity;
- (b) has full knowledge of all material facts; and
- (c) is not improperly induced by the trustee to take action under subsection (6).

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

(9) A trustee who becomes aware of a breach of trust to which subsection (4) relates shall take all reasonable steps to have such breach remedied.

(10) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from his or her own fraud, wilful misconduct or gross negligence.

Liability of controllers, directors and managers of a corporate trustee.

40. (1) This section applies to a corporate trustee which, being constituted or operated for the purpose of acting as a trustee (whether or not it is also constituted or operated for other purposes)—

- (a) is a trustee of a trust;
- (b) is resident in the Federation; or
- (c) is carrying on business in the Federation or from an address in the Federation.

(2) Where a breach of trust has been committed by a corporate trustee to which this section applies, every person who at the time of the commission of the breach of trust was a controller, director or manager of such corporate trustee shall be deemed to be a guarantor of such corporate trustee in respect of any pecuniary damages and costs awarded by the Court against such corporate trustee in respect of such breach.

(3) The Court may relieve a controller, director or manager either wholly or partially from personal liability as a guarantor of such corporate trustee where it appears to the Court that he or she ought fairly to be excused from such liability, because—

- (a) he or she has proved that he or she was not aware of such breach of trust being contemplated or committed, and in being not so aware, was not behaving in a reckless or negligent manner; or
- (b) he or she expressly objected, and exercised such rights as he or she had by way of voting power or otherwise as a controller, director or manager of the corporate trustee so as to try to prevent the commission of such breach of trust.

(4) For the purpose of this section—

- (a) “associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a corporate trustee, means—
 - (i) the spouse or children or step-children of that person;
 - (ii) the trustees of any settlement under which that person has a life interest;
 - (iii) any body corporate of which that person is a director;
 - (iv) any person who is an employee or partner of that person;
 - (v) if that person is a body corporate, any director of that body corporate, any subsidiary company of that body corporate and any director or employee of any such subsidiary company; and
 - (vi) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interest in that body corporate or under which they

undertake to act together in exercising their voting power in relation to it, that other person;

- (b) “chief executive”, in respect to a corporate trustee, means a person who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporate trustee and in relation to a corporate trustee which has its principal place of business in a place outside the Federation, includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business in the Federation;
- (c) “controller”, in relation to a corporate trustee, means—
 - (i) a chief executive of the corporate trustee;
 - (ii) a chief executive of any body corporate of which that corporate trustee is a subsidiary company;
 - (iii) a partner in any partnership of which the corporate trustee is also a partner;
 - (iv) a person in accordance with whose directions or instructions any director of that corporate trustee or any other body corporate of which that corporate trustee is a subsidiary company is accustomed to act;
 - (v) a person who, either alone or with any associate or associates, is entitled to exercise or control the exercise of not less than 15 per cent of the voting power in general meeting of that corporate trustee or of any other body corporate of which that corporate trustee is a subsidiary company;
- (d) “director” includes—
 - (i) a person who occupies the position of a director, by whatever name called;
 - (ii) in the case of a partnership, a partner;
- (e) “manager” means a person, by whatever name called, other than a director or chief executive, who is responsible for the overall control and administration or having effective control of the day to day business of a corporate trustee or an office in the Federation of that corporate trustee;
- (f) “subsidiary company” has the meaning attributed to it under the Companies Act.

Trustee acting in respect of more than one trust.

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

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

Dealings by trustee with third parties.

42. (1) Subject to subsection (2), where in any transaction or matter affecting a trust a trustee informs another party to the transaction or matter that he or she is acting as trustee, a claim by such other party in relation to that transaction or matter shall extend only to the trust property.

(2) Nothing in subsection (1) shall affect the liability of a trustee for breach of trust.

(3) Where, in any such transaction or matter as is referred to in subsection (1), a trustee fails to inform such other party that he or she is acting as trustee and that party is otherwise unaware of it, the trustee shall—

- (a) be personally liable to such other party in respect thereof; and
- (b) have a right of recourse to the trust property by way of indemnity against such personal liability.

Nature of trustee's estate, following trust property and insolvency of trustee.

43. (1) Subject to subsection (2)—

- (a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust; and
- (b) such property shall not be deemed to form part of his or her assets.

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

(3) Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted may be followed and recovered unless—

- (a) it is not identifiable; or
- (b) it is in the hands of a *bona fide* purchaser for value without notice of breach of trust or a person (other than a trustee himself or herself) deriving title through such a person.

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

Protection to persons dealing with trustee.

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

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

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

Constructive trustee.

45. (1) Subject to subsection (2), where a person (in this section referred to as a constructive trustee) makes or receives any profit, gain or advantage from a breach of trust he or she shall be deemed to be a trustee of that profit, gain, or advantage.

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

(3) A person who is or becomes a constructive trustee shall deliver up the property of which he or she is a constructive trustee to the person properly entitled to it.

(4) This section shall not be construed as excluding any other circumstances under which a person may be or become a constructive trustee.

Position of outgoing trustee.

46. (1) Subject to subsection (2), when a trustee resigns, retires or is removed, he or she shall duly surrender trust property in his or her possession or under his or her control.

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

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

- (a) arising from any breach of trust to which such trustee (or in the case of a corporate trustee any of its officers or employees) was a party or to which he or she was privy;
- (b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees.

Limitation of actions or prescription.

47. (1) No period of limitation or prescription shall apply to an action brought against a trustee—

- (a) in respect of any fraud to which the trustee was a party or to which he or she was privy; or
- (b) to recover from the trustee trust property—
 - (i) in his or her possession;
 - (ii) under his or her control; or
 - (iii) previously received by him or her and converted to his or her use.

(2) Save as provided in subsection (1), the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is—

- (a) 3 years from the delivery of the final accounts of the trust to the beneficiary; or

- (b) 3 years from the date on which the beneficiary first has knowledge of the occurrence of a breach of trust,

whichever period shall first begin to run.

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

PART IX

PROVISIONS IN RESPECT OF CERTAIN POWERS

Power to make application for directions.

48. A trustee may apply to the Court for direction concerning the manner in which he or she may or should act in connection with any matter concerning the trust and the Court may make such order, if any, as it thinks fit.

Power of investment.

49. (1) Subject to the terms of the trust, a trustee may invest any money requiring investment in any investment or property of whatsoever nature and wheresoever situated and whether producing income or not and whether involving any liability or not and upon such security (if any) as the trustee shall in his or her absolute discretion think fit as if the trustee were the absolute owner thereof.

(2) A trustee shall not be liable for breach of trust by reason only of continuing to hold any investment which has ceased to be an investment authorised by the terms of the trust.

(3) Subject to the terms of the trust, in selecting investments a trustee or (as the case may be) any investment manager to whom the trustee has delegated the management of the investment of trust property shall have regard—

- (a) to the need for diversification of investments in the trust, in so far as is appropriate to the circumstances of the trust; and
- (b) to the suitability to the trust of the investments proposed.

(4) Subject to the terms of the trust—

- (a) a trustee shall, before investing money in any investment, consider whether he or she should obtain appropriate advice as to whether the investment is suitable and satisfactory;
- (b) a trustee shall determine whether and at what intervals he or she should obtain appropriate advice as to whether the existing investments of the trust are suitable and satisfactory; and
- (c) if a trustee considers that the obtaining of such advice is necessary, he or she shall obtain and consider such advice accordingly.

(5) For the purpose of subsection (4), advice is appropriate if it is the advice of a person who the trustee reasonably considers competent and qualified to give such advice; and such advice may be given by a person notwithstanding that he or she gives it in the course of his or her employment, including employment with a trustee of the trust.

Power of accumulation and advancement.

50. (1) Subject to section 17, the terms of a trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

(2) Subject to subsection (3), income of the trust which is not accumulated under subsection (1) shall be distributed.

(3) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, where a beneficiary is a minor and whether or not his or her interest—

- (a) is a vested interest; or
- (b) is an interest which will become vested—
 - (i) on attaining the age of majority;
 - (ii) at any later age; or
 - (iii) upon the happening of any event,

the trustee may do any of the things specified in subsection (4).

(4) The trustee may—

- (a) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or such later age or the happening of such event;
- (b) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary;
- (c) advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest.

(5) The receipt of a parent or the lawful guardian of a beneficiary who is a minor shall be a sufficient discharge to the trustee for a payment made under subsection (4).

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

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

(8) No part of the trust property advanced or applied under subsection (6) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

Power of appointment.

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

Power of revocation.

- 52.** (1) A trust and any exercise of a power under a trust may be expressed to be—
- (a) revocable whether wholly or partly; or
 - (b) capable of variation.

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

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

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

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

Power to appoint resident trustee.

- 53.** (1) Where a trust has no resident trustee and the terms of the trust contain no provision for the appointment of a resident trustee, then—

- (a) the protector (if any); or failing him or her;
- (b) the trustees for the time being; or failing them;
- (c) the last remaining trustee; or failing him or her;
- (d) the personal representative or the liquidator of the last remaining trustee; or
- (e) if such person does not exist or is unwilling to act,

the Court may appoint a resident trustee.

(2) The provisions of subsections (2), (3) and (4) of section 27 shall, *mutatis mutandis*, apply to a resident trustee appointed under this section.

Power to relieve trustee from personal liability.

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

- (a) he or she is or may be personally liable for the breach of trust;
- (b) he or she has acted honestly and reasonably;
- (c) he or she ought fairly to be excused—
 - (i) for the breach of trust; or
 - (ii) for omitting to obtain the directions of the Court in the matter in which such breach arose.

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

Power to make beneficiary indemnify for breach of trust.

- 55.** (1) Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the Court may, by order, impound all or

part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through him or her.

(2) Subsection (1) applies whether or not such beneficiary is a minor or an interdict.

Power to provide variation of terms of trust.

56. (1) The terms of a trust may be varied in any manner provided by its terms or by the Court in accordance with the next following provisions of this section.

(2) Subject to subsection (3), the Court may, if it thinks fit, by order, approve on behalf of—

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

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

(3) The Court shall not approve an arrangement on behalf of any person coming within paragraph (a), (b) or (c) of subsection (2) unless the carrying out thereof appears to be for the benefit of that person.

(4) An application to the Court under this section may be made by the Attorney-General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

Power of approving particular transactions.

57. (1) Where, in the management or administration of a trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is, in the opinion of the Court, expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee by the terms of the trust or by law the Court may confer upon the trustee either generally or in any particular circumstances a power for that purpose on such terms and subject to such provisions and conditions, if any, as the Court thinks fit and may direct in what manner and from what property any money authorised to be expended and the costs of any transaction are to be paid or borne.

(2) An application to the Court under this section may be made by the Attorney-General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

Powers on failure or lapse of interest.

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

- (a) an interest lapses;
- (b) a trust terminates;
- (c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust; or
- (d) property is vested in a person which is not for his or her sole benefit and the trusts upon which he or she is to hold the property are not declared or communicated to him or her,

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

(2) Where an interest or property is held by the trustee for a charitable purpose or, where subsection (2) of section 14 applies, for any other purpose which has ceased to exist or is no longer applicable, that interest or property shall be held for such other charitable purpose, or where subsection (2) of section 14 applies, for such other purpose, as the Court may declare to be consistent with the original intention of the settlor.

(3) In subsections (1) and (2), “settlor” means the particular person who provided the interest or property affected as mentioned in subsection (1).

(4) An application to the Court under this section may be made by the Attorney-General.

PART X**ADMINISTRATION****Office for Service.**

59. (1) A trust shall have an office for service in the Federation.

(2) The trustees of a trust may change the address of its office for service from time to time by giving notice to the Registrar.

(3) The change shall take effect on the notice being registered by the Registrar, but until the end of the period of fourteen days beginning on the date on which it is registered, a person may validly serve any document on the trust at its previous office for service.

(4) The trustees of a trust shall keep at its office for service—

- (a) if it is a unit trust, a register showing in alphabetical order for each beneficiary—
 - (i) the full name and address of each beneficiary who is an individual, or in the case of a body corporate its full name, the place where it is incorporated and the address of its registered or principal office;

- (ii) where the participation by beneficiaries is defined by percentage interests or by the number of units or other similar rights held by them, the percentage interest or the number and class of units or other rights held;
 - (iii) a statement of the amount of any contributions agreed to be made by the beneficiary and the time at which, or events on the happening of which, the contributions are to be made;
 - (iv) a statement of the amount of money and nature and value of any other property contributed by the beneficiary and the dates thereof;
 - (v) a statement of the amount of contribution returned to the beneficiary and the dates thereof;
- (b) a copy of the attestation and each amendment made to it;
 - (c) a copy of the written terms of the trust (if any) and each amendment made to it;
 - (d) a copy of each annual statement required to be given to the Registrar pursuant to section 60; and
 - (e) such other particulars as may be prescribed.
- (5) The records kept under subsection (4) shall be—
- (a) *prima facie* evidence of the particulars which are by that subsection directed to be contained therein;
 - (b) amended within twenty-one days of any change in the particulars contained therein;
 - (c) available for inspection and copying without charge during ordinary business hours at the request of a trustee or the protector (if any).
- (6) If default is made in compliance with this section every trustee who is in default commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

Annual Statement.

- 60.** (1) The trustees of every trust shall, in each year before the end of the month next following the month in which the anniversary date of the registration of its attestation falls—
- (a) complete an annual statement containing information current as at the anniversary date of the registration of its attestation in that year;
 - (b) deliver to the Registrar a copy of the statement signed by each of the trustees of the trust together with the prescribed filing fee; and
 - (c) file a copy of the statement delivered to the Registrar in a register kept by them for the purpose.
- (2) The trustees of every trust shall state in its annual statement—
- (a) the trust's name and the address of its office for service;
 - (b) whether the trust is a charitable or a unit trust;
 - (c) whether the trust is an ordinary or an exempt trust;

- (d) the full name and address of each trustee who is an individual, or in the case of a body corporate its full name, the place where it is incorporated and the address of its registered or principal office;
- (e) in the case of an exempt trust, an undertaking that the trustees of the trust will forthwith notify the Minister by notice in writing if the trust should no longer qualify as an exempt trust; and
- (f) that the information contained in the statement is current as at the anniversary date of the registration of its attestation in the year in which it is required to be delivered.

(3) The Minister may, in his or her discretion, by written notice to a trustee of any unit trust direct that the trustees of the unit trust shall submit together with its annual statement such information, declaration and verification as are specified in the direction and the Minister may at any time withdraw or amend the terms of any such direction.

(4) If default is made in compliance with subsection (1) or (2) every trustee who is in default commits an offence and liable to a fine not exceeding four times the prescribed filing fee and in the case of an offence under paragraph (b) of subsection (1), is liable to a fine not exceeding one half of the prescribed filing fee for each day the offence is permitted to continue.

(5) Where the trustees of a trust—

- (a) fail to submit annual statements pursuant to subsections (1) and (2); and
- (b) have been delinquent in such filing in excess of 3 years,

the Registrar shall strike the name of the Trust from the Register of Trusts.

(Inserted by Act 4 of 2017)

Service of documents.

61. For the purposes of this Act, a document may be served on a trustee in respect of a trust—

- (a) by leaving it at, or sending it by post to, the office for service of the trust;
- (b) in accordance with subsection (3) of section 59; or
- (c) by delivering it to the trustee.

Authority to sign.

62. Where a trustee executes a document on behalf of the trust, it shall be conclusively presumed in favour of any person who is not a trustee that—

- (a) the trustee has the authority under which he or she purports to act; and
- (b) the executed document has been validly executed.

Legal proceedings.

63. Except as provided in this Act, legal proceedings by or against a trust shall be instituted by or against any one or more of the trustees only.

Accounts and audit.

64. (1) The trustees of every trust shall keep accounting records for a period of at least five years which—

- (a) are sufficient to show and explain their transactions with respect to the trust;
- (b) are such as to disclose with reasonable accuracy at any time the financial position of the trust;
- (c) are sufficient as to allow for financial statements to be prepared;
- (d) include underlying documentation and must be kept to reflect details of—
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases and other transactions; and
 - (iii) the assets and liabilities of the relevant entity or arrangements.

(Substituted by Act 6 of 2011)

(2) Unless the terms of a trust otherwise provides, it shall not be necessary for the trustees of a trust to appoint an auditor to audit their accounts in respect of the trust.

(3) If default is made in compliance with this section every trustee who is in default commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

PART XI**TERMINATION OF TRUSTS****Statement of termination.**

65. (1) Except as provided in section 68, a trust shall not be terminated by an act of its trustees until a statement of termination signed by one of its trustees has been delivered by him or her to the Registrar.

(2) When a statement of termination is delivered to the Registrar he or she shall cancel the registration of the attestation in respect of the trust named in the statement of termination.

(3) If default is made in compliance with this section every trustee who is in default commits an offence and is liable to a fine not exceeding two thousand five hundred dollars.

Distribution of trust property on termination.

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

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

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

Termination by Beneficiaries.

67. (1) Without prejudice to any power of the Court and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are interdicts or minors and all beneficiaries are in agreement so to do, they may require the trustee to terminate the trust and distribute the trust property in accordance with the terms of the trust to the persons entitled thereto.

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

Termination by the Court.

68. (1) If default is made by the trustees in compliance with any provision of this Part, the Court may order the termination of the trust.

(2) Where an order is made under subsection (1) the Court may give such directions as it thinks fit as to the distribution of the trust property.

(3) An application to the Court under this section may be made by the Attorney-General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

(4) When a trust has been terminated under this section the person making the application shall cause the relevant act of the Court to be delivered to the Registrar within 21 days after the making of the order and the Registrar shall thereupon cancel the registration of the attestation.

PART XII

PROSPECTUSES

Prospectuses.

69. (1) The Minister may, by Order, prohibit either of the following, except in circumstances and subject to conditions specified in the Order—

- (a) the circulation of a prospectus in the Federation;
- (b) the circulation of a prospectus, in the Federation or elsewhere, in respect of a trust.

(2) Such Order may provide—

- (a) for prospectuses—
 - (i) to be filed with, or filed and approved by, the Minister;
 - (ii) to contain such further information as is necessary to give investors an informed assessment of any investment proposed in the prospectus;
 - (iii) to comply with such other requirements as may be specified in the Order;
- (b) for any other matter required to carry the Order into effect.

(3) Any person who fails to comply with any provision of any such Order and, where the offence is committed by any of the trustees of a trust, every trustee of that trust who is in default commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

(4) In this Part—

- (a) “prospectus” means an invitation to the public to acquire or apply for any units; and
- (b) “unit” means any material representation of the rights of investors with regard to the trust property of a trust whether such rights are represented—
 - (i) by securities issued in respect of the trust; or
 - (ii) by the entry of names of investors (whether as beneficiaries or otherwise) in a register kept in relation to the trust; or
 - (iii) by any other means.

(5) For the purposes of this section—

- (a) an invitation is made to the public where it is not addressed exclusively to a restricted circle of persons; and
- (b) an invitation shall not be considered to be addressed to a restricted circle of persons unless—
 - (i) the invitation is addressed to an identifiable category of persons to whom it is directly communicated by the inviter or his or her agent;
 - (ii) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation; and
 - (iii) the number of persons in the Federation or elsewhere to whom the invitation is so communicated does not exceed 50.

(6) An invitation to the public to acquire or apply for units issued in respect of a trust shall, if the units are not fully paid or if the invitation is first circulated within 6 months after the units were allotted, be deemed to be a prospectus circulated in respect of the trust unless it is shown that the units were not allotted with a view to their being the subject of such an invitation.

Compensation for misleading statements in prospectus.

70. (1) A person who acquires or agrees to acquire a unit to which a prospectus relates and suffers a loss in respect of the unit as a result of the inclusion in the prospectus of a statement of a material fact which is untrue or misleading, or the omission from it of the statement of a material fact, shall, subject to section 71, be entitled to damages for loss suffered—

- (a) in the case of units offered for subscription, from each person who was a trustee of the trust when the prospectus was circulated;
- (b) in the case of units offered otherwise than for subscription, from the person making the offer and, where that person is a trustee of a trust, from each person who was a trustee of it when the prospectus was circulated;

- (c) from each person who is stated in the prospectus as accepting responsibility for the prospectus, or any part of it, but, in that case, only in respect of a statement made in or omitted from that part; and
- (d) from each person who has authorised the contents of, or any part of, the prospectus.

(2) Nothing in this section shall make a person responsible by reason only of giving advice as to the contents of a prospectus in a professional capacity.

(3) This section does not affect any liability which any person may incur apart from this section.

Exemption from liability to pay compensation.

71. A person shall not be liable under section 70 if he or she satisfies the Court—

- (a) that the prospectus was circulated without his or her consent;
- (b) that, having made such inquiries (if any) as were reasonable, from the circulation of the prospectus until the units were acquired, he or she reasonably believed that the statement was true and not misleading or that the matter omitted was properly omitted;
- (c) that, after the circulation of the prospectus and before the units were acquired he, or she on becoming aware of the untrue or misleading statement or of the omission of the statement of a material fact, took reasonable steps to secure that a correction was brought to the notice of persons likely to acquire the units;
- (d) in the case of a loss caused by a statement purporting to be made by a person whose qualifications give authority to a statement made by him or her which was included in the prospectus with his or her consent, that when the prospectus was circulated he or she reasonably believed that the person purporting to make the statement was competent to do so and had consented to its inclusion in the prospectus; or
- (e) that the person suffering the loss acquired or agreed to acquire the units knowing that the statement was untrue or misleading or that the matter in question was omitted.

Recovery of compensation.

72. (1) A person is not debarred from obtaining compensation from a trust by reason only of his or her holding or having held units in the trust or any right to apply or subscribe for units in the trust or to be included in the register of beneficiaries in respect of units.

(2) A sum due from a trust to a person who has acquired or agreed to acquire units in the trust being a sum due as compensation for loss suffered by him or her in respect of the units, shall (whether or not the trust is being terminated and whether the sum is due under section 70 or otherwise) be treated as a sum due to him or her otherwise than in his or her character of a beneficiary.

Criminal liability for misleading statements.

73. If a prospectus is circulated with a material statement in it which is untrue or misleading or with the omission from it of the statement of a material fact, any person who authorised the circulation of the prospectus commits an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both unless he or she

satisfies the Court that he or she reasonably believed, when the prospectus was circulated, that the statement was true and not misleading or that the matter omitted was properly omitted.

PART XIII

INVESTIGATIONS

Appointment of inspectors by Minister.

74. (1) If the Minister has *prima facie* evidence that—
- (a) a trust was created or is to be terminated for an unlawful or fraudulent purpose;
 - (b) the transactions or affairs of a trust are or have been conducted unlawfully or with intent to defraud any person;
 - (c) persons concerned with the creation, transactions or affairs of a trust have in connection therewith acted fraudulently or dishonestly; or
 - (d) in any case it is in the public interest that an investigation of the trust be made,

he or she may appoint one or more competent inspectors to investigate the affairs of a trust and to report on them as the Minister may direct.

(2) The appointment may be made on the application of the Registrar, or of any person who is a trustee or the protector or a beneficiary of the trust to be investigated or a creditor of its settlor.

(3) The Minister may, before appointing inspectors, require the applicant, other than the Registrar, to give security, to an amount not exceeding twenty-five thousand dollars or such other sum as may be prescribed for payment of the costs of the investigation.

(4) This section applies whether or not the trust is being terminated.

Powers of inspectors.

75. (1) If inspectors appointed under section 74 to investigate the affairs of a trust think it necessary for the purposes of their investigation to investigate also the affairs of another trust which is or at any relevant time was administered by any trustee of the first mentioned trust, they shall have power to do so; and they shall report on the affairs of the other trust so far as they think that the results of their investigation of the affairs of the other trust are relevant to the investigation of the affairs of the first mentioned trust.

(2) Inspectors so appointed may at any time in the course of their investigation, without the necessity of making an interim report, inform the Minister and the Attorney-General of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

Production of records and evidence to inspectors.

76. (1) If inspectors appointed under section 74 consider that any person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him or her—

- (a) to produce and make available to them all records in his custody or power relating to that matter;
- (b) at reasonable times and on reasonable notice, to attend before them; and
- (c) otherwise to give them all assistance in connection with the investigation which he or she is reasonably able to give,

and it is that person's duty to comply with the requirement.

(2) Inspectors may, for the purposes of the investigation, examine on oath any such person as is mentioned in subsection (1), and may administer an oath accordingly.

(3) An answer given by a person to a question put to him or her in exercise of the powers conferred by this section may be used in evidence against him or her.

Power of inspectors to call for trustee's bank accounts.

77. If inspectors appointed under section 74 have reasonable grounds for believing that a trustee, or past trustee, of the trust or other trust whose affairs they are investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the Federation or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that trustee towards the trust, the inspectors may require the trustee to produce and make available to them all records in the trustee's possession or under his control relating to that bank account.

Authority for search.

78. (1) Inspectors appointed under section 74 may, for the purpose of an investigation under that section, apply to the Court for a warrant under this section in relation to specified premises.

(2) If the Court is satisfied that the conditions set out in subsection (3) are fulfilled, it may issue a warrant authorising a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.

(3) The conditions referred to in subsection (2) are—

- (a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularised) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
- (b) that the investigation for the purposes of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.

(4) Where a person has entered premises in the execution of a warrant issued under this section, he or she may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(5) In this section, "premises" includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure.

Obstruction.

79. Any person who wilfully obstructs any person acting in the execution of a warrant issued under section 78 commits an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

Failure to co-operate with inspectors.

80. (1) If any person—

- (a) fails to comply with a requirement under section 76 or 77; or
- (b) refuses to answer any question put to him or her by the inspectors for the purpose of the investigation,

the inspectors may certify the refusal in writing to the Court.

(2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if he or she had been guilty of contempt of the Court.

(3) Notwithstanding the generality of the foregoing, no proceedings for an offence or for the recovery of any penalty shall be instituted under this section against any person who refuses to answer any question if such refusal is made pursuant to section 101.

Inspectors' reports.

81. (1) The inspectors may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of their investigation shall make a final report to the Minister.

(2) The Minister may—

- (a) forward a copy of any report made by the inspectors to the office for service of the trust;
- (b) furnish a copy, on request and on payment of the prescribed fee, to—
 - (i) any trustee of the trust or other trust which is the subject of the report;
 - (ii) any person whose conduct is referred to in the report;
 - (iii) the auditors (if any) of the trust or that other trust;
 - (iv) the applicants for the investigation;
 - (v) any other person whose financial interests appear to the Minister to be affected by the matters dealt with in the report, whether as a creditor of the trust or that other trust, or otherwise; and
- (c) cause the report to be printed and published.

Power to bring civil proceedings on behalf of trustees.

82. (1) If, from any report made or information obtained under this Part, it appears to the Minister that civil proceedings ought, in the public interest, to be brought by the trustees of a trust, the Minister may himself or herself bring those proceedings in the name and on behalf of the trustees of the trust.

(2) The Minister shall, at the expense of the Government, indemnify the trustees against any costs or expenses incurred by them or the trust in or in connection with proceedings brought under this section.

Expenses of investigating a trust's affairs.

83. (1) The expenses of and incidental to an investigation by inspectors shall be defrayed in the first instance by the Minister, but the following are liable to make repayment to the Minister to the extent specified—

(a) a person who—

(i) is convicted in proceedings on a prosecution instituted as a result of the investigation; or

(ii) is ordered to pay the whole or any part of the proceedings brought under section 82,

may, in the same proceedings, be ordered to pay those expenses to the extent specified in the order;

(b) a trust in whose name proceedings are brought under that section is liable to the amount or value of any sums or property recovered by it as a result of those proceedings;

(c) a trust which has been the subject of the investigation is liable except so far as the Minister otherwise directs; and

(d) the applicant or applicants for the investigation (other than the Registrar), is or are liable to the extent (if any) which the Minister may direct.

(2) For the purposes of this section, costs or expenses incurred by the Minister in or in connection with proceedings brought under section 82 (including expenses incurred under subsection (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(3) A liability to repay the Minister imposed by paragraph (a) or (b) of subsection (1) is (subject to satisfaction of his or her right to repayment) a liability also to indemnify all persons against liability under paragraph (c) or (d) of that subsection; and a liability imposed by paragraph (a) is (subject as mentioned above) a liability also to indemnify all persons against liability under paragraph (b).

(4) A person liable under subsection (1) is entitled to a contribution from any other person liable under the same subsection according to the amount of their respective liabilities under it.

(5) Expenses to be defrayed by the Minister under this section shall, so far as not recovered under it, be paid out of money provided by the Government.

(6) There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Minister may determine in respect of general staff costs and overheads.

Inspectors' report to be evidence.

84. (1) A copy of a report of inspectors certified by the Minister to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspectors in relation to a matter contained in the report.

(2) A document purporting to be a certificate mentioned in subsection (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

Privileged information.

85. Nothing in this Part requires the disclosure or production to the Minister or to an inspector appointed by him or her—

- (a) by a person of information or records which he or she would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he or she is a lawyer, the name and address of his or her client;
- (b) by the bankers (as such) of a trust of information or records relating to the affairs of any of their customers other than the trust or other trust under investigation.

PART XIV

REGISTRAR

Registrar and other officers.

86. (1) For the purposes of the registration of attestations under this Act, there shall be appointed a person known as the Registrar of Trusts and such other officers as may be necessary to assist the Registrar in the exercise of his or her functions under this Act.

(2) Any functions of the Registrar under this Act may, to the extent authorised by him or her, be exercised by any of his or her officers.

(3) In this section, “officer” means a person on the staff of the Registrar.

(4) The Minister may at any time and from time to time by Order require that the Registrar of Companies appointed pursuant to the Companies Act shall also be the Registrar of Trusts for such period or periods of time as may then be prescribed.

Registrar's seal.

87. The Minister may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the establishment of trusts under this Act.

Registration numbers.

88. (1) The Registrar shall allocate to every attestation a number, which shall be known as the attestation registration number of a trust.

(2) The attestation registration numbers of trusts shall be in such form, consisting of one or more sequences of figures or letters as the Registrar may from time to time determine.

(3) The Registrar may, upon adopting a new form of registration number, make such changes of existing registration numbers as appear to him or her necessary.

Size, durability, etc. of documents delivered to the Registrar.

89. (1) For the purpose of securing that documents delivered to the Registrar are of standard size, durable and easily legible, the Minister may prescribe requirements (whether as to size, weight, quality or colour of paper, size, type or colouring of lettering, or otherwise) as the Minister may consider appropriate; and different requirements may be prescribed for different documents or classes of documents.

(2) If a document is delivered to the Registrar (whether an original document or a copy) which in the Registrar's opinion does not comply with the prescribed requirements applicable to it, the Registrar may serve on a person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice stating his or her opinion to that effect and indicating the requirements so prescribed with which in his or her opinion the document does not comply.

(3) Where the Registrar serves a notice under subsection (2), then for the purposes of any enactment which enables a penalty to be imposed in respect of an omission to deliver to the Registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such enactment whereby such a penalty may be imposed by reference to each day during which the omission continues)—

- (a) a duty imposed by that provision to deliver a document to the Registrar is to be treated as not having been discharged by the delivery of that document; but
- (b) no account is to be taken of days falling within the period beginning with the day on which the document was delivered to the Registrar and ending with the 14th day after the date of service of the notice under subsection (2).

Form of documents to be delivered to the Registrar.

90. (1) Where any section of this Act requires a document to be delivered to the Registrar, but the form of the document has not been prescribed, it shall be sufficient compliance with that requirement if—

- (a) the document is delivered in a form which is acceptable to the Registrar; or
- (b) the information in question is delivered in material other than a document, being material which is acceptable to the Registrar,

and the document or information, as the case may be, is accompanied by the prescribed fee, if any.

(2) In this section and section 91, any reference to delivering a document includes, in the case of a notice, giving it.

Fees and forms.

91. (1) The Minister may, by Order, require the payment to the Registrar of such fees as may be prescribed in respect of—

- (a) the performance by the Registrar of such functions under this Act as may be specified in the Order, including the receipt by him or her of any document under this Act which is required to be delivered to him or her; and
- (b) the inspection of documents or other material held by him or her under this Act.

(2) Where a fee is provided for or charged under this section for the performance of an act or duty by the Registrar, no action need be taken by him or her until the fee is paid, and where the fee is payable on the receipt by him or her of a document required to be delivered to him or her, he or she shall be deemed not to have received it until the fee is paid.

(3) The Minister may prescribe forms to be used for any of the purposes of this Act and the manner in which any document to be delivered to the Registrar is to be authenticated.

(4) Unless otherwise provided by or under this Act, any document delivered to the Registrar on behalf of a trust pursuant to this Act shall be signed by one trustee.

(5) Fees paid to the Registrar shall form part of the Consolidated Fund, except that for a trust brought under this Act by virtue of section 108(4) hereof in which case the fees payable in relation to such trust shall be paid into the Nevis Island Consolidated Fund.

Inspection and production of documents kept by the Registrar.

92. (1) Subject to the provisions of this section, no inspection and production of documents kept by the Registrar under this Act shall be permitted except that any of the trustees of a trust may by notice in writing to the Registrar authorise the person named therein—

- (a) to inspect a document of the trust delivered to the Registrar under this Act or, if the Registrar thinks fit, obtain a copy thereof;
- (b) to require a certificate of registration in respect of the attestation of the trust or a copy, certified or otherwise, of any other document or part of any other document referred to in paragraph (a),

and a certificate given under paragraph (b) shall be signed by the Registrar and sealed with his or her seal.

(2) A copy of or extract from a record kept by the Registrar, certified in writing by him or her (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to him or her under this Act shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated therein of which direct oral evidence would be admissible.

Enforcement of duty to deliver documents and notices to the Registrar.

93. (1) If a trustee, having failed to comply with a provision of this Act which requires him or her to deliver to the Registrar any document, or to give notice to the Registrar of any matter, does not make good the failure within 14 days after the

service of a notice on the trustee requiring him or her to do so, the Court may, on an application made to it by another trustee or the protector (if any) or a beneficiary of the trust or by the Registrar, make an order directing the trustee to make good the failure within a time specified in the order.

(2) The Court's order may provide that all costs of and incidental to the application shall be borne by the trustee responsible for the failure.

(3) Nothing in this section prejudices the operation of any section imposing penalties on each of the trustees in respect of a failure mentioned above.

Destruction of old records.

94. (1) The Registrar may destroy any records delivered under this Act which have been kept for over thirty years and which were, or were comprised in or annexed or attached to, the annual statements of a trust.

(2) Where a trust has been terminated, whether under this Act or otherwise, the Registrar may, at any time after 30 years from the date of the termination, destroy any records relating to that trust in his or her possession or under his or her control.

PART XV

TAXES AND STAMP DUTIES

Exemption from taxes.

95. (1) Notwithstanding any provision to the contrary in any enactment, a trust is not itself a subject for assessment to any tax in the Federation and the beneficiaries of a trust are exempt from all income, capital gains and withholding taxes which may arise out of their interest in the trust if the trustees of the trust are in respect of it effecting transactions exclusively with persons who are not resident in the Federation.

(2) The beneficiaries of an exempt trust shall not lose their exemption under subsection (1) by reason only that the trustees of the trust are in respect of it—

- (a) effecting transactions with, or buying or selling or otherwise dealing in any securities issued or created by, any person resident in the Federation who is exempt from all income, capital gains and withholding taxes under any law of the Federation;
- (b) effecting or concluding in the Federation contracts or arrangements (including contracts or arrangements with any person resident in the Federation for employment with or the supply of goods and services to them in respect of the trust) and exercising in the Federation all other powers, so far as may be necessary for its proper performance;
- (c) carrying on any part of its administration within the Federation and holding meetings in the Federation;
- (d) owning or leasing property in the Federation for the carrying on of any part of its administration or as residence for its beneficiaries;
- (e) transacting banking business with any person resident in the Federation who is authorised to carry on banking business under any law of the Federation.

(3) Notwithstanding any provision to the contrary in any enactment, no estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by any person with regard to any property held in, or securities issued or created in respect of, an exempt trust.

(4) In this section—

- (a) “person” includes an individual and any body corporate; and
- (b) “resident in the Federation” means a person who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation but does not include the beneficiaries of an exempt trust, and “not resident in the Federation” shall be construed accordingly.

Exemption from stamp duties.

96. Notwithstanding any provision to the contrary in any enactment, no stamp duties are payable by any person with regard to any transaction in securities issued or created in respect of an exempt trust.

PART XVI

MISCELLANEOUS AND FINAL PROVISIONS

Form of trust’s records.

97. (1) The records, which the trustees of a trust are required by this Act to keep, may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

(2) The trustees of a trust shall take reasonable precautions—

- (a) to prevent loss or destruction of;
- (b) to prevent falsification of entries in; and
- (c) to facilitate detection and correction of inaccuracies in,

the records required by this Act to be kept, and if default is made in compliance with this subsection every trustee who is in default commits an offence and is liable to a fine not exceeding two thousand five hundred dollars.

Examination of records and admissibility of evidence.

98. (1) If any record referred to in subsection (4) of section 59 is kept otherwise than in intelligible written form, any duty imposed on the trustees of a trust by this Act to allow examination of, or to furnish extracts from, such record shall be treated as a duty to allow examination of, or to furnish a copy of the extract from, the record in intelligible written form.

(2) The records kept by the trustees of a trust in compliance with this Act shall be admissible in the form in which they are made intelligible under subsection (1) as *prima facie* evidence, before and after the termination of the trust, of all facts stated therein.

Production and inspection of records where offence suspected.

99. If, on an application by the Attorney-General, there is shown to be reasonable cause to believe that a person has, while a trustee of a trust, committed an offence in connection with the management of the trust's affairs and that evidence of the commission of the offence is to be found in any records of or under the control of the trustee, the Court may make an order—

- (a) authorising a person named in it to inspect the records in question, or any of them, for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring any trustee of the trust named in the order to produce and make available the records (or any of them) to a person named in the order at a place so named.

Legal professional privilege.

100. Where any proceedings are instituted under this Act against any person, nothing in this Act is to be taken to require any person to disclose any information which he or she is entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the Court.

Right to refuse to answer questions.

101. A person may refuse to answer any question put to him or her pursuant to any provision of this Act if his or her answer would tend to expose that person, or the spouse of that person, to proceedings under the law of the Federation for an offence or for the recovery of any penalty.

Punishment of offences.

102. (1) Any person who makes a statement in any document, material, evidence or information which is required to be kept under subsection (4) of section 59 or which is required to be delivered to the Registrar under this Act that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or that omits to state any material fact, the omission of which makes the statement false or misleading, commits an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

(2) A person shall not be found guilty of an offence under subsection (1) if he or she did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

Accessories and abettors.

103. Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence punishable by this Act shall be liable to be dealt with, tried and punished as a principal offender.

General powers of the Court.

104. (1) The Court may, if it thinks fit—

- (a) make an order concerning—
 - (i) the execution or the administration of a trust;

- (ii) a resident trustee or any other trustee of a trust, including an order relating to the exercise of any power, discretion or duty of a trustee, the appointment or removal of a trustee, the remuneration of any trustee, the keeping or submission of accounts, the conduct of a trustee and payments, whether payments into Court or otherwise;
- (iii) a protector, including an order appointing a protector;
- (iv) a beneficiary or any person having a connection with the trust;
- (b) make a declaration as to the validity or the enforceability of a trust;
- (c) rescind or vary any order or declaration made under this Act, or make any new or further order or declaration.

(2) An application to the Court under this section may be made by the Attorney-General or by a trustee or the protector (if any) or a beneficiary or, with the leave of the Court, by any other person.

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

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

(5) Where any person neglects or refuses to comply with an order of the Court directing him or her to execute or make any conveyance, assignment, or other document or instrument or endorsement, for giving effect to any order of the Court under this Act, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, assignment, or other document or instrument or endorsement, shall be executed, made or done by such person as the Court nominates for the purpose, at the cost of the person in default, or otherwise, as the Court directs, and a conveyance, assignment, document, instrument or endorsement so executed, made or done shall operate and be for all purposes available as if it had been executed, made or done by the person originally directed to execute, make or do it.

(6) The Court may order the costs and expenses of and incidental to an application to the Court under this Act to be raised and paid out of the trust property or to be borne and paid in such manner and by such persons as it thinks fit.

Orders.

105. (1) The Minister may, by Order, make provision for the purpose of carrying this Act into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which may be prescribed by this Act.

(2) Except in so far as this Act otherwise provides, any power conferred thereby to make any Order may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
- (b) so as to make in relation to the cases in relation to which it is exercised—
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);

- (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes of this Act; or
- (iii) any such provision either unconditionally or subject to any specified conditions.

(3) Without prejudice to any specific provision of this Act, any Order under this Act may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

Saving.

106. (1) Nothing in this Act shall—

- (a) abridge or affect the powers, responsibilities or duties under any provision of law of any curator, guardian, or special and general attorney;
- (b) affect a personal representative where he or she is acting as such;
- (c) affect the legality or validity of—
 - (i) anything done before the commencement of this Act in relation to an existing trust; or
 - (ii) any trust arising from a document or disposition executed or taking effect before the commencement of this Act;
- (d) derogate from the powers of the Court which exist independently of this Act—
 - (i) to set aside or reduce any transfer or other disposition of property;
 - (ii) to vary any trust;
 - (iii) to reduce or vary any testamentary or other disposition; or
 - (iv) to make an order relating to matrimonial proceedings.

(2) The Minister may, by Order, make provision for any other transitional matter connected with the coming into force of this Act.

Regulation of finance business.

107. (1) The Minister may, by Order, provide that the trustees of a trust shall be subject to such regulations as he or she may prescribe if they are in respect of the trust intending to carry on or are carrying on any business specified in the Order as being finance business.

(2) An Order made under this section may provide for the payment of annual and other fees and for the imposition of fines and daily default fines for breaches of the matters specified in the Order.

Application of this Act.

108. (1) Subject as otherwise provided in subsections (2) and (4), the provisions of this Act shall not extend or apply to trusts registered under the Nevis International Exempt Trust Ordinance.

(2) Any trust falling within subsection (1) shall be subject to and comply with all requirements of this Act in the same manner as a trust established hereunder where—

- (a) a trustee of the trust is resident in the Federation;
- (b) a settlor or beneficiary of the trust is resident in the Federation; or
- (c) the trust property comprises any land situated in the Federation.

(3) For the purposes of subsection (2) only—

- (a) a company formed under or subject to the Nevis Business Corporation Ordinance or the Nevis Limited Liability Company Ordinance;
- (b) any other body corporate which carries on business in Nevis or which has an address in Nevis which is used regularly for the purpose of its business; and
- (c) an individual who is domiciled or ordinarily resident in Nevis,

shall not be considered resident in the Federation unless in the case of persons mentioned in paragraph (b) or (c) such person is a settlor or beneficiary of a trust falling within subsection (1).

(4) The Minister may determine and by Order proclaim that the provisions of this Act shall as from the date specified in the Order extend and apply to any trust or trusts falling within subsection (1).

(5) In the exercise of his or her power under subsection (4), the Minister shall take into account any matter which he or she may have discussed with the person who is responsible for the Ministry of Finance within the Nevis Island Administration and such other matters as he or she considers appropriate, but shall in particular have regard to—

- (a) the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons carrying on business in or from within the Federation; or
 - (b) the protection of the reputation of the Federation as a financial centre.
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FIRST SCHEDULE

(Sections 105 and 107)

FINANCIAL SERVICES (REGULATIONS) ORDER

PART I

PRELIMINARY

Citation.

1. This Order may be cited as the Financial Services (Regulations) Order.

Interpretation.

2. (1) In this Order, unless the context otherwise requires—

“accountant” means a person who is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a practising member in good standing of one of those institutes or is otherwise approved by any supervisory body of the accounting profession recognised under the law of the Federation;

“Act” means the Act under which this Order is made;

“actuary” means a person who is qualified as an actuary by examination conducted by the Institutes of Actuaries in England or the Faculty of Actuaries in Scotland or the Society of Actuaries in the United States of America or Canada, and is a practising member of good standing of one of those professional associations or a person of good standing with some other actuarial qualification who is recognised by the Minister as such for the purpose of this Order;

“associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a company, means—

- (a) the spouse or children or step-children of that person;
- (b) the trustees of any settlement under which that person has a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—
 - (i) any director of that company;
 - (ii) any subsidiary company of that company; and
 - (iii) any director or employee of any such subsidiary company; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other

interest in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person;

“assurance business” means the carrying on of the business of—

- (a) insurance agent;
- (b) insurance broker;
- (c) insurance sub-agent;
- (d) insurance manager; or
- (e) principal insurance representative;

“auditor” means an accountant who is eligible for appointment as auditor under the rules of the institute of chartered or certified accountants of which he or she is a practising member in good standing or is otherwise approved for appointment as auditor by any supervisory body of the accounting profession recognised under the law of the Federation;

“authorisation” means authorisation granted by the Minister under this Order and “authorised” shall be construed accordingly;

“chief executive”, in respect to an authorised person, means a person who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the authorised person and, in relation to an authorised person whose principal place of business is in a place outside the Federation, includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business in the Federation;

“close relative”, in relation to any person, means—

- (a) his or her spouse;
- (b) his or her children and step-children, his or her parents and step-parents, his or her brothers and sisters and step-brothers and step-sisters; and
- (c) the spouse of any person mentioned in paragraph (b);

“company” means any body corporate wherever and however incorporated, other than a corporation sole;

“contract”, in relation to insurance business, includes policy;

“controller”, in relation to a company, means—

- (a) a chief executive of the company;
- (b) a chief executive of any other company of which that company is a subsidiary company;
- (c) a partner in any partnership of which the company is also a partner;
- (d) a person in accordance with whose directions or instructions any director of that company or any other company of which that company is a subsidiary company is accustomed to act;
- (e) a person who, either alone or with any associate or associates, is entitled to exercise or control the exercise of not less than 15 per cent of the voting power in a general meeting of that company or of any other company of which that company is a subsidiary company,

and in this Order, a person coming within paragraph (d) is referred to as “an indirect controller” and a person coming within paragraph (e) is referred to as “a shareholder controller”;

“corporate business” means the carrying on of, and the provision of services in relation to, the business of—

- (a) incorporating or establishing, as may be appropriate, companies or partnerships;
- (b) providing nominee shareholders, directors, chief executives or managers, as may be appropriate, for companies or partnerships;
- (c) maintaining the registered office or the office for service, as may be appropriate, for companies or partnerships;
- (d) managing or administrating, as may be appropriate, companies or partnerships;

“currency” includes foreign currency and any other means of exchange that may be prescribed;

“deposit” has the meaning assigned to it by section 1 of Schedule 1 to this Order;

“deposit-taking business” means the business of engaging in one or more of the activities which fall within section 2 of Schedule 1 to this Order;

“director” includes—

- (a) in the case of a company, a person who occupies the position of a director, by whatever name called;
- (b) in the case of a partnership, a partner;
- (c) in the case of a trust, a trustee;

“Director-General” means the Director-General appointed pursuant to section 21;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“domestic business” means—

- (a) deposit-taking business conducted exclusively in dollars and any other deposit-taking business when deposits are taken from, or moneys are lent to persons resident in the Federation;
- (b) investment business conducted exclusively in dollars and any other investment business when the investment represents a claim on persons resident in the Federation;
- (c) insurance business conducted exclusively in dollars and any other insurance business when the contract is in respect of the life, safety, fidelity or insurable interest (other than in respect of property) of a person who at the time of effecting the contract is resident in the Federation, or property that at the time of effecting the contract is in the Federation or, in the case of a vehicle, vessel, aircraft or other movable property, is ordinarily based in the Federation (but does not include re-insurance business);
- (d) assurance business when such business is conducted exclusively on behalf of an insurer who is carrying on domestic business;

“excluded person” means a person excluded under subsection (2) of section 4;

“exempt person” means any exempt company, exempt limited partnership or exempt trust;

“finance business” means any—

- (a) deposit-taking business;
- (b) investment business;
- (c) insurance business;
- (d) assurance business;
- (e) trust business; or
- (f) corporate business,

carried on for profit or reward in or from within the Federation;

“financial year”, in relation to an authorised person, means the period not exceeding 53 weeks at the end of which the balance of the authorised person’s accounts is struck or, if no such balance is struck or if a period in excess of 53 weeks is employed, then a calendar year;

“general insurance business” means insurance business other than long-term insurance business;

“insurance agent” means a person (not being an insurer) who solicits directly, or through representatives, advertising or other means, insurance business on behalf of not more than one insurer;

“insurance broker” means a person (not being an insurer) who negotiates directly, or through representatives or other means, contracts of insurance or of re-insurance on behalf of more than one insurer, or for placement with insurers or re-insurers;

“insurance business” means the business of effecting and carrying out contracts—

- (a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
- (b) to pay a sum of money or other thing of value upon the happening of an event,

and includes re-insurance business and running-off business including the settlement of claims;

“insurance manager” means a person operating in or from within the Federation who provides insurance expertise to or for insurers and which has in its *bona fide* employment a person who—

- (a) is qualified by examination as a fellow or associate of the Chartered Insurance Institute of London, or who is a member of either the Society of Chartered Property and Casualty Underwriters or the American Society of Chartered Life Underwriters both of the United States of America, and who is either a current member of good standing of the applicable professional body or of some other professional insurance association recognised by the Minister for the purpose of this Order; or
- (b) is a person of good standing with such insurance expertise as has been approved by the Minister.

- “insurance sub-agent” means a person (not being an insurer, insurance agent or insurance broker) who solicits directly or through advertising or other means, insurance business on behalf of an insurance agent or on behalf of an insurance broker;
- “insurer” means a person carrying on insurance business;
- “investment” means any asset, right or interest falling within any section in Part I of Schedule 2 to this Order;
- “investment business” means the business of engaging in one or more of the activities which fall within the sections in Part II of Schedule 2 to this Order and are not excluded by Part III or IV of that Schedule;
- “long-term insurance business” means insurance business involving the making of contracts of insurance—
- (a) on human life or contracts to pay annuities on human life; but excluding contracts for credit life insurance and term life insurance for a period of five years or less other than convertible and renewable term life contracts;
 - (b) against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; and
 - (c) whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraphs (a) or (b);
- “majority shareholder controller” and “principal shareholder controller” mean, respectively—
- (a) a shareholder controller in whose case the percentage referred to in that paragraph does not exceed 50;
 - (b) a shareholder controller in whose case the percentage exceeds 50 but does not exceed 75;
 - (c) a shareholder controller in whose case that percentage exceeds 75;
- “manager” means a person, by whatever name called, other than a director or chief executive, who is responsible for the overall control and administration or having effective control of the day to day business of an authorised person or an office in the Federation of that authorised person;
- “net assets” means the value of all the assets of a business less all its liabilities except its capital and reserves (other than reserves for duties, charges or contingencies) as determined on the basis of such regulations and valuation rules as the Minister may prescribe;
- “this Order” means this Order as amended, or as extended or applied, by or under any other Order made under this Act;

“partner” includes any general partner of a limited partnership;

“partnership” means any partnership, limited partnership or other unincorporated association wherever and however established;

“person” includes any—

- (a) individual;
- (b) company;
- (c) partnership; or
- (d) trust;

“principal insurance representative” means a person operating in or from within the Federation who, not being a *bona fide* employee, maintains for an insurer full and proper records of the business activities of that insurer;

“resident in the Federation” means a person who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation but does not include an excluded person or an exempt person;

“restricted business” means deposit-taking business, investment business or trust business undertaken exclusively for persons listed in any undertaking accompanying the application for the relevant authorisation, and “unrestricted business” shall be construed accordingly;

“settlement” includes any disposition or arrangement under which property is held in trust;

“shareholder controller” has the meaning given by paragraph (e) of the definition of controller, above, and “minority shareholder controller”,

“trust” means any trust or settlement wherever and however established;

“trust business” means the carrying on of, and the provision of services in relation to, corporate business and the business of—

- (a) undertaking or executing trusts;
- (b) providing trustees or protectors for trusts;
- (c) maintaining the office for service of trusts;
- (d) managing or administering trusts.

(2) Subject to subsection (1), any words defined in the Acts shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

(4) A reference to dollars in this Order is a reference to the currency of the Eastern Caribbean Central Bank.

Application of this Order.

3. The provisions of this Order shall not extend or apply to persons carrying on domestic business.

PART II
AUTHORISATION

Prohibition of Unauthorised Finance Business.

4. (1) Subject to the provisions of this Order, no person shall carry on or hold himself or herself out as carrying on any finance business in or from within the Federation unless that person is for the time being authorised under this Order.

(2) This section shall not apply to the doing of anything by or on behalf of—

- (a) the Government;
- (b) the Eastern Caribbean Central Bank;
- (c) the Eastern Caribbean Mortgage Bank;
- (d) the Caribbean Development Bank; or
- (e) any other person which the Minister may from time to time prescribe (subject always to such conditions or restrictions as the Minister may think fit to impose in such Order).

(3) This section shall not apply to any transaction prescribed by the Minister for the purposes of this subsection.

(4) An Order under subsection (3)—

- (a) may prescribe transactions by reference to any factor appearing to the Minister to be appropriate; and
- (b) may make any exemption for which it provides subjects to compliance with specified conditions or requirements.

(5) A person who contravenes this section commits an offence and is liable to a fine not exceeding fifty-four thousand dollars or, if that person is an individual, to imprisonment for a term not exceeding two years, or both.

Application for and grant and extent of Authorisation.

5. (1) Subject to the provisions of this Order, on an application in that behalf made under this section and on payment of the prescribed fee, the Minister shall authorise that person.

(2) Every authorisation shall, unless previously revoked under the provisions of section 7, expire on the anniversary date in the next following year of the date on which it takes effect.

(3) Where an application under this section is made by or on behalf of a person who is not at the time of the application an authorised person the applicant shall deliver to the Director-General together with the prescribed fee a statement signed by or on behalf of the applicant setting out—

- (a) the full name and principal business address of any applicant who is not a company, or in the case of a company its full name, the place where it is incorporated and the full address of its registered or principal office;
- (b) the nature and scale of the finance business which the applicant intends to carry on, any plans of the applicant for the future development of that business and particulars of the applicant's arrangement for the management of that business; and

- (c) where an application is delivered by a person as agent for any applicant, the statement shall specify that fact and the person's name and address.
- (4) Every statement delivered to the Director-General pursuant to subsection (3) shall be accompanied by—
- (a) in the case of a company or partnership, a copy of the act, charter, articles of incorporation, memorandum and articles of association or partnership agreement of the applicant, as may be appropriate, verified by an affidavit sworn by a director and duly authenticated as follows—
 - (i) in the case of a company incorporated or partnership established under the law of the Federation, notarised; and
 - (ii) in the case of a company incorporated or partnership established under the law of any other country or territory, certified and authenticated under the public seal of the country or territory under the laws of which such company or partnership was incorporated or established;
 - (b) a list containing the names, addresses and nationalities of each shareholder controller and indirect controller of the applicant, together with a statement explaining, in respect of each of them, the nature and size of his or her controlling interest in the applicant;
 - (c) a list containing the names, addresses and nationalities of each director, chief executive and manager of the applicant, together with a statement explaining, in respect of each of them, any contractual arrangements that he or she may have with the applicant;
 - (d) in respect of each director, chief executive and manager of the applicant—
 - (i) a police affidavit of no criminal record;
 - (ii) two letters of references, one from a recognised bank and one from a reputable lawyer, accountant or other professional; and
 - (iii) a resume with particular emphasis on experience in the finance business for which the application is submitted;
 - (e) the names and addresses—
 - (i) of one director, chief executive or manager of the applicant who is the authorised agent in the Federation to accept on behalf of the applicant service of process and any notice required to be served on the applicant; and
 - (ii) of another director, chief executive or manager of the applicant who in the absence or inability to act of the person mentioned in sub-paragraph (i) is the authorised agent in the Federation of the applicant for the purposes of that sub-paragraph;
 - (f) the names and addresses of lawyers, if any, of the applicant, together with a letter from the lawyers confirming that they act for the applicant;
 - (g) the names and addresses of auditors of the applicant, together with a letter from auditors confirming that they act for the applicant;

- (h) an undertaking in writing to maintain at all times the relevant minimum financial resources set out in subsection (1) of section 6;
- (i) the audited accounts of the applicant for the three years immediately preceding the date of the application or, in the case where the applicant has not carried out any business before the date of the application, an audited balance sheet showing the net assets of the applicant as at the end of the month immediately preceding the date of the application;
- (j) in the case of an application for the authorisation to carry on a deposit-taking business, investment business or insurance business, a detailed business plan for the five years next following the date of the application;
- (k) in the case of an application for an authorisation to undertake restricted business, an undertaking in writing to undertake business exclusively for the persons whose names, addresses and nationalities are given in the undertaking; and
- (l) such other information or documents as the Minister may reasonably require for the purpose of determining the application.

(5) Where an application under this section is made by or on behalf of a person who is at the time of the application an authorised person the applicant shall deliver to the Director-General together with the prescribed fee a statement signed by or on behalf of the applicant setting out—

- (a) the full name and principal business address of any applicant who is not a company, or in the case of a company its full name, the place where it is incorporated and the full address of its registered or principal office;
- (b) the extent to which any information given in any statement, audited accounts or other document delivered in respect of the last application has changed; and
- (c) where an application is delivered by a person as agent for any applicant, the statement shall specify that fact and the person's name and address.

(6) At any time after receiving an application and before determining it the Minister may by written notice require the applicant or any person who is or is to be a controller, director or manager of the applicant to provide additional information or documents.

(7) The Minister may by written notice require the applicant or any other person as it is mentioned in subsection (6) to provide a report by an accountant or other qualified person approved by the Minister on such aspects of any information received by the Minister as he or she may specify in the notice.

(8) The directions and requirements given or imposed under subsection (6) may differ as between different applications.

(9) An application may be withdrawn by written notice to the Minister at any time before it is granted or refused.

Conditions of Grant of Authorisation.

6. (1) Subject to the provisions of this Order, no authorisation shall be granted unless the applicant has the following minimum financial resources—

- (a) in the case of deposit-taking business, net assets in the minimum sum of—
 - (i) one million three hundred and fifty thousand dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business and restricted business;
 - (ii) one hundred and thirty-five thousand dollars or its equivalent in other currencies for an authorisation to undertake restricted business but not unrestricted business;
- (b) in the case of investment business, net assets in the minimum sum of—
 - (i) one million and eighty thousand dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business and restricted business;
 - (ii) one hundred and eight thousand dollars or its equivalent in other currencies for an authorisation to undertake restricted business but not unrestricted business;
- (c) in the case of insurance business, net assets in the minimum sum of—
 - (i) eight hundred and ten thousand dollars or its equivalent in other currencies for an authorisation to undertake long-term insurance business and general insurance business;
 - (ii) five hundred and forty thousand dollars or its equivalent in other currencies for an authorisation to undertake long-term insurance business but not general insurance business;
 - (iii) two hundred and seventy thousand dollars or its equivalent in other currencies for an authorisation to undertake general insurance business but not long-term insurance business;
- (d) in the case of trust business, net assets in the minimum sum of—
 - (i) five hundred and forty thousand dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business and restricted business;
 - (ii) fifty-four thousand dollars or its equivalent in other currencies for an authorisation to undertake restricted business but not unrestricted business;
- (e) in the case of any other finance business—
 - (i) net assets in the minimum sum of two hundred and seventy thousand dollars or its equivalent in other currencies; or
 - (ii) a professional indemnity insurance in respect of the activities of the applicant and extended to include the activities on behalf of the applicant or of his or her agents, if any, placed with an insurer approved by the Minister, and for an indemnity in the minimum sum of two hundred and seventy thousand dollars or its equivalent in other currencies for any one loss; or
 - (iii) a guarantee in the minimum sum of two hundred and seventy thousand dollars or its equivalent in other currencies given under seal by a holding company of the applicant approved by the Minister, provided always that any guarantee which may be given

under this sub-paragraph shall only be effective if it expressly provides that its formal validity, its essential validity, its interpretation and effect and the rights and obligation of the parties to it are governed exclusively by the law of the Federation and that the Court only shall be the forum for these purposes.

(2) Without prejudice to the generality of subsection (1), the requirement for an applicant to have the minimum financial resources specified in that subsection shall not apply in the case where a lawyer or accountant applies for an authorisation to carry on corporate business.

(3) Every authorisation shall be subject to the conditions that the authorised person—

- (a) maintains at all times the minimum financial resources specified in subsection (1);
- (b) informs the Minister by notice in writing delivered to the Director-General of any change, or proposed change, in the information contained in, or supplied in connection with, the last application for an authorisation;
- (c) carries on business only in accordance with the information referred in paragraph (b) and such changes as the Minister may have approved.

(4) Notwithstanding anything in subsections (1), (2) and (3), the Minister may prescribe such conditions as he or she thinks fit applicable either generally to all authorised persons or to a class of authorised persons and may attach conditions to the authorisation of any particular person under that section and may from time to time vary any general condition applying to a class of authorised persons or any condition attached to an authorisation or prescribe or attach a new condition.

(5) Without prejudice to the generality of subsection (4), such conditions may include matters which the Minister considers to be desirable in the interests of clients or prospective clients of an authorised person, whether for the purpose of safeguarding the assets of the authorised person or otherwise, and may, in particular—

- (a) require the authorised person to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict its business in a particular way;
- (b) require any authorised person to have higher minimum financial resources than those specified in subsection (1);
- (c) require any authorised person to effect a policy of insurance with a reputable insurance company against—
 - (i) the dishonesty of employees of the authorised person; and
 - (ii) loss of documents, in such amount and of such a nature as the Minister may determine to be fit and proper, having due regard to the nature and type of business carried on by the authorised person;
- (d) specify the manner in which an authorised person may hold money for his or her clients;
- (e) impose limitations on the acceptance of deposits, the granting of credit, the effecting of insurance contracts or the making of investments;

- (f) prohibit the authorised person from soliciting business either generally or from persons who are not already clients of that authorised person;
- (g) prohibit an authorised person from entering into any other transaction or class of transactions;
- (h) require the removal of any director, chief executive or manager;
- (i) require the appointment of an auditor for a branch office of the authorised person;
- (j) require the production to the Minister of true and fair view audited accounts; and
- (k) require that the authorised person shall at all times have appointed a director, chief executive or manager, approved by the Minister, responsible for ensuring compliance with the terms and conditions of the authorisation.

(6) If any person fails to comply with any condition imposed under this section that person shall for each such contravention be liable to a fine of two hundred and seventy thousand dollars or, if that person is an individual, to imprisonment for a term not exceeding two years or both.

(7) Where the Minister varies a condition attached to an authorisation or person attaches a condition to an authorisation he or she shall give notice in writing to the authorised person concerned.

Refusal and Revocation of Authorisation.

7. (1) The Minister may refuse to grant an authorisation or, where an authorisation has been granted may revoke the authorisation, if—

- (a) the applicant or the authorised person has not provided information required under section 5 or (as the case may be) has not provided to the Minister at any other time such information as the Minister may reasonably require;
- (b) it appears to the Minister that circumstances exist which either are likely to lead to the improper conduct of business by, or reflect discredit on, the method of conducting business of the applicant or the authorised person (as the case may be), or any person employed by or associated with the applicant or that authorised person for the purposes of his or her business;
- (c) without prejudice to the generality of paragraph (b), it appears to the Minister that by reason of the applicant or authorised person (as the case may be), or any person employed by or associated with, the applicant or that authorised person for the purposes of his or her business—
 - (i) having been convicted of an offence involving dishonesty in any part of the Federation or in any other place; or
 - (ii) having been convicted of an offence against this Order, the applicant or authorised person is not, or as the case may be, is no longer fit and proper to be authorised;
- (d) it appears to the Minister, as a result of information provided in pursuance of the requirements of section 5 or information otherwise obtained, that it is not in the best interest of clients or prospective

clients of the applicant or the authorised person (as the case may be) or in order to protect the integrity of the Federation in financial or commercial matters or that it is not in the best economic interests of the Federation that the applicant or authorised person should be authorised or should continue to be authorised; or

- (e) without prejudice to sub-paragraph (ii) of paragraph (c), in connection with any application for the grant of an authorisation under this Order, the applicant or authorised person has provided to the Minister information which is untrue or misleading in any material particular.

(2) Where the Minister refuses to grant an authorisation or revokes an authorisation he or she shall give written notice accordingly to the applicant or authorised person as the case may be.

Authorisation Certificate and Publication of Names of Authorised Persons.

8. (1) Whenever the Minister authorises a person he or she shall issue to that person, free of charge, an authorisation certificate.

(2) The Minister shall, from time to time, publish in the *Gazette* the names and addresses of all authorised persons, together with such other information appertaining to such persons as the Minister may think appropriate.

Display, Production and Delivery of Authorisation Certificate.

9. (1) Every authorised person shall—

- (a) keep a copy of his or her authorisation certificate displayed in a prominent place and open to public view in every place in or from which he or she carries on a finance business;
- (b) when required by or on behalf of the Minister to do so, produce or deliver his or her authorisation certificate to the Minister or to any person authorised in that behalf.

(2) If any authorised person fails to comply with the provisions of this section, that person commits an offence and liable to a fine not exceeding two thousand seven hundred dollars and to a further fine not exceeding two hundred and seventy dollars for each day during which the offence continues.

PART III

CONTROL OF TRANSFERABILITY OF SHARES

Notification of new or increased Control.

10. (1) No person shall become a minority, majority or principal shareholder controller or an indirect controller of an authorised person which is a company incorporated in the Federation unless—

- (a) he or she has notified the Minister in writing of his or her intention to become such a controller; and
- (b) the Minister has notified him or her in writing that there is no objection to his or her becoming such a controller.

(2) Subsection (1) applies also in relation to a person becoming a partner of an authorised person which is a partnership formed under the law of the Federation.

(3) Following receipt of a notice under subsection (1), the Minister may, by giving written notice to the person from whom the notice was received, require him or her to give such additional information or documents as the Minister may require for deciding whether to serve a notice of objection.

Objection to new or increased Control.

11. (1) The Minister may serve a notice of objection under this section on a person who has given notice under section 10 unless he or she is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the authorised person;
- (b) that the interest of clients and potential clients of the authorised person would not be in any other manner prejudiced by that person becoming a controller of that description of the authorised person; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the authorised person as a controller of the description in question the authorised person would be likely to continue to fulfil the conditions imposed on the authorised person under section 7, or, if any of those conditions is not fulfilled, that the person concerned would be likely to take remedial action.

(2) A notice of objection under this section shall—

- (a) specify which of the matters mentioned in subsection (1) the Minister is not satisfied about and, subject to subsection (3), the reasons for which he or she is not satisfied; and
- (b) give particulars of the rights of appeal conferred by section 15.

(3) Subsection (2) shall not require the Minister to specify any reason which would in his or her opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Objection to existing Shareholder Controller.

12. (1) Where it appears to the Minister that a person who is a shareholder controller of any description of an authorised person which is a company incorporated in the Federation is not or, is no longer, a fit person to be such a controller, the Minister may serve on him or her a written notice of objection to his or her being such a controller.

(2) A notice of objection under this section shall—

- (a) subject to subsection (3), specify the reasons for which it appears to the Minister that the person in question is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights of appeal conferred by section 15.

(3) Paragraph (a) of subsection (2) shall not require the Minister to specify any reason which would in his or her opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Contravention by Controller.

13. (1) Subject to subsection (2), any person who contravenes section 10 by—

- (a) failing to give the notice required by paragraph (a) of subsection (1) of that section; or
- (b) becoming a controller of any description to which that section applies before having been served with a notice by the Minister under paragraph (b) of subsection (1) of that section,

commits an offence.

(2) A person shall not be found guilty of an offence under subsection (1) if he or she shows that he or she did not know of the acts or circumstances by virtue of which he or she became a controller of the relevant description, but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he or she has become such a controller he or she commits an offence unless he or she gives the Minister written notice of the fact that he or she has become such a controller within fourteen days of becoming aware of the fact.

(3) Any person who—

- (a) contravenes section 10 by becoming a controller of any descriptions after being served with a notice of objection to his or her becoming a controller of that description; or
- (b) having become a controller of any description in contravention of that section (whether before or after being served with such a notice of objection) continues to be such a controller after such a notice has been served on him or her,

commits an offence.

(4) A person found guilty of an offence under subsection (1) or (2) shall be liable to a fine not exceeding twenty-seven thousand dollars.

(5) A person found guilty of an offence under subsection (3) shall be liable to a fine not exceeding fifty-four thousand dollars or, if that person is an individual, to imprisonment for a term not exceeding two years, or both and, in the case of an offence under paragraph (b) of that subsection, to a fine not exceeding five thousand four hundred dollars for each day on which the offence has continued.

Restrictions on Acquisition and Disposal of Shares.

14. (1) The powers conferred by this section shall be exercisable where a person—

- (a) has contravened section 10 by becoming a shareholder controller of any description after being served with a notice of objection to his or her becoming a controller of that description;
- (b) having become a shareholder controller of any description in contravention of that section continues to be one after such a notice has been served on him or her; or
- (c) continues to be a shareholder controller of any description after being served under section 12 with a notice of objection to his or her being a controller of that description.

(2) The Minister may, by notice in writing served on the person concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) except in liquidation, no payment shall be made of any sum due from the authorised person on the shares, whether in respect of capital or otherwise.

(3) The Court may, on the application of the Minister, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

(4) The Court shall not make any Order under subsection (3) in a case where notice of objection was served under section 11 or 12—

- (a) until the end of the period within which an appeal can be brought against the notice of objection; and
- (b) if such an appeal is brought, until it has been determined or withdrawn.

(5) Where an order has been made under subsection (3) the Court may, on the application of the Minister, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold in pursuance of an Order under this section the proceeds of sale, less the costs of the sale, shall be paid into Court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court for an order that the whole or part of the proceeds be paid to him or her.

(7) This section applies—

- (a) to all the shares in an authorised person of which the person in question is a controller of the relevant description which are held by him or her or any associate of his or her and were not so held immediately before he or she became such a controller of the authorised person; and
- (b) where the person in question became a controller of the relevant description of an authorised person as a result of the acquisition by him or her or any associate of his or her of shares in another company, to all the shares in that company which are held by him or her or any associate of his or her and were not so held before he or she became such a controller of that authorised person.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the authorised person or the company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

PART IV

APPEALS

Procedure and Rights of Appeal.

15. (1) Where the Minister, acting under section 7, refuses an authorisation or revokes any authorisation or acting under section 6, attaches a condition to a requisition of a particular person or varies any condition so attached, the applicant or the authorised person, as the case may be, may require the Minister to furnish him or her with a statement in writing of his or her reasons for that decision.

(2) Any person aggrieved by such refusal or revocation, or by the conditions attached to his or her authorisation or by any variation of such conditions may appeal to the Court, either in term or in vacation, on the ground that the decision of the Minister was unreasonable having regard to all the circumstances of the case.

(3) Where any person appeals against the revocation of his or her authorisations or against the variation of any condition attached to his or her authorisation under section 6, or, where his or her original authorisation was granted without any conditions attached thereto, against any subsequent attaching of conditions, the authorisation shall not be cancelled or the conditions varied or attached as the case may be, until the appeal has been determined or withdrawn.

(4) Notwithstanding anything in subsection (3), the Court may, until an appeal is determined or withdrawn, make such order as it thinks fit for protecting the public against financial loss due to the dishonesty, incompetence or malpractice by the person appealing in respect of any of the matters mentioned in that subsection.

(5) Any person on whom a notice of objection has been served under section 11 or 12 may appeal to the Court against the decision of the Minister to serve the notice, but this subsection does not apply to a person in any case in which he or she has failed to give a notice or become or continued to be a controller in circumstances in which his or her doing so constitutes an offence under section 13.

Representation to the Court by Minister.

16. (1) Notwithstanding section 15, where the Minister decides to refuse an authorisation or to revoke any authorisation or to attach or vary any condition or where a person has ceased for any other reason to be an authorised person, he or she may represent to the Court that, in order that the interest of the clients of the applicant, the authorised person or the former authorised person, as the case may be, shall not be prejudicially affected, the business of the applicant or the authorised person or the former authorised person, should be subject to such supervision, restraint or conditions from such time and for such periods as the Minister may specify in the representation.

(2) On the presentation of a representation under this section, the Court may make such order as it thinks just.

PART V
INFORMATION

Annual Audited Accounts, Certificate of Compliance and other Documents.

17. (1) An authorised person shall, within three months of the end of each of his or her financial year—

- (a) prepare annual accounts in accordance with generally accepted accounting principles, audited by an independent auditor;
- (b) deliver to the Director-General the annual accounts together with written confirmation from an independent auditor that the annual accounts have been prepared as required under paragraph (a) and whether or not the auditor's certificate for such accounts is unqualified and if qualified, the nature of the qualification;
- (c) deliver to the Director-General a certificate of compliance issued by an independent auditor that the information set out in the application for an authorisation, as modified by any subsequent application for an authorisation, as modified by any subsequent notification of change in accordance with paragraph (b) of subsection (5) of section 5, remains correct and gives an accurate summary of the business of the authorised person; and
- (d) deliver to the Director-General such other documents as are mentioned in section 18 or 19, as the case may require.

(2) The Director-General may at any time by written notice sent to an authorised person request that the authorised person shall, within 1 month from the date of such notice, deliver to the Director-General a certificate of compliance issued by an independent auditor that the information set out in the application for an authorisation, as notified by any subsequent notification of change in accordance with paragraph (b) of subsection (5) of section 5, remains correct and gives an accurate summary of the business of the authorised person.

(3) Where an authorised person changes auditor, the authorised person shall, when required by the Director-General, authorise the former auditor to disclose the circumstances that gave rise to the change, and when so authorised, the auditor shall disclose such circumstances.

(4) The period within which any document is required to be submitted under this section may be extended by the Director-General where he or she considers that there are circumstances justifying an extension.

(5) If any authorised person fails to comply with the provisions of this section, that person commits an offence and liable to a fine not exceeding five thousand four hundred dollars and a further fine not exceeding five hundred and forty dollars for each day during which the offence continues.

Quarterly Statements and Returns.

18. (1) An authorised person carrying on deposit-taking business or investment business shall, in relation to his or her operations in or from within the Federation, submit to the Director-General within 1 month of the end of each of his or her financial quarters the undermentioned documents in such form as the Director-General may from time to time approve—

- (a) in the case of a deposit taking business—

- (i) a quarterly statement of the assets and liabilities of its offices and branches in the Federation at the close of the last business day of the quarter to which the statement relates; and
 - (ii) a quarterly return providing an analysis of the liabilities of clients to such authorised person in respect of loans, advances and other assets of the authorised person at the close of the last day of business of the quarter of which the return relates;
- (b) in the case of an investment business, a quarterly statement of the assets and liabilities of its offices and branches in the Federation at the close of the last business day of the quarter to which the statement relates.

(2) The period within which any document is required to be submitted under this section may be extended by the Director-General where he or she considers that there are circumstances justifying an extension.

Actuarial Valuations and written Confirmations.

19. (1) Every authorised person carrying on insurance business or assurance business shall, in relation to his or her operations in or from within the Federation, submit to the Director-General within three months of the end of each of his or her financial year the undermentioned documents in such form as the Director-General may, from time to time, approve—

- (a) in the case of an insurer—
 - (i) if he or she carries on long-term insurance business, an actuarial valuation of his or her assets and liabilities;
 - (ii) if he or she has a branch or other subsidiary activity in the Federation which is constituted as a separate legal entity, written confirmation that he or she accepts responsibility for all contracts issued by such branch or subsidiary activity and also for any acts, omissions and liabilities of such branch or subsidiary activity; and
 - (iii) a list of insurance agents and insurance brokers who have his or her authority to effect business on his or her behalf;
- (b) in the case of an insurance agent—
 - (i) a confirmation in writing that the said agent is acting for one insurer only and the name of that insurer;
 - (ii) a list of the sub-agents, if any, authorised by the said agent to solicit insurance business on his or her behalf and on behalf of the insurer whom he or she represents;
- (c) in the case of an insurance broker—
 - (i) a list of all insurers for whom the said insurance broker is authorised to act;
 - (ii) a list of the sub-agents, if any, authorised by the said insurance broker to solicit insurance business on his or her behalf and on behalf of the insurers whom he or she represents;
- (d) in the case of an insurance sub-agent, a confirmation in writing that the said sub-agent is acting for one insurance agent only, or for one insurance broker only, and the name of such insurance agent or insurance broker;

(e) in the case of an insurance manager, a list of all insurers for whom the said insurance manager acts.

(2) The period within which any documents is required to be submitted under this section may be extended by the Director-General where he or she considers that there are circumstances justifying an extension.

(3) If any authorised person fails to comply with the provisions of this section, that person commits an offence and liable to a fine not exceeding five thousand four hundred dollars and to a further fine not exceeding five hundred and forty dollars for each day during which the offences continues.

PART VI

ADMINISTRATION

Establishment of the Financial Services Department.

20. (1) For the purpose of administering this Order there is established, in accordance with the provisions of this Order, within the Ministry of Finance a department to be known as the Financial Services Department.

(Substituted by S.R.O. 45/1997)

(2) The Financial Services Department consists of the Office of the Director-General comprising the Director-General and the Assistant to the Director-General, and subordinated thereto, the following organisational units—

- (a) the office of Superintendents, comprising—
 - (i) the Superintendent of Deposit-Taking and Investment Business;
 - (ii) the Superintendent of Insurance and Assurance Business; and
 - (iii) the Superintendent of Trust and Corporate Business;
- (b) the Office of Registrars, comprising—
 - (i) the Registrar of Companies;
 - (ii) the Registrar of Limited Partnerships; and
 - (iii) the Registrar of Trusts;
- (c) the Office of Public Relation Officers, comprising—
 - (i) the Officer of Information and Press Relations;
 - (ii) the Officer of Marketing and Advertising; and
 - (iii) the Officer of Publications and Promotional Activities; and
- (d) the Office of Administrative Officers, comprising—
 - (i) the Principal Accountant;
 - (ii) the Principal Secretary; and
 - (iii) the Assistant Secretary.

Appointment of Director-General.

21. (1) For the purpose of ensuring the proper administration of this Order, there shall be appointed by the Minister an individual to be known as the Director-General of the Financial Services Department.

- (2) The functions of the Director-General include—
- (a) the monitoring of finance business in the Federation;
 - (b) where he or she thinks fit, or when required by the Minister, the examination in such manner as he or she considers necessary, the affairs or business of any authorised person for the purpose of satisfying himself or herself that the provisions of this Order are being complied with and the authorised person is in a sound financial position and is carrying on its business in a satisfactory manner;
 - (c) reporting to the Minister regarding the examination of any documents produced to the Director-General in the course of the performance of his or her functions;
 - (d) examining and making recommendations to the Minister with respect to all applications; and
 - (e) the management and supervision of the day-to-day affairs of the Financial Services Department.

Appointment of other Officers.

22. (1) The Director-General, with the written approval of the Minister, may appoint any person to hold such office within the Financial Service Department as he or she thinks may be required to assist him or her in the performance of his or her functions under this Order.

(2) The Director-General, with the written approval of the Minister, may fix the terms of employment of the persons appointed by him or her under subsection (1) and define the functions to be performed by them under this Order if they are not set out in the Acts.

Production of Records and evidence to Director-General.

23. (1) In the performance of his or her functions under this Order, the Director-General may at any time require an authorised person—

- (a) to produce for examination such books, records and other documents; and
- (b) to supply such information or explanation,

as the Director-General may reasonably require for the purpose of enabling him or her to perform his or her functions under this Order.

(2) Notwithstanding subsection (1), the Director-General shall not have access to any document of a client of an authorised person or to any information, matter or thing relating to or concerning the affairs of any such client without first having obtained—

- (a) the written consent of that client; or
- (b) an order of the Court made on the ground that there are no other reasonable means of obtaining such documents, matter or thing.

Authority for Search.

24. (1) The Director-General may, for the purpose of enabling him or her to perform his or her functions under this Order, apply to the Court *ex parte* for a warrant under this section in relation to specified premises.

(2) If the Court is satisfied that the conditions in subsection (3) are fulfilled it may issue a warrant authorising a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.

(3) The conditions referred to in subsection (2) are—

- (a) that an authorisation has been revoked under section 7;
- (b) that there are reasonable grounds for believing that an offence under this Order has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the application; or
- (c) that any document that ought to have been produced under section 23 and have not been produced are to be found at any premises specified in the application.

(4) Where a person enters premises in the execution of a warrant issued under this section, he or she may seize and retain any material which is likely to be of substantial value (whether by itself or together with other material) in determining whether an offence under this Order has been or is being committed.

(5) In this section, “premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure.

Obstruction.

25. Any person who wilfully obstructs any person acting in the execution of a warrant issued under section 24 commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

Failure to co-operate with Director-General.

26. (1) If any person fails to comply with a requirement under section 23 the Director-General may certify the refusal in writing to the Court.

(2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement of defence, the Court may punish the offender as if he or she had been guilty of contempt of the Court.

(3) Notwithstanding the generality of the foregoing, no proceedings for an offence or of the recovery of any penalty shall be instituted under this section against any person who refuses to answer any question if such refusal is made pursuant to subsection (4).

(4) A person may refuse to answer any question put to him or her pursuant to any provision of this Order if his or her answer would tend to expose that person, or the purpose of that person, to proceedings under the law of the Federation for an offence or for the recovery of any penalty.

Preservation of Secrecy.

27. (1) Except for the purpose of the performance or exercise of his or her duties or functions under this Order or when lawfully required to do so by the Court or under the provisions of any other law, the Director-General or any person appointed under subsection (1) of section 22 to assist him or her shall not disclose any information relating to any application under the provisions of this Order, or to the affairs of an authorised person or any client of an authorised person which he or she has acquired in the performance or exercise of such duties or functions under this Order.

(2) Subsection (1) shall not apply to the disclosure by the Director-General to a banking supervisory authority or any other like regulatory authority of information about the authorised person.

PART VII

MISCELLANEOUS AND FINAL PROVISIONS

Duties of Authorised Persons.

28. (1) An authorised person shall maintain, in respect of any finance business carried out by him or her—

- (a) such books or records as accurately reflect the finance business carried out by him or her;
- (b) separate accounts in the books or records in respect of each of his or her clients and shall separate the funds and other property of every such client from his or her own; and
- (c) in the case of finance business other than deposit-taking business, one or more separate bank accounts into which shall be deposited all moneys held on behalf of each of his or her clients.

(2) An authorised person shall not change its name or operate outside the Federation as subsidiary, branch, an agency or representative office without the prior written approval of the Minister.

Restrictions in use of certain terms.

29. (1) No person, other than an authorised person, shall—

- (a) use any word, either in English or in any other language, in the description or title under which he or she carries on business in or from within the Federation that, in the opinion of the Minister, suggests that he or she is carrying on any finance business; or
- (b) make any representation in any document or in any other manner that is likely to suggest that he or she is carrying on any finance business.

(2) The Minister may require an authorised person who carries on any finance business under a name which is—

- (a) identical to that of any other person, whether within or outside the Federation, or which so nearly resembles that name as to be calculated to deceive;

- (b) calculated to suggest falsely the patronage of or connection with some person whether within or outside the Federation; or
- (c) calculated to suggest falsely that he or she has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials,

forthwith to change the name and in the default of compliance may revoke the licence issued to the authorised person.

Exemptions.

30. An authorised person shall not be subject to any of the following Acts, that is to say—

- (a) the Banking Act, Cap. 21.01 if he or she is authorised to carry on deposit-taking or investment business under this Order;
- (b) the Insurance Act, Cap. 21.11 if he or she is authorised to carry on insurance or assurance business under this Order; and
- (c) the Licences on Businesses and Occupations Act, Cap. 18.20 in respect of the finance business which he or she is authorised to carry on under this Order if he or she is resident in the Island of Saint Christopher.

SCHEDULE 1 TO THE ORDER

(Regulation 2)

DEPOSIT AND DEPOSIT-TAKING BUSINESS

Deposit.

1. (1) In this Order, unless the context otherwise requires, “deposit” means a sum of money denominated in whatever currency paid on terms—

- (a) under which it will be repaid, with or without interest or on premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property or services or to the giving of security,

and reference in this Order to money deposited and to the making of a deposit shall be construed accordingly.

(2) For the purposes of paragraph (b) of subsection (1), money is paid on sums which are referable to the provision of property or services or to the giving of security and only if—

- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable only in the event that the property or services is not or are not in fact, sold, hired or otherwise provided;

- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
 - (c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.
- (3) Except so far as any provision of this Order otherwise provides, in this Order “deposit” does not include—
- (a) a sum paid by an authorised person;
 - (b) a sum paid by an excluded person;
 - (c) a sum paid by a person, other than a person mentioned in paragraph (a) or (b), in the course of carrying on a business consisting wholly or mainly of lending money;
 - (d) a sum which is paid by one company to another at a time when one is a subsidiary of the other or both are subsidiaries of another company or the same individual is a majority or principal shareholder controller of both of them;
 - (e) a sum which is paid by a person who, at the same time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a controller, director or manager of that person;
 - (f) a sum paid on terms involving the issue of debentures or other securities.
- (4) In the application of paragraph (e) of subsection (3) to a sum paid by a partnership that paragraph shall have effect as if the reference to the person paying the sum there were substituted a reference to each of the partners.

Activities constituting Deposit-Taking Business.

- 2.** (1) For the purpose of this Order, a person carries on deposit-taking businesses if—
- (a) in the course of the business, money received by way of deposit is lent to others; or
 - (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.
- (2) Notwithstanding subsection (1), a business is not a deposit-taking business for the purpose of this Order if—
- (a) the person carrying it on does not hold himself or herself out as accepting deposits on a daily basis; and
 - (b) any deposits which are accepted are accepted only on particular occasions.
- (3) For the purpose of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him or her.
- (4) In determining, for the purpose of paragraph (b) of subsection (2), whether deposits are accepted only on particular occasions, regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(5) For the purpose of subsection (2), there shall be disregarded any deposit in respect of the acceptance of which the person in question is an excluded person and any money received by way of deposit which is not used in the manner described in subsection (1).

SCHEDULE 2 TO THE ORDER

(Regulation 2(1))

INVESTMENTS AND INVESTMENT BUSINESS

PART I

INVESTMENTS

Shares.

1. (1) Shares and stock in the share capital of a company.

(2) In this section, “company” does not include an open-ended investment company.

Debentures.

2. (1) Debentures, including debenture stock, loan stock, bonds, certificates of deposits and other instruments creating or acknowledging indebtedness, not being instruments falling within section 3.

(2) This section shall not be construed as applying—

- (a) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) to a cheque or other bill of exchange, a banker’s draft or a letter of credit; or
- (c) to a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy.

Government and public securities.

3. (1) Loan stock, bonds and other instruments creating or acknowledging debentures issued by or on behalf of a government, local authority or public authority.

(2) In this section, “government, local authority or public authority” means—

- (a) the government of the Federation or of any country or territory outside the Federation;
- (b) a local authority in the Federation or elsewhere;

(c) any international organisation the members of which include the Federation or another member state.

(3) Subsection (2) of section 2 shall, so far as applicable, also apply to this section.

Instruments entitling to shares or securities.

4. (1) Warrants or other instruments entitling the holder to subscribe for investments falling within section 1, 2 or 3.

(2) For the purposes of this section, it is immaterial whether the investments are for the time being in existence or identifiable.

(3) An investment falling within this section shall not be regarded as falling within section 7, 8 or 9.

Certificates representing securities.

5. (1) Certificates or other instruments which confer—

- (a) property rights in respect of any investment falling within section 1, 2, 3 or 4;
- (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he or she held any such investment to which the certificate or instrument relates; or
- (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

(2) This section does not apply to any instrument which confers rights in respect of two or more investments issued by different persons or in respect of two or more different investments falling within section 3 and issued by the same person.

Units in collective investment schemes.

6. Units in collective investment schemes, including shares in or security of an open-ended investment company.

Options.

7. Options to acquire or dispose of—

- (a) an investment falling within any other section of this Part of this Schedule;
- (b) currency of any country or territory;
- (c) gold, palladium, platinum or silver; or
- (d) an option to acquire or dispose of an investment falling within this section by virtue of paragraph (a), (b) or (c).

Futures.

8. (1) Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

(2) This section does not apply if the contract is made for commercial and not for investment purposes.

(3) A contract shall be regarded as made for investment purposes if it is made or traded on a recognised investment exchange or made otherwise than on a recognised investment exchange but expressed to be as traded on such an exchange or on the same terms as those on which equivalent contracts would be made on such an exchange.

(4) A contract not falling within subsection (3) shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within 7 days.

(5) The following are indications that any other contract is made for commercial purposes and the absence of any of them is an indication that it is made for investment purposes—

- (a) either or each of the parties is a producer of the commodity or other property or uses it in his or her business;
- (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.

(6) It is an indication that a contract is made for commercial purposes, that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.

(7) The following are also indications that a contract is made for investment purposes—

- (a) it is expressed to be as traded on a market or an exchange;
 - (b) performance of the contract is ensured by an investment exchange or a clearing house;
 - (c) there are arrangements for the payment or provision of margin.
- (8) A price shall be taken to have been agreed upon when a contract is made—
- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
 - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Contracts for differences.

9. (1) Rights under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

(2) This section does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

Long-term insurance contracts.

10. (1) Rights under a contract the effecting and carrying out of which constitute long-term insurance business.

- (2) This section does not apply to rights under a contract of insurance if—
- (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within 10 years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding 17 years;
 - (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed the premium; and
 - (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with subparagraphs (a), (b) and (c).

(3) This section does not apply to rights under a re-insurance contract.

(4) Rights falling within this section shall not be regarded as falling within section 9.

Rights and interests in investments.

11. (1) Rights to and interests in anything which is an investment falling within any other section of this Part of this Schedule.

(2) This section does not apply to interests under the trusts of an occupational pension scheme.

(3) This section does not apply to rights or interests which are investments by virtue of any other section of this Part of this Schedule.

PART II

ACTIVITIES CONSTITUTING INVESTMENT BUSINESS

Dealing in investments.

12. (1) Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.

(2) This section does not apply to a person by reason of his or her accepting, or offering or agreeing to accept, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or she or his or her principal has made, granted or provided or which he or she or his or her principal has offered or agreed to make, grant or provide.

(3) The references in subsection (2) to a person accepting, or offering or agreeing to accept, an instrument include references to a person becoming, or offering or agreeing to become, a party to an instrument otherwise than as debtor or a surety.

Arranging deals in investments.

13. (1) Making or offering or agreeing to make—

- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment; or
- (b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

(2) This section does not apply to a person by reason of his or her making, or offering or agreeing to make, arrangements with a view to a transaction to which he or she will himself or herself be a party as principal or which will be entered into by him or her as agent for one of the parties.

(3) The arrangements in paragraph (a) of subsection (1) are arrangements which bring about or would bring about the transaction in question.

(4) This section does not apply to a person (“the relevant person”) whose ordinary business includes the making of loans or the giving of guarantees in connection with loans by reason of the relevant person making, or offering or agreeing to make arrangements with a view to an authorised person who carries on insurance business which is investment business selling an investment which falls within section 10 or, so far as relevant to that section, section 11 if the arrangements are either—

- (a) that the authorised person or a person on his or her behalf will introduce persons to whom the authorised person has sold or proposes to sell an investment of the kind described above, or will advise such persons to approach, the relevant person with a view to the relevant person lending money on the security of that investment; or
- (b) that the authorised person gives an assurance to the relevant person as to the amount which will or may be received by the relevant person, should that person lend money to a person to whom the authorised person has sold or proposes to sell an investment of the kind described above, on the surrender or maturity of that investment if it is taken as security for a loan.

(5) This section does not apply to a person by reason of his or her making, or offering or agreeing to make, arrangements with a view to a person, accepting, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or she or his or her principal has made, granted or provided or which he or she or his or her principal has offered or agreed to make, grant or provide.

(6) Arrangements do all fall within paragraph (b) of subsection (4) by reason of their having as their purpose the provision of finance to enable a person to buy, sell, describe for or underwrite investments.

(7) This section does not apply to arrangements for the introduction of persons or another person if—

- (a) the person to whom the introduction is made is an authorised person or excluded person or is a person whose ordinary business involves him or her in engaging in activities which fall within this Part of this Schedule or would do apart from the provisions of Part III or Part IV and who is not unlawfully carrying on investment business in the Federation; and
- (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either—

- (i) in relation to investments generally; or
- (ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.

(8) The references in subsection (4) above to a person accepting an investment include references to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Managing Investments.

14. Managing, or offering or agreeing to manage, assets, belonging to another person if—

- (a) those assets consist of or include investment; or
- (b) the arrangement for their management are such that those assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them and either they have at any time since the date of the coming into force of this Order done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which they would so be.

Investment advice.

15. Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

Establishing etc. collective investment schemes.

16. Establishing, operating or winding up collective investment schemes, including acting as trustee of unit trusts.

PART III

EXCLUDED ACTIVITIES

Dealings as principals.

17. (1) Section 12 applies to a transaction which is or is to be entered into by a person as principal only if—

- (a) he or she holds himself or herself out as willing to enter into transactions of that kind at prices determined by him or her generally and continuously rather than in respect of each particular transaction;
- (b) he or she holds himself or herself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
- (c) he or she regularly solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his or her having solicited members of the public in that manner.

(2) In subsection (1), “buying” and “selling” means buying and selling by transactions to which section 12 applies and “member of the public”, in relation to the person soliciting them (“the relevant person”), means any other persons except—

- (a) authorised persons, excluded persons, or persons holding a permission under section 23;
- (b) members of the same group as the relevant person;
- (c) persons who are, or propose to become, participators with the relevant person in a joint enterprise;
- (d) any person who is solicited by the relevant person with a view to—
 - (i) the acquisition by the relevant person of 15 per cent or more of the voting shares in a company (that is to say, shares carrying not less than that percentage of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body);
 - (ii) if the relevant person (either alone or with other members of the same group as himself or herself) holds 15 per cent or more of the voting shares in a company, the acquisition by him or her of further shares in the body or the disposal by him or her of shares in that body to the person solicited or to a member of the same group as that person; or
 - (iii) if the person solicited (either alone or with other members of the same group as himself or herself) holds 15 per cent or more of the voting shares in a company, the disposal by the relevant person of further shares in that body to the person solicited or to a member of the same group as that person;
- (e) any person whose head office is outside the Federation, who is solicited by an approach made or directed to him or her at a place outside the Federation and whose ordinary business involves him or her in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.

(3) Subsection (1) applies only—

- (a) if the investment to which the transaction relates or will relate falls within any of sections 1 to 6 or, so far as relevant to any of those sections, section 11; or
- (b) if the transaction is the assignment of an investment falling within section 10 or is the assignment of any investment falling within section 11 which confers rights to or interests in an investment falling within section 10.

(4) Section 12 does not apply to any transaction which relates or is to relate to an investment which falls within section 10 or, so far as relevant to that section, section 11 nor does it apply to a transaction which relates or is to relate to an investment which falls within any of sections 7 to 9 or, so far as relevant to any of those sections, section 11 being a transaction which, in either case, is or is to be entered into by a person as principal if he or she is not an authorised person and the transaction is or is to be entered into by him or her—

- (a) with or through an authorised person, an excluded person or a person holding a permission under section 23; or

- (b) through an office outside the Federation, maintained by a party to the transaction, and with or through a person whose head office is situated outside the Federation and whose ordinary business is such as is mentioned in paragraph (e) of subsection (2).

Groups and joint enterprises.

18. (1) Section 12 does not apply to any transaction which is to be entered into a person as principal with another person if—

- (a) they are companies in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and this transaction is or is to be entered into for the purposes of, or in connection with, that enterprise.

(2) Section 12 does not apply to any transaction which is or is to be entered into by any person as agent for another person in the circumstances mentioned in paragraph (a) or (b) of subsection (1) if—

- (a) where the investment falls within any of sections 1 to 6 or, so far as relevant to any of those sections, section 11, the agent does not—
 - (i) hold himself or herself out (otherwise than to other companies in the same group or persons who are or propose to become participators with him or her in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
 - (ii) regularly solicit members of the public for the purpose of including them to enter as principals or agents into transactions to which section 12 applies,

and the transaction is not or is not to be entered into as a result of his or her having solicited members of the public in that manner;

- (b) where the investment is not as mentioned in paragraph (a)—
 - (i) the agent enters into the transaction with or through, an authorised person, an excluded person or a person holding a permission under section 23; or
 - (ii) the transaction is effected through an office outside the Federation, maintained by a party to the transaction, and with or through a person whose head office is situated outside the Federation and whose ordinary business involves him or her in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part and Part IV.

(3) Section 13 does not apply to arrangements which a person makes or offers or agrees to make if—

- (a) that person is a company and the arrangements are with a view to another company in the same group entering into a transaction of the kind mentioned in that section; or
- (b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.

(4) Section 14 does not apply to a person by reason of his or her managing or offering or agreeing to manage the investments of another person if—

- (a) they are companies in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the investments are managed or are to be managed for the purpose of, or in connection with, that enterprise.

(5) Section 15 does not apply to advice given by a person to another person if—

- (a) they are companies in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of, or in connection with, that enterprise.

(6) The definitions in subsection (2) of section 17 shall apply also for the purposes of paragraph (a) of subsection (2) except that the relevant person referred to in paragraph (d) of subsection (2) of section 17 shall be the person for whom the agent is acting.

Sale of goods and supply of services.

19. (1) Subject to subsection (9), this section has effect where a person (“the supplier”) sells or offers or agrees to sell goods to another person (“the customer”) or supplies or offers or agrees to supply him or her with services and the supplier’s main business is to supply goods or services and not to engage in activities falling within Part II of this Schedule.

(2) Section 12 does not apply to any transaction which is or is to be entered into by the supplier as principal if it is or is to be entered into by him or her with the customer for the purposes of or in connection with the sale or supply or a related sale or supply (that is to say, a sale or supply to the customer otherwise than by the supplier but for or in connection with the same purpose as the first-mentioned sale or supply).

(3) Section 12 does not apply to any transaction which is or is to be entered into by the supplier as agent for the customer if it is or is to be entered into for the purposes of or in connection with the sale or supply or a related sale or supply and—

- (a) where the investment falls within any of sections 1 to 6 or, so far as relevant to any of those sections, section 11, the supplier does not—
 - (i) hold himself or herself out (otherwise than to the customer) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
 - (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which section 12 applies,

and the transaction is not or is not to be entered into as a result of his or her having solicited members of the public in that manner;

- (b) where the investment is not or is not as mentioned in paragraph (a), the supplier enters in to the transaction—
 - (i) with or through an authorised person, an excluded person or a person holding a permission under section 23; or

(ii) through an office outside the Federation, maintained by a party to the transaction, and with or through a person whose head office is situated outside the Federation and whose ordinary business involves him or her in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part and Part IV.

(4) Section 13 does not apply to arrangements which the supplier makes or offers or agrees to make with a view to the customer entering into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.

(5) Section 14 does not apply to the supplier by reason of his or her managing or offering or agreeing to manage the investments of the customers if they are or are to be managed for the purposes of or in connection with the sale or supply or a related sale or supply.

(6) Section 15 does not apply to advice given by the supplier to the customer for the purposes of or in connection with the sale or supply or a related sale or supply to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.

(7) Where the supplier is a company and a member of a group subsections (2) to (6) shall apply to any other member of the group as they apply to the supplier, and where the customer is a company and a member of a group reference in those subsections to the customer include references to any other member of the group.

(8) The definitions in subsection (2) of section 17 shall apply also for the purposes of paragraph (a) of subsection (3).

(9) This section does not have effect where either—

- (a) the customer is an individual;
- (b) the transaction in question is the purchase or sale of an investment which falls within section 6 or 10 or, so far as relevant to either of those sections, section 11;
- (c) the investments which the supplier manages or offers or agrees to manage consist of investments falling within section 6 or 10 or, so far as relevant to either of those sections, section 11; or
- (d) the advice which the supplier gives is advice on an investment falling within section 6 or 10 or, so far as relevant to either of those sections, section 11.

Employees' share scheme.

20. (1) Sections 12 and 13 do not apply to anything done by a company, a company connected with it or a relevant trustee for the purpose of enabling or facilitating transactions in shares in or debentures of the first mentioned body between or for the benefit of any of the persons mentioned in subsection (2) or the holding of such shares or debentures by or for the benefit of any such person.

(2) The persons referred to in subsection (1) are—

- (a) the *bona fide* employees or former employees of the company or of another company in the same group; or
- (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.

(3) In this section, “a relevant trustee” means a person holding shares in or debentures of a company as trustee in pursuance of arrangements made for the purpose mentioned in subsection (1) by, or by a company connected with, that company.

(4) In this section, “shares” and “debentures” include any investment falling within section 1, 2, 4, 5 or 11.

(5) For the purposes of this section, a company is connected with another company if—

- (a) they are in same group; or
- (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other company or of its holding company.

Sale of company.

21. (1) Sections 12 and 13 do not apply to the acquisition or disposal of, or to anything done for the purpose of the acquisition or disposal of, shares in a company other than an open-ended investment company, and section 15 does not apply to advice given in connection with the acquisition or disposal of such shares if—

- (a) the shares consist of or include shares carrying 75 per cent or more of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the company; or
- (b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
- (c) in either case, the acquisition and disposal is, or is to be between parties each of whom is a company, a partnership, a single individual or a group of connected individuals.

(2) For the purposes of paragraph (c) of subsection (1), “a group of connected individuals”, in relation to the party disposing of the shares, means persons each of whom is, or is a close relative of, a controller, director or manager of the company and, in relation to the party acquiring the shares, means persons each of whom is, or is a close relative of, a person who is a controller, director or manager of the company.

Trustees and personal representatives.

22. (1) Section 12 does not apply to a person by reason of his or her buying, selling or subscribing for an investment or offering or agreeing to do so if—

- (a) the investment is or, as the case may be, is to be held by him or her as bare trustee or nominee for another person;
- (b) he or she is acting on that person’s instructions; and
- (c) he or she does not hold himself or herself out as providing a service of buying and selling investments.

(2) Section 13 does not apply to anything done by a person as trustees or personal representative with a view to—

- (a) a fellow trustee or personal representative and himself or herself engaging in their capacity as such in an activity falling within section 12; or
- (b) a beneficiary under the trust, will or intestacy engaging in any such activity,

unless that person is remunerated for what he or she does in addition to any remuneration he or she receives for discharging his or her duties as trustee or personal representative.

(3) Section 14 does not apply to anything done by a person as trustee or personal representative unless he or she holds himself or herself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he or she receives for discharging his or her duties as trustee or personal representative.

(4) Section 15 does not apply to advice given by a person as trustee or personal representative to—

- (a) a fellow trustee or personal representative for the purposes of the trust or estate; or
- (b) a beneficiary under the trust, will or intestacy concerning his or her interest in the trust fund or estate,

unless that person is remunerated for doing so in addition to any remuneration he or she receives for discharging his or her duties as trustee or personal representative.

(5) Subsection (1) has effect to the exclusion of section 17 as respects any transaction in respect of which the conditions in paragraphs (a) and (b) of subsection (1) are satisfied.

(6) For the purposes of paragraph (a) of subsection (1), “bare trustee”, in relation to an investment, means a person holding the investment on trust for another person who has the exclusive right to direct how it shall be dealt with subject only to satisfying any outstanding charge, lien or other right of the trustee to resort to it for the payment of duty, taxes, costs or other outgoings.

Dealings in course of non-investment business.

23. (1) Section 12 does not apply to anything done by a person—

- (a) as principal;
- (b) if that person is a company in group, as agent for another member of the group; or
- (c) as agent for a person who is or proposes to become a participator with him or her in a joint enterprise and for the purposes of or in connection with that enterprise,

if it is done in accordance with the terms and conditions of a permission granted to him or her by the Minister under this section.

(2) Any application for permission under this section shall be accompanied or supported by such information as the Minister may require and shall not be regarded as duly made unless accompanied by the prescribed fee.

(3) The Minister may grant a permission under this section if it appears to him or her—

- (a) that the applicant's main business, or if he or she is a member of a group, the main business of the group does not consist of activities for which a person is required to be authorised under this Order;
- (b) that the applicant's business is likely to involve such activities which fall within section 12; and
- (c) that, having regard to the nature of the applicant's main business and, if he or she is a member of a group, the main business of the group taken as a whole, the manner in which, the persons with whom and the purposes for which the applicant proposes to engage in activities that would require him or her to be an authorised person and to any other relevant matters, it is inappropriate to require him or her to be subject to regulation as an authorised person.

(4) Any permission under this section shall be granted by a notice in writing, and the Minister may, by a further notice in writing, withdraw any such permission if for any reason it appears to him or her that it is not appropriate for it to continue in force.

(5) The Minister may prescribe regulations, requiring persons holding permissions under this section to furnish him or her with information for the purpose of enabling him or her to determine whether those permissions should continue in force, and such regulations may, in particular, require such persons—

- (a) to give him or her notice forthwith of the occurrence of such events as are specified in the regulations with such information in respect of those events as is so specified;
- (b) to furnish him or her at such times or in respect of such periods as are specified in the regulations with such information as is so specified.

(6) Part V of this Order shall apply to a person holding a permission under this section as if he or she were an authorised person carrying on investment business.

Advice given or arrangements made in course of professional or non-investment business.

24. (1) Section 13 does not apply to arrangements—

- (a) which are made in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
- (b) the making of which is a necessary part of other services provided in the course of carrying on that profession or business.

(2) Section 15 does not apply to advice—

- (a) which is given in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
- (b) the giving of which is a necessary part of other advice or services given in the course of carrying on that profession or business.

(3) The making of arrangements shall not be regarded as falling within paragraph (b) of subsection (1) and advice shall not be regarded as falling within paragraph (b) of subsection (2) if the giving of advice or the making of arrangements is remunerated separately from the other advice or services.

Newspapers.

25. (1) Section 15 does not apply to advice given in a newspaper, journal, magazine or other periodical publication, if the principal purposes of the publication, taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.

(2) The Minister may, on the application of the proprietor of any periodical publication, certify that it is of the nature described in subsection (1) and revoke any such certificate if he or she considers that it is no longer justified.

(3) A certificate given under subsection (2) and not revoked shall be conclusive evidence of the matters certified.

Advice given to television, sound or teletext services.

26. (1) Section 15 does not apply to any advice given in any programme included, or made for inclusion in—

- (a) any television broadcasting service or other television programme service;
- (b) any sound broadcasting service or licensable sound programme service; or
- (c) any teletext service.

(2) For the purpose of this section, “programme”, in relation to a service mentioned in subsection (1), includes any advertisement and any other item included in the service.

International self-regulating organisations.

27. (1) An activity within section 13 engaged in for the purposes of carrying out the functions of a body or association which is approved under this section as an international securities self-relating organisation, whether by the organisation or by any person acting on its behalf, shall not constitute the carrying on of investment business in the Federation for the purpose of this Order.

(2) In this section—

- (a) “international securities business” means the business of buying, selling, subscribing for or underwriting investments (or offering or agreeing to do so, either as principal or agent) which fall within any of the sections in Part I of this Schedule other than section 10 and, so far as relevant to section 10, section 11 and which, by their nature, and the manner in which the business is conducted, may be expected normally to be bought or dealt in by persons sufficiently expert to understand any risks involved, where either the transaction is international or each of the parties may be expected to be indifferent to the location of the other, and, for the purpose of this definition, the fact that the investments may ultimately be bought otherwise than in the course of international securities business by persons not so expert shall be disregarded; and
- (b) “international securities self-regulating organisation” means an organisation which—
 - (i) does not have its head office in the Federation;

- (ii) has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, excluded persons, persons holding a permission under section 23 and persons whose head offices are outside the Federation and whose ordinary business is such as is mentioned in paragraph (e) of subsection (2) of section 17; and
- (iii) which facilitates and regulates the activity of its members in the conduct of international securities business.

(3) The Minister may approve as an international securities self-regulating organisation any body or association appearing to him or her to fall within subsection (2) if, having regard to such matters affecting international trade, overseas earnings and the balance of payments or otherwise as he or she considers relevant, it appears to him or her that to do so would be desirable and not result in any undue risk to investors.

(4) Any approval given under this section shall be given by notice in writing, and the Minister may, by further notice in writing, withdraw any such approval if for any reason it appears to him or her that it is not appropriate for it to continue in force.

PART IV

ADDITIONAL EXCLUSIONS FOR PERSONS WITHOUT PERMANENT PLACE OF BUSINESS IN THE FEDERATION

Transaction with or through authorised or excluded persons.

28. (1) Section 12 does not apply to any transaction by a person who does not carry on investment business from a permanent place of business maintained by him or her in the Federation (“an overseas person”) with or through—

- (a) an authorised person; or
- (b) an excluded person.

(2) Section 13 does not apply if—

- (a) the arrangements are made by an overseas person with, or the offer or agreement to make them is made by him or her to or with, an authorised person, or an excluded person; or
- (b) the transactions with a view to which the arrangements are made are, as respects transactions in the Federation, confined to transactions by authorised persons and transactions by excluded persons.

Unsolicited or legitimately solicited transactions etc. with or for other persons.

29. (1) Section 12 does not apply to any transaction entered into by an overseas person as principal with, or as agent for, a person in the Federation, sections 13, 14 and 15 do not apply to any offer made by an overseas person to or arrangement made by him or her with a person in the Federation and section 15 does not apply to any advice given by an overseas person to a person in the Federation if the transaction, offer, agreement or advice is the result of—

- (a) an approach made to the overseas person by or on behalf of the person in the Federation which either has been in any way solicited by the overseas person or has been solicited by him or her in any way which

has not contravened any provision which the Minister may, by Order, make to regulate unsolicited calls and investment advertisement; or

- (b) an approach made by an overseas person which has not contravened any of those provisions.

(2) Where the transactions is entered into by the overseas person as agent for a person in the Federation, subsection (1) applies only if—

- (a) the other party is outside the Federation; or
- (b) the other party is in the Federation and the transaction is the result of such an approach by the other party as is mentioned in paragraph (a) of subsection (1) or of such an approach as is mentioned in paragraph (b) of subsection (1).

PART V

INTERPRETATION

Meaning of “entering into a transaction”.

30. For the purpose of this Schedule, a transaction is entered into through a person if he or she enters into it as agent or arranges for it to be entered into by another person as principal or agent.

Meaning of “group” and “joint enterprise”.

31. (1) For the purpose of this Schedule, “a group” shall be treated as including any company in which a member of the group is a shareholder controller.

(2) In this Schedule, “a joint enterprise” means an enterprise into which two or more persons (in this Schedule referred to as “participators”) enter for commercial reasons related to a business or business (other than investment business) carried on by them, and where a participator is a company and a member of a group each other member of the group shall also be regarded as a participator in the enterprise.

Meaning of “collective investment scheme”.

32. (1) In this Schedule, “a collective investment scheme” means, subject to the provisions of this section, any arrangement with respect to property the purpose or effect of which is to enable persons taking part in the arrangement (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposals of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate mentioned in subsection (1) (in this Schedule referred to as “participants”) do not have day to day control over the management of the property in question whether or not they have the right to be consulted or to give directions, and the arrangements must also have either or both of the following characteristics—

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) the property in question is managed as a whole by or on behalf of the operator of the scheme.

(3) Where any arrangements provide for such pooling as is mentioned in paragraph (a) of subsection (2) in relation to separate parts of the property in question, arrangements shall not be regarded as constituting single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(4) For the purpose of this Schedule, arrangements are not a collective investment scheme if—

- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any section 1 to 6 and 10;
- (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
- (c) the arrangements do not have the characteristics mentioned in paragraph (a) of subsection (2) and have those mentioned on paragraph (b) of that subsection only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.

(5) For the purpose of this Schedule, the following are not collective investment schemes—

- (a) arrangements operated by a person otherwise than by way of business;
- (b) arrangements where each of the participants carries on a business other than investment business and enters into arrangements for commercial purposes related to that business;
- (c) arrangements where each of the participants is a company in the same group as the operator;
- (d) arrangements where—
 - (i) each of the participants is a *bona fide* employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such employee or former employee) of a company in the same group as the operator; and
 - (ii) the property to which the arrangements relate consists of shares or debentures (as defined in subsection (4) of section 20), in or of a member of that company;
- (e) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
- (f) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (g) arrangements under which the rights or interests of the participants are investments falling within section 5;
- (h) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;

- (i) contracts of insurance;
- (j) occupational pension schemes;
- (k) arrangements where the entire contribution of each participant is a deposit within the meaning of section 1 of Schedule 1 of this Order;
- (l) arrangements under which the rights or interests of the participants are represented by the following—
 - (i) investments falling within section 2 which are issued by a single company which is not an open-ended investment company or which are issued by a single issuer which is not a company and are guaranteed by the government of the Federation, or of any country or territory outside the Federation;
 - (ii) investments falling within sub-paragraph (i) which are convertible into or exchangeable for investments falling within section 1 provided that those latter investments are issued by the same person issued the investment falling within sub-paragraph (i) or issued by a single other issuer;
 - (iii) investments falling within section 3 issued by the same government, local authority or public authority; or
 - (iv) investments falling within section 4 which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within section 1 or within sub-paragraph (i), (ii) or (iii);
- (m) arrangements which would fall within paragraph (b) were it not for the fact that the rights or interests of a participant (“the counterparty”) whose ordinary business involves him or her in engaging in activities which fall within Part II of this Schedule or would do so apart from Part III or IV are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which—
 - (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and
 - (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in sub-paragraph (i) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in that sub-paragraph;
- (n) arrangements under which the rights or interests of the participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or her or in satisfaction of sums owned by him or her or in acquisition of property or the provision of services for him or her.

Miscellaneous Definitions.

33. (1) In this Schedule, unless the context otherwise requires—

“buying and selling” includes any acquisition or disposal for valuable consideration;

“instrument” includes any record whether or not in the form of a document;

“investment advertisement” means any advertisement inviting persons to enter or offers to enter into an investment agreement or the exercise of any rights conferred by an investment to acquire, dispose or, underwrite or convert an investment or containing information calculated to lead directly or indirectly to persons doing so;

“investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any section of Part II of this Schedule or would do so apart from Part III and IV;

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

“offer” includes any invitation to trade;

“open-ended investment company” means a collective investment scheme under which—

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a company having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of the company; and
- (b) the rights of the participants are represented by shares in or securities of that company which—
 - (i) the participants are entitled to have redeemed or repurchased, or which are redeemed or repurchased from them by, or out of funds provided by, that company; or
 - (ii) the company ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate;

“operator”, in relation to a unit trust with a separate trustee, means the manager and, in relation to an open-ended investment company, means that company;

“participant” has the meaning given in subsection (2) of section 32;

“participator” has the meaning given in subsection (2) of section 31;

“property” includes property of any description, including money denominated in the currency of any country or territory;

“recognised clearing house” means a body declared by an Order of the Minister for the time being in force to be a recognised clearing house for the purposes of this Schedule;

“recognised investment exchange” means a body declared by an Order of the Minister for the time being in force to be a recognised investment exchange for the purposes of this Schedule;

“trustee”, in relation to a unit trust, means the person holding the property in question on trust for the participants and, in relation to a collective investment scheme constituted under the law of a country or territory outside the Federation, means any person who (whether or not under a trust) is entrusted with the custody of the property in question;

“units” means the rights or interests (however described) of the participants in a collective investment scheme;

“units trust” means a collective investment scheme under which the property in question is held on trust for the participants.

(2) In the definition for “buying and selling” given in subsection (1) “disposal” includes—

- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangement;
- (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
- (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.

(3) A company shall not, by reason of issuing its own shares or share warrants, and a person shall not by reason of issuing his or her own debentures or debenture warrants, be regarded for the purpose of this Schedule as disposing of them or, by reason of anything done for the purpose of issuing them, be regarded as making arrangements with a view to a person subscribing for otherwise acquiring them or underwriting them.

(4) In subsection (3)—

- (a) “company” has the same meaning as in section 1;
- (b) “shares” and “debentures” include any investments falling within section 1 or 2; and
- (c) “shares warrants” and “debenture warrants” means any investment which falls within section 4 and relates to shares in the company concerned or, as the case may be, to debentures issued by the person concerned.

SECOND SCHEDULE

(Sections 105 and 107)

FINANCIAL SERVICES (BUSINESS NAMES) ORDER

Citation.

1. This Order may be cited as Financial Services (Business Names) Order.

Interpretation.

2. (1) In this Order, unless the context otherwise requires—

“Act” means the Act under which this Order is made;

“existing institution” means an institution incorporated or established before the date on which this Order comes into force;

“institution” means any—

- (a) company;
- (b) partnership; or
- (c) trust,

incorporated or established under the laws of the Federation or, if incorporated or established under the law of any other country or territory, carrying on business in the Federation or having an address in the Federation which is used regularly for the purpose of its business;

“Order” means this Order as amended, or is extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order, as amended, or as extended or applied, by or under any other Order made under the Act.

(2) Subject to subsection (1), any words defined in the Act and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

Restriction on use of certain words in Business Names.

3. (1) The words specified in the Schedule hereto or any word, however spelt and whether in the singular or plural form or in the masculine, feminine or neutral gender, or any abbreviation thereof, which may reasonably be understood to convey a similar meaning whether in English or any other language are hereby specified as words for the use of which as, or as part of, an institution’s name the permission of the Minister shall be obtained.

(2) Any word in a language other than English (“foreign word”) is a word for the use of which as, or as part of, an institution’s name the permission of the Minister shall be obtained.

(3) Words in English or in any other language which are used as, or from part of, an institution’s name shall be in Roman characters when reproduced in writing or in any substitute for writing.

Restrictions on the use of initials in Business Names.

4. (1) Any initial is an initial for the use of which as, or as part of, an institution’s name the permission of the Minister shall be obtained.

(2) Initials which are used as, or form part of, an institution’s name shall be in Roman characters or numerals or in Arabic numerals (as may be desired) when reproduced in writing or in any substitute for writing.

(3) References to “initial” in this Order are references to any character or numeral, whether or not preceded or followed by a space or punctuation mark, which can neither by itself nor in combination with any adjacent characters or numerals be reasonably understood to form a word which conveys any meaning in English.

Application for Permission.

5. Any institution desirous of obtaining the permission of the Minister under this Order may make application in that behalf by delivering to the Director-General a statement signed by or on behalf of a director of the institution setting out—

- (a) any name currently used by it;
- (b) the name for which the permission of the Minister is being sought together with—
 - (i) a certified translation of any foreign word; and
 - (ii) a statement explaining the meaning of any initial used as, or forming part of, its name;
- (c) the intended or, in the case of an existing institution, the current address of its registered office or office for service (as the case may be);
- (d) a summary description of the nature of each business intended to be carried out by it or, in the case of an existing institution, currently being carried out by it; and
- (e) where a statement is delivered by a person as agent for any director of the institution, the statement shall specify that fact and the person’s name and address.

Grant of Permission.

6. Subject to section 7, the Minister shall grant permission under this Order and whenever the Minister grants such permission he or she shall by Notice in writing inform the applicant accordingly.

Refusal to grant Permission.

7. (1) The Minister may refuse to grant permission under this Order—
- (a) if the applicant has not provided information required under section 5;
 - (b) if it appears to him or her, as a result of information provided in pursuance of the requirements of section 6 or information otherwise obtained, that the name of the institution for which the application is made would be misleading or otherwise undesirable;
 - (c) if in connection with any application made under this Order, the applicant has provided information which is untrue or misleading in any material particular; or
 - (d) if the name of the institution—
 - (i) contains one or more initials that have no meaning; or
 - (ii) consists of solely one or more initials.
- (2) Whenever the Minister refuses to grant permission under this Order he or she shall by notice in writing inform the applicant accordingly.

Procedure and Rights of Appeal.

8. (1) Where the Minister, acting under section 7, refuses to grant permission under this Order to an institution, the applicant may require the Minister to furnish him or her with a statement in writing of the Minister's reasons for that decision.

(2) Any person aggrieved by such refusal may appeal to the Court, either in term or in vacation, on the ground that the decision of the Minister was unreasonable having regard to all the circumstances of the case.

Punishment of Offences.

9. An institution which fails to comply with any provision of this Order which applies to it commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

SCHEDULE TO THE ORDER*(Section 3)***SPECIFICATION OF RESTRICTED WORDS**

A Agency	D Deposit	Insurance	Registrar
Association	Divine	Insurer	Reinsurance
Assurance	Divinity	Investigation	Reinsurer
Assurer	Duchess	K King	Resident
Authority	Duke	Kittitian(5)	Royal
B Bank	E Exchange	L Licensed	Royale
Banker	F Federation	Licensee	Royalty
Banking	Finance	Licentiate	S Saint Christopher (5)
Beneficial	Financial	Limited (1) (2)	Saint Kitts (5)
Benevolent	Firm(2) (3)	M Majesty	Scheme
Board	Foundation	Municipal	School
Broker	Fund	Mutual	Secured
Brokerage	G Gambling	N National	Security
C Casino	Gaming	Nevis (5)	Society
Casualty	Giro	Nevisian (5)	Sovereign
Chamber	God	Nursing	State
Charitable	Government	O Offshore	Stockbroker
Charity	Governor	Onshore	Subsidiary
Charter	Group	P Parliament	Surety
Chartered	Guarantee	Partnership (2) (3)	T Trust (4)
Clinic	Guaranteed	Patent	Trustee

Club	H	Health	Patentee	U	Underwriter
Collective		Highness	Police		Union
College		Holding	Polytechnic		Unit
Commission		Holiness	Prince		University
Committee		Holy	Princess		Unlimited
Company (1)					
(2) (3)		Hospital	Protection		
Consolidated	I	Imperial	Q	Queen	
Co-operative		Incorporated(1)	R	Reassurance	
Corporate (1)		Indemnity		Reassurer	
Corporation (1)		Institute		Register	
Council		Institution		Registered	

Notes:

Restricted only if the institution (1) is not a company; (2) is not a limited partnership; (3) is not a partnership; (4) is not a trust; or (5) has not majority or principal shareholder controller or no indirect controller who is resident in the Federation.

THIRD SCHEDULE

(Sections 69 and 105)

FINANCIAL SERVICES (PROSPECTUSES) ORDER**Citation.**

1. This Order may be cited as the Financial Services (Prospectuses) Order.

Interpretation.

2. (1) In this Order, unless the context otherwise requires—

“Act” means the Trusts Act under which this Order is made;

“institution” means any—

- (a) company;
- (b) partnership; or
- (c) trust,

incorporated or established under the law of the Federation or, if incorporated or established under the law of any other country or territory, carrying on business in the Federation or having an address in the Federation which is used regularly for the purpose of its business;

“Order” means this Order as amended, or as extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order, as amended, or as extended or applied, by or under any other Order made under the Act.

(2) Subject to subsection (1), any words defined in the Act and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

Circulation of Prospectus.

3. (1) Subject to subsection (2), no prospectus offering securities in an institution shall be circulated in the Federation or elsewhere unless—

- (a) it contains the information specified in Part I of the Schedule to this Order;
- (b) it includes the statements specified in Part II of that Schedule;
- (c) there has been delivered to the Director-General—
 - (i) a copy of the prospectus, signed by or on behalf of all the directors of the institution;
 - (ii) a signed copy of any report included in, or attached to, the prospectus; and
 - (iii) such other particulars as the Director-General may require; and
- (d) the Minister has given his or her consent to the circulation of the prospectus.

(2) The Minister may give his or her consent to the circulation of a prospectus which does not comply in every respect with the requirements of subsection (1) if he or she is satisfied that the deviation from those requirements does not affect the substance of the prospectus or is not calculated to mislead.

SCHEDULE TO THE ORDER

(Section 3)

PART I

INFORMATION TO BE SPECIFIED IN PROSPECTUSES

Details relating to the Offer.

1. The following shall be stated—
- (a) the names, occupations and addresses of—
 - (i) the offerors or vendors; and
 - (ii) any promoter, of the securities;

- (b) the offer price for the securities, including the method, time and place of payment;
- (c) the opening and closing dates and times of the offer;
- (d) the minimum amount required to be raised by the offer;
- (e) when and how moneys will be returned in the event of the offer not being completed or any securities applied for not being allotted;
- (f) general particulars of any property which is to be acquired with the proceeds of the offer;
- (g) in the case of any business which is to be acquired with the proceeds of the offer, the length of time during which that business has been carried on;
- (h) if dividends or interests are payable on the securities, then the terms and conditions under which such dividends or interests are to be paid;
- (i) if the securities are redeemable, then the terms and conditions under which they are to be redeemed.

Capital.

2. There shall be stated particulars of—
- (a) the paid-in capital of the institution; and
 - (b) the securities which are the subject of the offer, together with details of any existing issued securities which are not part of the offer.

Goodwill, Preliminary Expenses etc.

3. There shall be stated particulars of any amounts to be written off or provided for in respect of goodwill or preliminary expenses, or of any benefit given to a promoter.

Contracts.

4. There shall be stated the dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on, or intended to be carried on, by the institution or a contract entered into more than two years before the date of issue of the prospectus.

Interest of Directors.

5. There shall be stated—
- (a) full particulars of the nature and extent of the interest, if any, of every director in the promotion of or in the property proposed to be acquired by, the institution, or where the interest of such a director consists of being a partner in a partnership or a trustee of a trust, the nature and extent of the interest of the partnership or trust (as the case may be); and
 - (b) details of all sums paid or agreed to be paid to him or her or to the partnership or trust (as the case may be) in cash or shares or otherwise by any person to induce him or her to become, or to qualify him or her as, a director, or otherwise for services rendered by him or her or by

the partnership or trust (as the case may be) in connection with the promotion or formation of the institution.

Debentures and Loans.

6. There shall be stated details of any subscriptions, allotments or options to be given, or already existing, in respect of any other securities of the institution, including any which have a prior right over the securities covered by the offer to a distribution of the institution's profits.

Accounts and Reports.

7. The following shall be included in the prospectus—
- (a) a copy of the institution's latest accounts accompanied by a report thereon by the institution's auditors;
 - (b) any other reports of a specialist nature by any person who could be described as an expert on any aspect of the institution's business, identifying any unusual element of risk to the investor.

Registered Office or Office for Service.

8. There shall be stated the address of the institution's registered office or office for service (as the case may be) and if the institution is not keeping its register of members at that office, the address of the office at which such register is kept.

Principal Establishments.

9. The location and nature of the institution's principal operating establishments shall be stated.

Directors and other Officers.

10. The following shall be stated in respect of each director, chief executive and manager of the institution—
- (a) his or her forenames and surname;
 - (b) his or her business or usual residential address;
 - (c) his or her business occupation (if any); and
 - (d) his or her qualifications (if any).

Advisers.

11. The following shall be stated—
- (a) the name and address of the institution's auditors;
 - (b) the name and address of the institution's legal advisers;
 - (c) the name and address of the institution's principal bankers.

Additional Information.

12. There shall be included any other material information which an investor (including a person who cannot be expected to have any special knowledge of investments of the nature being offered) would reasonably require to enable him or her to make an informed judgment about the merits of investing in the securities offered in the prospectus.

Date of Issue.

13. The date of issue of the prospectus shall be stated.

PART II

STATEMENTS TO BE INCLUDED IN THE PROSPECTUS

The following statements shall be included—

- (a) “A copy of this document has been delivered to the Minister of Finance of the Federation of Saint Christopher and Nevis in accordance with section 3 of the Financial Services (Prospectus) Order and he or she has given, and has not withdrawn, his or her consent to its circulation.”;
- (b) “It must be distinctly understood that, in giving these consents, the Minister of Finance of the Federation of Saint Christopher and Nevis takes no responsibility whatsoever for the financial soundness of the institution or for the correctness of any statements made, or opinions expressed, with regard to it.”;
- (c) “The persons responsible for this document have taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of facts or of opinion. All these persons accept responsibility accordingly.”;
- (d) “If you are in any doubt about the contents of this document you should consult your stockbroker, bank manager, solicitor, accountant or other financial adviser.”;
- (e) “It should be remembered that the price of securities and the income from them can go down as well as up.”.

FOURTH SCHEDULE

(Sections 105 and 107)

FINANCIAL SERVICES (PROFESSIONAL BODIES) ORDER

Citation.

1. This Order may be cited as the Financial Services (Professional Bodies) Order.

Interpretation.

2. (1) In this Order, unless the context otherwise requires—

“Act” means the Trusts Act under which this Order is made;

“authorised person” means a person authorised to carry on finance business under the principal Order;

“Order” means this Order as amended, or as extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order, as amended, or as extended or applied, by or under any other Order made under the Act.

(2) Subject to subsection (1), any words defined in the Act and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

Authorisation by Certification.

3. (1) Notwithstanding any provision to the contrary in the principal Order, a person holding an authorisation certificate issued for the purpose of this Order by a recognised professional body is an authorised person and the provisions of the principal Order shall, *mutatis mutandis*, apply to such person as if he or she is an authorised person otherwise than by virtue of the certification.

(2) An authorisation certificate may be issued by a recognised professional body to an individual, a company or a partnership.

(3) An authorisation certificate issued to a partnership—

(a) shall be issued in the name of the partnership; and

(b) shall authorise the carrying on of finance business in that name by the partnership to which the authorisation certificate is issued, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership,

and, in relation to an authorisation certificate issued to a partnership constituted under the law of any country or territory under which a partnership is not a legal person, references in this Order to the person who holds the authorisation certificate or is certified shall be construed as references to the persons or person for the time being authorised by the authorisation certificate to carry on finance business as mentioned in paragraph (b).

Professional Bodies.

4. (1) In this Order, a “professional body” means a body which regulates the practice of a profession and references to the practise of a profession do not include references to carrying on a business consisting wholly or mainly of finance business.

(2) In this Order, references to the members of a professional body are references to the individuals who, whether or not members of the body, are entitled to practice the profession in question and, in practising it, are subject to the rules of that body.

(3) In this Order, references to the rules of a professional body are references to the rules (whether or not laid down by the body itself) which the body has power to enforce in relation to the practice of the profession in question and the carrying on of finance business by persons practising that profession or which relate to the grant, suspension or withdrawal of authorisation certificates under section 3, the admission and expulsion of members or otherwise to the constitution of the body.

(4) In this Order, references to guidance issued by a professional body are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members, or to persons or any class of persons who are or are seeking to be certified by the body, and which would, if it were a rule, fall within subsection (3).

Application for Recognition.

5. (1) A professional body may apply to the Financial Secretary for an order declaring it to be a recognised professional body for the purpose of this Order.

(2) Any such application—

(a) shall be delivered to the Director-General;

(b) shall be in such form as the Financial Secretary may direct; and

(c) shall be accompanied by such information as the Financial Secretary may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it the Financial Secretary may require that applicant to provide additional information.

(4) The directions and requirements given or imposed under subsections (2) and (3) may differ as between different applications.

(5) Any information to be provided under this section shall, if the Financial Secretary so requires, be in such form or verified in such manner as he or she may specify.

(6) Every application shall be accompanied by a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

Grant and Refusal of Recognition.

6. (1) The Financial Secretary may, on an application duly made in accordance with section 5 and after being furnished with all such information as he or she may require under that section, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised professional body.

(2) The Financial Secretary may make a recognition order if it appears to him or her from the information furnished by the body making the application and having regard to any other information in his or her possession that the requirements of subsection (3) and of the Schedule to this Order are satisfied as respects that body.

(3) The body must have rules which impose acceptable limits on the kinds of finance business which may be carried on by persons certified by it and the circumstances in which they may carry on such business and which preclude a person certified by that body from carrying on any finance business outside those limits unless that person is an authorised person otherwise than by virtue of the certification.

(4) Where the Financial Secretary refuses an application for a recognition order he or she shall give the applicant a written notice to that effect, stating the reasons for the refusal.

(5) A recognition order shall state the date on which it takes effect.

Revocation of Recognition.

7. (1) A recognition order under section 6 may be revoked by a further order made by the Financial Secretary if at any time it appears to him or her—

- (a) that subsection (3) of section 6 or any requirements of the Schedule to this Order is not satisfied in the case of the body to which the recognition order relates; or
- (b) that the body has failed to comply with any obligation to which it is subject by virtue of this Order.

(2) An Order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than 3 months after the day on which the revocation order is made.

(3) Before revoking a recognition order the Financial Secretary shall give written notice of his or her intention to do so to the recognised professional body, take such steps as he or she considers reasonably practicable for bringing the notice to the attention of members of the body and publish it in such manner as he or she thinks appropriate for bringing it to the attention of any other persons who are in his or her opinion likely to be affected.

(4) A notice under subsection (3) shall state the reasons for which the Financial Secretary proposes to act and give particulars of the rights conferred by subsection (5).

(5) A body on which a notice is served under subsection (3), any member of the body and any other person who appears to the Financial Secretary to be affected may, within 3 months after the date of service or publication, or within such longer time as the Financial Secretary may allow, make written representations to the Financial Secretary and, if desired, oral representations to a person appointed for that purpose by the Financial Secretary, and the Financial Secretary shall have regard to any representations made in accordance with this subsection in determining whether to revoke the recognition order.

(6) If in any case the Financial Secretary considers it essential to do so in the interest of the public, he or she may revoke a recognition order without regard to the restrictions imposed by subsection (2) and notwithstanding that no notice has been given or published under subsection (3) or that the time for making representations in pursuance of such a notice has not expired.

(7) An order revoking a recognition order may contain such transitional provisions as the Financial Secretary thinks necessary or expedient.

(8) A recognition order may be revoked at the request or with the consent of the recognised professional body and any such revocation shall not be subject to the restrictions imposed by subsections (1) and (2) or the requirements of subsections (3) to (5).

(9) On making an order revoking a recognition order the Financial Secretary shall give the body written notice of the making of the order, take such steps as he or she considers reasonably practicable for bringing the making of the order to the attention of members of the body and publish a notice of the making of the order in such manner as he or she thinks appropriate for bringing it to the attention of any other persons who are in his or her opinion likely to be affected.

Compliance Order.

8. (1) If at any time it appears to the Financial Secretary—

- (a) that subsection (3) of section 6 or any requirements of the Schedule to this Order is not satisfied in the case of a recognised professional body; or
- (b) that such body has failed to comply with any obligation to which it is subject by virtue of this Order, he or she may, instead of revoking the recognition order under section 7, make an application to the Court under this section.

(2) If on any such application the Court decides that subsection (3) of section 6 or the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question it may order the body to take such steps as it directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.

Notification Requirements.

9. (1) The Financial Secretary may make regulations requiring a recognised professional body to give forthwith notice to the Director-General of the occurrence of such events relating to the body, its members or persons certified by it as are specified in the regulations and such information in respect of those events as is so specified.

(2) The Financial Secretary may make regulations requiring a recognised professional body to furnish to the Director-General at such times or in respect of such periods as are specified in the regulations with such information relating to the body, its members and persons certified by it as is so specified.

(3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Financial Secretary may reasonably require for the exercise of the functions of the Director-General under this Order.

(4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.

(5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Financial Secretary may approve.

(6) Where a recognised professional body amends, revokes or adds to its rules or guidance it shall, within 7 days, give written notice to the Director-General of the amendment, revocation or addition but—

- (a) notice need not be given of the revocation of guidance other than such as is mentioned in subsection (6) of section 5 or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned; and
- (b) notice need not be given in respect of any rule or guidance, or rules or guidance of any description, in the case of which the Financial Secretary has waived compliance with this subsection by notice in writing to the body concerned,

and any such waiver may be varied or revoked by a further notice in writing.

(7) Contravention of, or of regulations under, this section shall not be an offence.

Temporary Recognition Order.

10. (1) The St. Kitts and Nevis Bar Association and the St. Kitts-Nevis Association of Chartered Accountants shall be granted a temporary recognition order under this section.

(2) An order issued under subsection (1) shall expire on the earlier of the day on which it is replaced by a recognition order made under section 6 or on which the period of 12 months from the day on which this Order takes effect expires.

(3) An order issued under subsection (1) which is not replaced by a recognition order made under section 6 shall for the purpose of this Order be deemed to have been revoked by an order made under subsection (6) of section 7 on the relevant expiration day referred to in subsection (2).

Functions of the Director General.

11. In addition to his or her functions under the principal Order, the Director-General shall also examine and make recommendations to the Financial Secretary with respect to all applications for recognition, revocations of recognition and compliance orders made under this Order.

SCHEDULE TO THE ORDER**REQUIREMENTS FOR RECOGNITION OF PROFESSIONAL BODIES****Statutory Status.**

- 1.** The body must—
- (a) regulate the practice of a profession in the exercise of statutory powers;
 - (b) be recognised (otherwise than under this Order) for a statutory purpose by a Minister of the Federal Government; or
 - (c) be specified in a provision contained in or made under an enactment as a body whose members are qualified to exercise functions or hold offices specified in that provision.

Certification.

2. (1) The body must have rules, practices and arrangements for securing that no person can be certified by the body for the purpose of this Order unless the conditions set out in subsections (2) and (3) are satisfied.

(2) The certified person must be either—

- (a) an individual who is a member of the body; or
- (b) a person managed and controlled by one or more individuals each of whom is a member of a recognised professional body and at least one of whom is a member of the certifying body.

(3) Where the certified person is an individual his or her main business must be the practise of the profession regulated by the certifying body and he or she must be practising that profession otherwise than in partnership, and where the certified person is not an individual that person's main business must be the practice of the

profession or professions regulated by the recognised professional body or bodies of which the individual or individuals mentioned in paragraph (b) of subsection (2) are members.

(4) In the application of subsections (2) and (3) to an authorisation certificate which is to be or has been issued to a partnership constituted under the law of any country or territory under which a partnership is not a legal person, references to the certified person shall be construed as references to the partnership.

Safeguards for Clients.

3. (1) The body must have rules regulating the carrying on of finance business by persons certified by it which, together with the statements of principle, rules, regulations and codes of practice to which those persons are subject afford an adequate level of protection for clients.

(2) In determining in any case whether an adequate level of protection is afforded for clients of any description, regard shall be had to the nature of the finance business carried on by persons certified by the body, the kinds of clients involved and the effectiveness of the body's arrangement for enforcing compliance.

Taking Account of Costs of Compliance.

4. The body must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

Monitoring and Enforcement.

5. (1) The body must have adequate arrangements and resources for the effective monitoring of the continued compliance by persons certified by it with the conditions mentioned in section 2 and rules, practices and arrangements for the withdrawal or suspension of certification (subject to appropriate transitional provisions) in the event of any of those conditions ceasing to be satisfied.

(2) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance by persons certified by it with the rules of the body relating to the carrying on of finance business and with any statements of principles, rules, regulations or codes of practice to which those persons are subject in respect of business of a kind regulated by the body.

(3) The arrangements for enforcement must include provision for the withdrawal or suspension of certification and may include provision for disciplining members of the body who manage or control a certified person.

(4) The arrangements for enforcement may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the professional body.

(5) The arrangements for enforcement must be such as to secure a proper balance between the interests of persons certified by the body and the interest of the public, and the arrangements shall not be regarded as satisfying that requirement unless the persons responsible for enforcement include a sufficient number of persons who are independent of the body and its members and of persons certified by it.

(6) The arrangements for monitoring may make provision for that function to be performed on behalf of the body (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

Investigation of Complaints.

6. (1) The body must have effective arrangements for the investigation of complaints relating to—

- (a) the carrying on by persons certified by it of finance business in respect of which they are subject to its rules; and
- (b) its regulation of investment business.

(2) Subsection (4) of section 4 applies also to arrangements made pursuant to this section.

Promotion and Maintenance of Standards.

7. The body must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of finance business and to co-operate, by the sharing of information and otherwise, with the Director-General and any other authority, body or person having responsibility for the supervision or regulation of finance business.
