

International Trusts Act

SAINT LUCIA

No. 39 of 1999

Arrangement of Sections

PART I

Short Title and Interpretation

1. Short title and commencement.
2. Interpretation.
3. Trusts, trustees and beneficiaries generally.
4. Application of Act.

PART II

Registration of International Trusts

5. Appointment of Registrar.
6. Appointment of Deputy Registrar.
7. Application for registration.
8. Registration.
9. Qualifications for trust to be registered.
10. Powers of Director to require information.
11. Language and translation.
12. Fees payable to Registrar.
13. Refusal or cancellation of registration.
14. Appeals against cancellation.
15. Benefits.

PART III

Validity

16. Validity of international trust.
17. Presumption of irrevocability.
18. Duration of trust and accumulation of income.
19. Retention of control by settlor.

PART IV

Protective International Trusts

20. Protective international trusts.

PART V

Charitable International Trusts

21. Charitable international trusts.

PART VI

Purpose International Trusts

22. Trusts for non-charitable purposes.

23. Extension of cy-pres.

PART VII

Protector and Similar Appointments

24. Protector of a trust.

25. Advisors and agents.

PART VIII

Termination or Failure of International Trust

26. Failure or lapse of interest.

27. Failure of charitable international trust.

28. Termination of international trust.

PART IX

Breach of International Trust

29. Liability for breach of trust.

30. Constructive trusts.

31. Tracing trust property.

32. Beneficiary may relieve or indemnify trustee.

33. Power to relieve trustee from personal liability.

34. Power to make beneficiaries indemnify.

PART X

Proper Law and Effect of Foreign Law

- 35. Proper law of trust.
- 36. Change of proper law.
- 37. Capacity of settlor.
- 38. Law in force in St. Lucia.
- 39. Effect of section 38.
- 40. Exclusion of foreign laws.
- 41. Community property.

PART XI

Powers of the Court Proceedings and Limitations

- 42. Jurisdiction of the Court.
- 43. Court's determination of validity.
- 44. Savings of certain rights.
- 45. Extent of invalidity for creditors.
- 46. Foreign judgements not enforceable.
- 47. Application for directions.
- 48. Payment of cost.
- 49. Limitation on commencement of proceedings.
- 50. Security for costs.

PART XII

Disposition into or by an International Trust

- 51. Scope.
- 52. Avoidance of fraud.
- 53. Limitations.
- 54. Application.
- 55. Certain rights.
- 56. Extent of avoidance of relevant dispositions.
- 57. Statute of Elizabeth not applicable.
- 58. Heirship rights not applicable.

PART XIII

Tax Exemptions

- 59. Exemption of international trust from income tax.

PART XIV

Miscellaneous

60. Custody of copy of instrument.

61. Confidentiality.

62. Investments.

63. Bankruptcy.

64. Regulations.

I Assent

[L.S.] PEARLETTELOUISY,
Governor-General.

4th January, 2000.

SAINT LUCIA

No. 39 of 1999

An Act to provide for the registration and regulation of international trusts in Saint Lucia and for related matters.

[ON PROCLAMATION]

BE IT ENACTED by the Queen's most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

No. 39] *International Trusts Act* [1999.

PART I

Short Title and Interpretation

Short title and commencement

1.— (1) This Act may be cited as the International Trusts Act, 1999.

(2) This Act comes into operation on a day to be prescribed by the Minister by Order published in the *Gazette*.

[\[Back to the top\]](#)

Interpretation

2.— (1) In this Act —

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

"Certificate of Registration" means Certificate of Registration issued under section 8;

"charitable international trust" means a charitable international trust as described in Part V;

"charitable purpose" shall be construed in accordance with the provisions of Part V of this Act;

"Court" means the High Court;

"creditor" means a person to whom an obligation is owed, whether or not the obligation came into existence before or after a relevant disposition;

"Deputy Registrar" means a Deputy Registrar of International Trusts appointed under section 6;

"Director" means the Director of Financial Services appointed as such by the Public Service Commission, pursuant to section 11 of the Registered Agent and Trustee Licensing Act;

"disposition" includes a sale, transaction, grant, contribution, gift

or transfer of property;

"heirship right" means a right, claim or interest in, against or to property of a person arising or accruing in consequence of that person's death, other than a right, claim or interest created by will or other voluntary inter vivos or testamentary disposition or resulting from an express limitation in, or failure of the disposition of the property of the person;

"insolvent" in respect of a settlor of an international trust means a settlor of an international trust whose financial liabilities, actual, contingent, or prospective, exceed the value of his or her assets;

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

"International Banks Act" means the International Banks Act, 1999;

"international business company" means a company incorporated or continued under the International Business Companies Act;

"International Business Companies Act" means the International Business Companies Act, 1999;

"international trust" means a trust —

(a) which is created by instrument in writing;

(b) which satisfies the formal requirements for a deed or settlement under the proper law of trusts;

(c) in respect of which the settlor is not a resident at the time of the creation of the trust or at any time at which the settlor adds property to the trust;

(d) in respect of which the trust is evidenced by a writing signed by the settlor or the settlor's nominee and by a registered trustee;

(e) in respect of which at all times at least one of the trustees is licensed under the Registered Agent and Trustee Licensing Act;

(f) in respect of which no beneficiary is a resident at the time of the creation or settlement of the trust or at any time at which the

settlor adds new property to the trust;

(g) in respect of which the trust property does not include any real property situated in Saint Lucia or an interest in any real property situated in Saint Lucia; and

(h) which is registered in accordance with Part II;

and also means the deed or other instrument governing the trust;

"minor" means a person who has not attained full age under the laws of that persons domicile;

"Minister" means the Minister responsible for International Financial Services;

"obligation" means an obligation or liability that existed on or before the date of a relevant disposition and of which the transferor had actual notice, and includes a liability contingent upon such an obligation or liability;

"person" means a natural person, a company, partnership, limited partnership or other body corporate;

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

"prescribed annual fees" means the fees prescribed in the Regulations;

"prescribed fees" means fees prescribed in the Regulations;

"property" means

(a) property of any description, wherever situated, including any shape or interest therein, but excluding any real property which is in Saint Lucia;

(b) in relation to rights and interests, includes rights and interests whether vested, contingent, defeasible or future;

"protector" means a protector appointed under section 24;

"protective international trust" means a protective international trust as described in Part IV;

"purpose international trust" means a purpose international trust as described in Part VI.

"register" means register to be maintained under section 8;

"Registered Agent and Trustee Licencing Act" means the Registered Act and Trustee Licensing Act, 1999;

"registered trustee" means a person holding a valid licence to engage in the business of trustee for international trusts in connection with its business of the international financial services representation pursuant to the Registered Agent and Trustee Licensing Act;

"Registrar of International Business Companies" means the Registrar of International Business Companies employed as such under the International Business Companies Act;

"Registrar" means the Registrar of International Trusts designated under section 5;

"Regulations" means Regulations made under section 64;

"relatives" in relation to a person means that person's father and mother, spouse, the father and mother of his or her spouse, his or her brothers and sisters, the brother and sister of his or her spouse, his or her children and remoter issue and the spouse of such children and issue whether such relations are of the full blood or half blood;

"resident" means, for purposes of this Act,

(a) a natural person who is ordinarily resident in Saint Lucia as under the Income Tax Act, 1989;

(b) a trust company, partnership, limited partnership or other body, incorporated, established, formed or organised in Saint Lucia under the law in force in Saint Lucia, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly, by the Government or by persons who are resident under paragraph (a) or (c) hereof; and;

(c) any other trust, company partnership, limited partnership, or other entity, which is a resident of, or ordinarily resident or

domiciled in Saint Lucia under the Income Tax Act, 1989;

but does not mean a person registered or licensed under the law in force in Saint Lucia relating to international financial services;

"settlor" means a person who makes a disposition of property on or to a trust;

"tax" includes, duty, levy, excise tax, capital gains tax, and rates;

"transferor" means a person who, as owner of property, directly or indirectly makes a disposition or causes a disposition to be made of the property;

"transferee" means the person to whom a disposition of property is made and includes any successors in title through a disposition;

"trust advisor" means a trust advisor appointed under section 25;

"trust property" means property held in trust, directly or indirectly under an international trust;

(2) A reference in this Act to "dollar" or "\$" unless the context requires otherwise, is a reference to the lawful currency of the United States of America.

[\[Back to the top\]](#)

Trusts, trustees and beneficiaries generally

3.— (1) A reference in this Act to "trust" is a reference to the legal relationship created under principles of equity and common law when property has been placed under the control of a trustee for the benefit of one or more beneficiaries or other specified purpose.

(2) A trust shall be regarded as created at the time when property is first received by or vested in a trustee to be held by the trustee in accordance with the terms of the trust.

(3) Without limiting the provisions of this Act which have specific application to an international trust, a trust has the following general characteristics:

(a) the property of the trust constitutes a separate fund and is not

a part of the trustee's own estate or taxable to the trustee;

(b) title to the property of the trust is held in the name of the trustee or in the name of another person on behalf of the trustee for the benefit of the beneficiaries, while the beneficial enjoyment of the property is vested in beneficiaries;

(c) the trustee has the power and the duty to manage, employ or dispose of the property in the trust in accordance with the terms of the trust and the special duties imposed upon him or her by law; and

(d) the trustee is a fiduciary, and thereby accountable for the management and administration of the property in the trust.

(4) A beneficiary shall be —

(a) identifiable by name; or

(b) ascertainable by reference to —

(i) a class; or

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

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

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

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

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

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

(10) A disclaimer is not effective until received by a trustee.

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

(12) A trust shall not cease to be valid by reason only that there is no trustee or fewer than the number of trustees required by the terms of the trust.

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

(14) Except in the case of a trust established for a charitable purpose —

(a) the number of trustees shall not be more than four; and

(b) if at any time there are more than four persons named as trustees, only the first four persons so named shall be the trustees of the trust.

(15) 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

(b) the trustees for the time being but so that a trustee shall not be required to join in the appointment of his successor; or

(c) the last remaining trustee; or

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

(e) if there is no such person (or no such person willing to act), the Court may appoint a new or additional trustee.

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

(17) A trustee having power to appoint a new trustee who fails to

exercise such power may be removed from office by the Court.

(18) 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.

(19) A corporate trustee may —

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

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

[\[Back to the top\]](#)

Application of Act

4. This Act applies only to a trust whether created before or after the commencement of this Act, which is an international trust, but the provisions of this Act other than those contained in Part XIII shall continue to apply to a trust which has duly established as an international trust but which ceases to qualify as such due to circumstances beyond the control of the settlor, whether the lapse is temporary or permanent.

[\[Back to the top\]](#)

PART II

Registration of International Trusts

Appointment of Registrar

5. There shall be a Registrar of International Trusts who shall be designated as such by the Minister and who may also be the Registrar of International Business Companies.

[\[Back to the top\]](#)

Appointment of Deputy Registrar

6.— (1) With the approval of the Minister, the Registrar may appoint one or more Deputy Registrars of International Trusts to operate branch registers of international trusts.

(2) A branch register of international trusts shall operate under

terms and conditions designed to ensure confidentiality to the contents of the branch register of international trusts.

[\[Back to the top\]](#)

Application for registration

7.— (1) A registered trustee may apply to the Registrar to register a trust as an international trust.

(2) an application made under subsection (1) shall be accompanied by —

(a) the prescribed fee;

(b) notice of the name and registered office of the international trust;

(c) a certificate from an attorney-at-law certifying that the trust upon registration will be an international trust.

[\[Back to the top\]](#)

Registration

8.— (1) Upon receipt of an application under section 7 the Registrar shall —

(a) register the trust, in respect of which the application is made, as an international trust by entering particulars of the international trust in a register to be maintained by the Registrar;

(b) open and maintain a file containing all the documents relevant to the international trust and

(c) transmit to the registered trustee a copy of the trust instrument stamped and certified by the Registrar to be a true copy of the original, together with a Certificate of Registration showing that the international trust has been duly registered and specifying the date upon which it was so registered under this Act.

(2) A Certificate of Registration shall be in the form set out in the Regulations.

(3) If for any reason the Registrar is of the opinion that a trust should not be registered as an international trust he or she shall

inform the registered trustee, giving the reason for the refusal and requiring the registered trustee, within four weeks or such longer period as the Registrar may in a particular case allow, to satisfy the Registrar that registration may properly be effected.

(4) The Registrar shall at all times during normal office hours permit a trustee or other person authorised in writing by a registered trustee of an international trust to inspect the entry in the register and the documents in the file relating to that international trust, and shall permit the making of copies thereof by any such person.

(5) A registered trustee seeking to register a trust as an international trust may appeal to the Minister against a decision of the Registrar that the trust may not be registered.

(6) An appeal under section (5) shall be made in the form of a written petition directed to the Minister and shall contain the legal and factual basis for the request that the decision of the Registrar be set aside.

(7) The Minister shall render his or her decision as to the registration of the trust that is the subject of the appeal within four weeks following the date on which the written notice of appeal is received by the Minister.

(8) A decision by the Minister under subsection (7) shall be made in writing and shall be sent to the Registrar and shall not be subject to further appeal except as provided in section 14.

[\[Back to the top\]](#)

Qualifications for trust to be registered

9.— (1) A registered trustee shall not apply for the registration of a trust as an international trust unless the trust meets all of the

requirements of an international trust under this Act and the registered trustee is satisfied by representations made to the registered trustee in writing by the settlor that the settlor is solvent at the time of settlement of the trust, that neither the settlement nor any subsequent transfer or disposition to the trust will render the settlor insolvent, and that no such transfer or disposition is made with the principal intent to defraud his or her creditors.

(2) An international trust registered and in good standing under

the provisions of this Act shall not be struck from the register if one or more of its direct or indirect beneficiaries become resident after the date that the international trust is registered, but —

(a) neither the international trust nor its beneficiaries shall be entitled to the exemptions from taxation contained in Part XIII for any calendar year during which the international trust had one or more resident beneficiaries; and

(b) an international trust may be struck from the register if it has one or more resident beneficiaries during any two consecutive calendar years.

(3) A trust may be registered under this Act only if it has not less than one trustee that is a registered trustee who holds a valid licence under the Registered Agent and Trustee Licencing Act. If, during the period in which a trust is registered under this Act, it fails to have at least one trustee who is a registered trustee in good standing, the co-trustees or the beneficiaries, shall appoint a registered trustee, and, failing such appointment, the trust may be struck from the register.

(4) The register maintained by the Registrar shall not be open for inspection by members of the public, except that —

(a) a trustee of an international trust that is listed on the register may authorize a person in writing to inspect the entry of that international trust on the register; and

(b) the Registrar shall promptly respond to inquiries made to the Registrar in writing to the questions whether a trust under a given name is duly registered on the register and whether a certification of registration is genuine, but the Registrar shall not disclose any other information regarding that trust unless authorised in writing by a trustee named in the register as a trustee for the trust.

[\[Back to the top\]](#)

Powers of Director to require information

10.— (1) Subject to the presumption under section 15 created by registration, the Director may require the registered trustee serving as a trustee of an international trust to furnish the Director with such information as the Director deems necessary to enable the Director to determine whether or not the exemption

afforded by Part XIII should be granted or continued.

(2) If within twenty-eight days or such longer period as the Director may in any particular case allow, after service of a notice in writing for the purpose of subsection (1), served personally on or sent by registered post to the registered trustee, the Director —

(a) is not satisfied that the information required to be given and specified in the notice is sufficient, or

(b) has not received that information;

the provisions of Part XIII shall cease to be applicable in relation to the international trust concerned until such time as the information given is sufficient, or the Director is otherwise satisfied.

[\[Back to the top\]](#)

Language and translation

11.— (1) A document filed with the Registrar and not in the English Language shall be accompanied by a certified translation into the English Language.

(2) A document not in English Language and not accompanied by a certified translation at the time of the application for the registration, shall not be accepted for registration by the Registrar.

(3) For the purpose of this section, a certified translation is a translation certified as a correct translation by a translator and satisfactory to the Registrar.

[\[Back to the top\]](#)

Fees payable to Registrar

12. There shall be paid to the Registrar the prescribed fees, by or on behalf of an international trust registered or to be registered under this Act.

[\[Back to the top\]](#)

Refusal or cancellation of registration

13. — (1) The Registrar may refuse the registration of a trust as an international trust if the Registrar is not satisfied —

(a) that an application is in conformity with the provisions of this Act;

(b) after the expiry of a period of notice given in accordance with section 8 (3), that registration may properly be effected; or

(c) that a trust is qualified to exist as an international trust.

(2) The Registrar shall cancel the registration of an international trust —

(a) upon the written request of all the trustees for the international trust named in the register;

(b) if the international trust has ceased to exist;

(c) if the Registrar is satisfied that a certificate of registration issued by the Registrar in respect of the international trust has been obtained by, or on account of, any fraud or mistake;

(d) if it ceases to be qualified as an international trust under the requirements of this Act; or

(e) in the event that the Registrar has not, within sixty days or such longer period as the Registrar may in any particular case allow, received the prescribed annual fee.

[\[Back to the top\]](#)

Appeals against cancellation

14.— (1) The following procedures apply to appeals from decisions of the Registrar to cancel a registration of an international trust —

(a) the appellant, within twenty _one days after the day on which the Registrar has given his or her decision, shall serve a notice in writing, signed by the appellant or his or her attorney-at-law, on the Registrar and the Attorney General of the appellants intentions to appeal and of the general grounds of the appeal, and the appellant may apply to the Court within fourteen days after the day on which the Registrar has given his or her decision for leave to extend the time within which notice of appeal prescribed by this section may be served, and the Court upon hearing of the

application may extend the time prescribed by this section as it thinks fit;

(b) the Registrar shall, within fourteen days of receiving the notice of appeal, transmit a copy of its decision to the Registrar of the Court and to the Attorney General together with all papers relating to the appeal provided that the Registrar shall not be obliged to disclose any information if the Minister considers that the public interest would suffer by such disclosure;

(c) The Registrar of the Court shall set down the appeal for hearing on such day as is convenient and shall cause notice of the hearing to be served in such manner as the Court may direct; and

(d) The Court may, upon the hearing of the appeal, confirm, reverse, or modify the decision of the Registrar or remit the matter with the opinion and directions of the Court to the Registrar.

(2) An appeal against the decision of the Registrar shall not operate as a suspension of the decision of the Registrar.

(3) The burden of proving that a trust is qualified for registration under this Act, or that a refusal or cancellation of registration was not justified, shall lie on the registered trustee for the trust who shall be the appellant in the name of the trust.

[\[Back to the top\]](#)

Benefits

15. An international trust and the settlor of an international trust that is registered as provided in this Part shall have the following benefits —

(a) if the settlor was not insolvent at the date of the creation or establishment of the international trust or of a disposition of property to or by the international trust, and the settlor did not become insolvent in consequence of such creation or settlement, and if the settlor did not make a disposition of property into the international trust with the principal intent to defraud the settlor's creditors, neither the international trust nor any disposition of property to it by the settlor shall be voidable at the instance of or upon application of any creditor of the settlor, except as may be provided in Part XII; and

(b) there is a rebuttable presumption that the international trust, its income, and its beneficiaries are entitled to the exemptions from tax and duties set forth in Part XIII.

[\[Back to the top\]](#)

PART III

Validity

Validity of international trust

16.— (1) An international trust shall be valid and enforceable if it meets the requirements of this Act and notwithstanding that it may be invalid according to the law of the settlor's domicile, residence or place of incorporation.

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

(a) it purports to do anything contrary to the law in force in Saint Lucia; or

(b) it purports to confer a right or power, or to impose any obligation, the exercise or effect of which is contrary to the law in force in Saint Lucia;

[\[Back to the top\]](#)

Presumption of irrevocability

17. An international trust that does not contain a power of revocation shall be presumed to be irrevocable by the settlor or the settlor's legal personal representative notwithstanding that the trust is created inter vivos or voluntarily by the settlor or the settlor's nominee.

[\[Back to the top\]](#)

Duration of trust and accumulation of income

18.— (1) The terms of an international trust may provide for a duration or date of termination of the international trust but, subject to subsection (2), the maximum duration of an international trust shall be one hundred and twenty years.

(2) Subsection (1) does not apply to a purpose international trust or a charitable international trust which may continue in force without any limit as to time.

(3) Subject to subsection (4), the rules of law and equity known as the "rule against perpetuities" and the "rules against

accumulation" shall not apply to an international trust.

(4) The terms of an international trust may direct or authorise the accumulation of all or part of the income of the international trust for a period not exceeding one hundred and twenty years from the date of the creation of the international trust.

[\[Back to the top\]](#)

Retention of control by settlor

19. An international trust shall not be declared invalid or be affected in any way if the settlor, or if more than one settlor or any one of the settlors;

(a) retains, possesses or acquires a power to revoke the international trust;

(b) retains, possesses or acquires a power to amend the international trust;

(c) retains, possesses or acquires any benefit, interest or property from the international trust;

(d) retains, possesses or acquires the power to remove or appoint a trustee, protector or advisor for the international trust;

(e) retains, possesses or acquires the power to direct a trustee or protector of the international trust on any matter;

(f) retains, possesses or acquires any specific power to appoint the capital or income from the international trust to persons other than the settlor himself or herself;

(g) is a beneficiary of the international trust solely or together with others; or

(h) purports to direct the activities of a trustee through a letter of wishes or similar statements or documents made or delivered to that trustee in connection with and at the time of creation of an international trust.

[\[Back to the top\]](#)

PART IV

Protective International Trusts

Protective international trusts

20.— (1) The terms of an international trust may make the interest of any beneficiary —

(a) subject to termination upon the happening of a specified event;

(b) subject to diminution, suspension or termination in the event of the beneficiary becoming insolvent or any of his or her

property becoming liable to seizure or sequestration for the benefit of creditors; or

(c) subject to a restriction on alienation of or dealing in that interest.

and in such a case the international trust shall be known for purposes of this Act as a protective international trust.

(2) Where any property is directed to be held on protective international trust for the benefit of a beneficiary, the trustee shall hold the property attributable to the interest of such beneficiary —

(a) in trust to pay the income to the beneficiary until the interest terminates in accordance with the terms of the protective international trust; and

(b) where the terms of the protective international trust do not provide otherwise, if a determining event occurs while the interest of the beneficiary continues, in trust to pay the income to such of the following (and if more than one, then in such shares as the trustee in his or her absolute discretion shall appoint) —

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

(ii) if there is no such spouse or child, the beneficiary and the person who would be entitled to the estate of the beneficiary if he or she had then died intestate and domiciled in Saint Lucia.

(3) In subsection (2), a "determining event" shall mean the

occurrence of any act or omission by or on behalf of the beneficiary (other than the giving of consent to an advancement of trust property) which would result in the capital or any income of the protective trust becoming payable to any person other than the beneficiary.

(4) A law in force in Saint Lucia which prevents a settlor from establishing a protective international trust of which he or she is a beneficiary shall have no application to an international trust.

[\[Back to the top\]](#)

PART V

Charitable International Trusts

Charitable international trusts

21.— (1) An international trust may be created for a charitable purpose and in such a case the international trust shall be known as a charitable international trust.

(2) Subject to subsections (3) and (4), the following purposes shall be regarded as charitable:

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the protection of the environment;
- (e) the advancement or protection of human rights and fundamental freedoms; or
- (f) any other purposes which is beneficial to the community.

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

(4) A purpose may be regarded as charitable whether it is to be carried out in Saint Lucia or elsewhere and whether it is

beneficial to a community in Saint Lucia or elsewhere.

(5) A registered trustee of an international trust may apply in writing to the Minister for a written ruling, in advance of registration of the international trust under this Act, as to whether a purpose qualifies as a charitable purpose for purposes of this Act.

(6) A registered trustee applying under subsection (5) shall comply with any Regulations regarding the issuance of any such ruling and shall pay the prescribed fee.

[\[Back to the top\]](#)

PART VI

Purpose International Trusts

Trusts for non-charitable purposes

22. — (1) An international trust may be created for a purpose which is non-charitable provided that —

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

(b) the purpose as described in the stated purpose of the international trust is not immoral, unlawful or contrary to the public policy in Saint Lucia; and

(c) terms of the international trust specify the event upon the happening of which the international trust shall terminate and provide for the disposition of surplus assets of the international trust upon its termination.

(2) An international trust created for a non charitable purpose in accordance with subsection (1) shall be known as a purpose international trust.

[\[Back to the top\]](#)

Extension of cy-pres

23.— (1) Without limiting the provisions of section 27 the terms of a purpose international trust may provide that the doctrine of cy-pres is applicable to the purpose international trust.

(2) For the purpose of subsection (1), where a purpose that is

reasonably similar to the original purpose cannot be found, a purpose that is not contrary to the spirit and meaning of the settlement may be substituted for the original purpose.

[\[Back to the top\]](#)

PART VII

Protector and Similar Appointments

Protector of a trust

24.— (1) The terms of an international trust may provide for the appointment of a protector of the international trust.

(2) A protector shall have the following powers, unless the terms of the international trust provide otherwise —

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

(b) the power to change the proper law of the international trust;

(c) the right to receive notice in advance of specified actions of the trustee;

(d) the right to receive information relating to or forming part of the accounts of the trustee; and

(e) such further powers as are conferred on the protector by the terms of the international trust.

(3) A protector may be a settlor, trustee or beneficiary of the international trust, or any other person.

(4) In the exercise of his or her powers the protector shall not be regarded as a trustee.

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

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

protectors for the time being agree on its exercise.

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

(8) If an international trust provides for the appointment of a protector but no person is so appointed or in existence at a given time, the international trust shall not fail but shall be interpreted as though references to the protector has been excluded.

[\[Back to the top\]](#)

Advisors and agents

25.— (1) An international trust may provide for the appointment of one or more trust advisors who, acting alone or in concert, may offer advice to a trustee or a protector but who shall not be deemed to be bound by the duties of either.

(2) The duties, responsibilities and rights of a trust advisor or other agent appointed pursuant to subsection (1) shall be as set forth in applicable law or in the trust instrument, but there shall be no presumption that any such person shall have the capacity of settlor, trustee, beneficiary, or protector unless otherwise provided in the trust instrument.

[\[Back to the top\]](#)

PART VIII

Termination or Failure of International Trusts

Failure or lapse of interest

26. Where —

(a) an interest of a beneficiary of the international trust lapses;

(b) an international trust terminates; or

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

the interest or trust property concerned shall, subject to the terms of the international trust, any Order of the Court, or section 27,

be held by the trustee in trust for the settlor absolutely, or if he or she is dead, as if it had formed part of his or her estate at death.

[\[Back to the top\]](#)

Failure of charitable international trusts

27.— (1) Where property is held in a charitable international trust and

- (a) the purpose has been, as far as may be, fulfilled;
- (b) the purpose cannot be carried out at all, or not according to the specification of the purpose in the charitable international trust;
- (c) the purpose provides a use for only part of the trust property;
- (d) the purpose was laid down by reference to an area or a class of persons which was then, but has since ceased to be, suitable or practicable for any reason in administering the charitable international trust;
- (e) the purpose has been adequately provided for by other means; or
- (f) the purpose has ceased to be charitable (by being useless or harmful to the community or otherwise);

the remaining trust property shall be held for such other charitable purpose as the Court, upon the application of the trustee, may declare to be consistent with the original intention of the settlor.

(2) Where trust property is held for a charitable purpose, the Court, on the application of the trustee, may approve an arrangement which varies or revokes the purpose or terms of the charitable international trust or enlarges or modifies the powers of management or administration of the trustee if it is satisfied that the arrangement —

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

(3) Without limiting the provisions of Part XII, the Court shall not make a declaration under subsection (1) or approve an

arrangement under subsection (2) unless satisfied that any person with a material interest in the trust has had an opportunity to be heard.

[\[Back to the top\]](#)

Termination of international trust

28.— (1) Without prejudice to any power of the Court, and except as may be provided in the terms of the international trust, where all the beneficiaries of the trust in existence and have been ascertained and none is a person under a legal disability or a minor, and all beneficiaries are in agreement so to do, they may in writing signed by all of them, direct the trustee to terminate the trust and distribute the trust property as the beneficiaries direct, so long as such distribution is not inconsistent with the terms of the international trust.

(2) A beneficiary of an interest under a protective international trust may not enter into an agreement referred to in subsection (1).

[\[Back to the top\]](#)

PART IX

Breach of International Trust

Liability for breach of trust

29.— (1) Subject to the provisions of this Act and to the terms of an international trust a trustee who commits or concurs in a breach of an international trust is liable for —

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

(b) any profit which would have accrued to the international trust had there been no breach.

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

(3) A trustee is not liable for a breach of an international trust, committed by another person prior to his or her appointment or for a breach of an international trust committed by a co-trustee unless —

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

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

(4) Where trustees are liable for a breach of an international trust, they are liable jointly or severally.

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

(6) Nothing in terms of an international trust shall relieve a trustee of liability for a breach of the international trust arising from, the trustee's own fraud, self dealing or wilful misconduct.

[\[Back to the top\]](#)

Constructive trusts

30.— (1) A person who derives a profit from a breach of an

international trust shall be deemed to be a trustee of the profit or the trust property unless that person derives or obtains in it good faith and without actual, constructive or implied notice of the breach of trust.

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

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

[\[Back to the top\]](#)

Tracing trust property

31. Without prejudice to the personal liability of a trustee, trust property which has been changed or dealt with through a breach of the international trust or any property into which the trust property has been converted may be traced, followed and recovered unless —

(a) it is no longer identifiable; or

(b) it is in the hands of a good faith purchaser for value without actual constructive or implied notice of the breach of the international trust.

[\[Back to the top\]](#)

Beneficiary may relieve or indemnify trustee

32.— (1) A beneficiary may relieve a trustee of liability to the beneficiary for a breach of an international trust or may indemnify a trustee against liability for a breach of the international trust.

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

(a) is a minor or a person under legal disability;

(b) does not have full knowledge of all material facts; or

(c) is improperly induced by the trustee to act under subsection (1).

[\[Back to the top\]](#)

Power to relieve trustee from personal liability

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

[\[Back to the top\]](#)

Power to make beneficiaries indemnify

34. Where a trustee commits a breach of an international trust at the instigation of a beneficiary, the Court at the request or with the concurrence of any other beneficiary (whether or not the beneficiary is a minor or a person with legal disability) may impound all or part of the instigating beneficiary's interest by way of indemnity to the trustee or any person claiming through the trustee.

[\[Back to the top\]](#)

PART X

Proper Law and Effect of Foreign Law

Proper law of trust

35.— (1) The proper law applicable to an international trust shall be as in this Act and, to the extent not inconsistent with the other provisions of this Act, as set forth in other law in force in Saint Lucia and as determined in accordance with this section.

(2) Subject to subsection (1), an international trust may also be subject to the proper law of —

(a) the jurisdiction expressed by the terms of the international trust as the proper law; or

(b) if not so expressed, the jurisdiction intended by the settlor to be the proper law.

(3) Where the proper law of an international trust changes from the law of another jurisdiction to the law in force in Saint Lucia

the change shall be valid and effective regardless of whether it is recognised by the law of the other jurisdiction.

(4) Where the terms of an international trust provide for the proper law of the international trust to be changed from the law in force in Saint Lucia to the law of another jurisdiction, unless provided to the contrary in the international trust, the change is, subject to subsection (1), valid and effective only if the new proper law recognises the validity of the international trust and the respective interests of the beneficiaries to the extent provided in this Act.

(5) Subject to subsection (1), the terms of an international trust may provide —

(a) for the severable aspects of the international trust, particularly aspects relating to the administration of the international trust, to be governed by a different law from the proper law of the international trust; and

(b) for the law governing a severable aspect of the international trust to be changed from the law in force in Saint Lucia to the law of another jurisdiction and vice versa.

(6) A change in the proper law of an international trust shall not affect the legality or validity of the international trust or render any person liable for anything done before the change unless the liability would result under both the old and the new proper law of the international trust.

(7) The proper law of the international trust shall govern the

validity of the international trust, its nature and construction, its effects, and its administration.

[\[Back to the top\]](#)

Change of proper law

36.— (1) Where the proper law of an international trust or the law governing the severable aspects of an international trust is changed from the law in force in Saint Lucia to the law of another jurisdiction (herein called the "new law") no provision of the law in force in Saint Lucia shall operate to render void, invalid or unlawful any function conferred on the trustee under the new law.

(2) Where the proper law of an international trust or the law governing the severable aspects of a trust is changed from the law of another jurisdiction (herein called the "old law") to the law in force in Saint Lucia, no provision of the old law shall operate to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the law in force in Saint Lucia.

[\[Back to the top\]](#)

Capacity of settlor

37. A person may create an international trust under this Act that is—

(a) an inter vivos trust, if the trust property is movable and the person has the legal capacity to create a trust of movable property under the law in force in Saint Lucia;

(b) a testamentary trust, if the property of the international trust is movable, and the person has the capacity to create a trust of movable property under the law of the person's domicile and the trust is created with the requisite formalities under such law;

(c) a trust of immovable property if the person has the capacity to create a trust of immovable property under the law of the jurisdiction in which the immovable property has its situs.

[\[Back to the top\]](#)

Law in force in Saint Lucia

38. Any question arising with regard to —

(a) an international trust that is governed by the law in force in Saint Lucia; or

(b) any disposition of property upon the international trust shall be determined by the Court according to the law in force in the Saint Lucia without reference to the law of any other jurisdiction with which the international trust or the disposition may be connected.

[\[Back to the top\]](#)

Effect of section 38

39.— (1) Section 38 —

(a) does not validate any disposition of property that was not —

(i) legally owned by the settlor at the time of the disposition; or

(ii) the subject of a power to make such disposition and vested in the settlor;

(b) takes effect subject to any express contrary term of the international trust or disposition;

(c) does not with regard to the capacity of a body corporate affect the recognition of the law in force in Saint Lucia of its place of incorporation;

(d) does not affect the recognition of a law of a foreign jurisdiction prescribing generally, without reference to the existence or terms of the international trust, the formalities for the disposition of property;

(e) does not validate any trust or disposition of immovable property situate in a jurisdiction other than Saint Lucia that is invalid under the law of that jurisdiction; and

(f) does not validate any testamentary trust or testamentary disposition that is invalid under the law of the testor's domicile.

(2) The recognition of the law of a foreign jurisdiction in determining whether the settlor was the owner of the property referred to in this part or the holder of a power so referred to before or at the time of disposition is not affected by this Part.

[\[Back to the top\]](#)

Exclusion of foreign laws

40. An international trust governed by this Act or a disposition of property to be held upon the international trust shall not be varied, declared void, voidable, liable to be set aside or defective in any manner, and the capacity of any settlor is not to be questioned by reason that —

(a) the law of any foreign jurisdiction prohibit or do not recognise the concept of an international trust either in part or in whole;

(b) the international trust or disposition avoids or defeats rights, claims or interest conferred by the law of the foreign jurisdiction upon any person, or contravenes any law, rule, judicial or administrative order or action intended to recognise, protect enforce or give effect to any such rights, claims or interest;

(c) the international trust creates rights in property that are contrary to other laws relating to the personal or proprietary effects of marriage or the succession rights testate and intestate, of any person, especially the legal right of surviving spouses and the shares of relatives; or

(d) the law in force in Saint Lucia or the provisions of this Act are inconsistent with a law of a foreign jurisdiction.

[\[Back to the top\]](#)

Community property

41.— (1) Where a husband and wife make a disposition of property to an international trust or to a trust that subsequently becomes an international trust, and, immediately before the disposition, the property or any part of the property or an accumulation thereto is or was, pursuant to the law of its situs or the law either of the transferors' domicile or residence determined to be community property, then, notwithstanding the transfer and except where the provision of the trust deed may expressly provide to the contrary, that property and any accumulation thereto shall, for the purpose of giving effect to the 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 international trust.

(2) Notwithstanding anything to the contrary herein contained, nothing herein shall be construed so as to cause the international trust, the trust property, the trustees, the protectors or any of them, to be liable or obligated for any debt or responsibility of the settlor merely by reason of this section.

[\[Back to the top\]](#)

PART XI

Powers of the Court, Proceedings and Limitations

Jurisdiction of the court

42. —(1) The Court has jurisdiction in respect of any matter concerning the international trust where —

(a) the proper law of the international trust, as determined by this Act, is the law in force in Saint Lucia;

(b) a trustee of the international trust is a resident;

(c) any part of the administration of the international trust is carried on in Saint Lucia; or

(d) the international trust is registered under this Act.

(2) On the application of a registered trustee, a beneficiary, a settlor or his or her personal representatives, a protector, or with the leave of the Court, any other person, the Court may —

(a) make an order in respect of —

(i) the execution, administration or enforcement of an international trust;

(ii) a registered trustee, including an order as to the exercise of any power by a registered trustee, the appointment, remuneration or conduct of a registered trustee, the keeping or submission of accounts, the the making of payments, whether into Court or otherwise;

(iii) a protector, including an order appointing a protector;

(iv) a beneficiary, or any person connected with an international trust;

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

(b) make a declaration as to the validity or enforce ability of an international trust;

(c) direct the registered trustee to distribute, or not to distribute the trust property;

(d) make such order in respect of the termination of the international trust and the distribution of the property as it thinks

fit;

(e) rescind or vary an order or declaration under this Ordinance, or make a new or further order or declaration.

(3) Where the Court appoints or removes a registered trustee under this section —

(a) it may impose such requirements and conditions as it thinks fit, including provisions as to remuneration and requirements or conditions as to the vesting of trust property;

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

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

[\[Back to the top\]](#)

Courts determination of validity

43.— (1) The Court may declare an international trust to be invalid if —

(a) the international trust was established under duress or undue influence, or by mistake or misrepresentation;

(b) the international trust is immoral or contrary to the public policy in Saint Lucia;

(c) subject to section 27, the terms of the international trust are so uncertain that performance of such terms is rendered impossible or impractical; or

(d) subject to section 35, the settlor was, at the time of the disposition leading to the creation of the international trust, incapable under the law in force in Saint Lucia of creating an international trust.

(2) Where an international trust is created for two or more

purposes of which some are lawful and others are not, or where some of the terms of the international trust are lawful and others are not —

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

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

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

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

(5) Notwithstanding section 35, in determining the existence and validity of an international trust registered under this Act, the Court shall apply —

(a) the provisions of this Act;

(b) any other law in force in Saint Lucia; and

(c) any other law which may be applied if to do so would validate the trust as an international trust.

[\[Back to the top\]](#)

Saving of certain rights

44. In the event that an international trust might be declared invalid pursuant to this Act, if the Court is satisfied that a beneficiary has not acted in bad faith —

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

(b) the international trust shall be declared invalid subject to the

payment of proper fees, costs, pre-existing rights, claims and interests of such beneficiary.

[\[Back to the top\]](#)

Extent of invalidity for creditors

45. If an international trust is declared invalid under the provisions this Part or Part XII., the international trust shall be invalid only to the extent necessary to satisfy the obligations of the creditor at whose instance the international trust was declared invalid together with such costs as the Court may allow pursuant to the relevant Part.

[\[Back to the top\]](#)

Foreign judgements not enforceable

46. Notwithstanding the provision of any treaty, convention, statute, or rule of law or equity to the contrary, a proceeding for or in relation to the enforcement or recognition of a judgement or order obtained in a jurisdiction other than Saint Lucia against —

(a) an international trust;

(b) a settlor, trustee, protector or beneficiary of an international trust;

(c) a person appointed or instructed in accordance with the express or implied provisions of an instrument or disposition to exercise a function, or undertake an act, matter or thing in connection with an international trust on the property of the international trust; or

(d) the property of an international trust, a trustee, a protector or a beneficiary of the international trust;

shall not be entertained by any court if that judgement or order is based in whole or in part, upon the application of any law or interpretation of law that is inconsistent with the provisions of this Act or relates to a matter that is governed by the law in force in Saint Lucia;

[\[Back to the top\]](#)

Application for directions

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

[\[Back to the top\]](#)

Payment of costs

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

[\[Back to the top\]](#)

Limitation on commencement of proceedings

49.— (1) An action or proceeding pursuant to this Act or at common law or in equity —

- (a) to set aside the creation or settlement of an international trust,
- (b) to set aside any disposition to or by any international trust, or
- (c) against a trustee or trustees for breach of an international trust;

shall not be commenced unless the action or proceeding is commenced in the Court before the expiration of two years from the date of the creation of the international trust which is sought to be set aside or the date of the disposition to or by the international trust that is sought to be set aside, or the date of breach of the international trust by the trustee or trustees.

(2) An action or proceedings at common law or in equity shall not be commenced by any person claiming to have or to have had an interest in property before that property was settled upon or disposed to or by an international trust and seeking to derive a legal or equitable interest in that property unless —

- (a) the person can establish the nature and extent of the interest and that the interest existed at the time of the relevant disposition or of the creation of the international trust; and

(b) the action or proceeding is commenced in the Court before the expiration of two years from the date that the property was settled upon or disposed to or by the international trust.

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

(a) the action or proceedings has been commenced in accordance with subsections (1) or (2);

(b) where the action or proceeding shall allege fraud or be founded upon some other action or proceeding alleging fraud, that the determination or order sought would not be contrary to the provisions of Part XII of this Act; and

(c) that the requirements of section 50 have been fulfilled.

(4) An affidavit required to be filed pursuant to subsection (3) shall be made by the person on whose behalf the action or proceeding is brought or, in the case of a body corporate, an officer thereof, and the person or officer shall depose as to —

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

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

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

(d) whether an action or proceeding has been commenced in any jurisdiction in respect of the cause of action or the international trust generally, and, if so, the date upon which that action or proceeding was commenced, the nature of the proceeding and in which jurisdiction it is pending.

(5) This section shall apply to every international trust expressed

to be governed by the law in force in Saint Lucia and, in the event that a trust shall be registered as an international trust and shall change the law by which it shall be governed to that of Saint Lucia then every proceeding after that date of registration by a person claiming to be interested in, or to be prejudiced by, the settlement of property upon the trust, or disposition of property to the trust before registration, shall be commenced subject to subsections (1) and (2) and every determination and order shall be made subject to subsection (3) as if upon the date that such settlement or disposition was made the trust was an international trust governed by the law in force in Saint Lucia.

[\[Back to the top\]](#)

Security for costs

50. A creditor before bringing any action or proceeding against an international trust or trust property or with respect or within respect to any disposition by or to an international trust or any other matter governed by this Act shall first deposit with the Court a cash sum of twenty-five thousand United States dollars, or such greater amount as may be ordered by the Court, securing the payment of all costs as may become payable by the creditor in the event of the creditor not succeeding in the action or proceeding against the trust property or the international trust or in respect of the relevant disposition.

[\[Back to the top\]](#)

PART XII

Disposition Into Or By An International trust

Scope

51. This part applies to an action or proceeding relating to a disposition into or by an international trust, or into or by an entity owned or controlled by an international trust, whether the property has or had as its situs within or outside Saint Lucia, at the time of the disposition or of the commencement of such proceedings, if —

(a) the relevant disposition takes place after the commencement of this Act; or

(b) the relevant disposition took place before the commencement of this Act but proceedings were commenced by the issuance of a writ within twelve months after the commencement of this Act.

[\[Back to the top\]](#)

Avoidance of fraud

52.— (1) Where it is proven by a creditor in proceedings that are final and not subject to further appeal that —

(a)

(i) an international trust was settled or established; or

(ii) a disposition was made to or by an international trust, and the property after the disposition constituted trust property; and

(b) the international trust was settled, created, migrated, continued, established or property was deposited by on behalf of the settlor or the settlors nominee with the principal intent being to defraud the creditor of the settlor;

(c) the disposition did, at the time the settlement, creation, migration, continuation, establishment, or disposition took place, render the settlor insolvent;

the settlement, creation, migration continuation establishment, or disposition shall not be void or voidable, but the international trust shall be liable to satisfy the creditor's claim out of property or the international trust and the amount of the liability shall

only be to the extent of the interest that the settlor had in the property disposed to the international trust prior to its settlement, creation, migration, continuation, establishment, or disposition, and to any accumulation to that property subsequent thereto.

(2) Unless it is proven, in accordance with the provisions of subsection (1), that an international trust was settled or created, or a disposition was made to or by an international trust, with the principal intent being to defraud the creditor and with the result of the settlement, establishment or disposition being the insolvency of the settlor, the Court shall not find that the international trust is liable to satisfy the creditor's claim out of trustee property or that any disposition to the international trust is void or voidable.

(3) In determining whether the creation of an international trust, or a disposition to or by an international trust has rendered the settlor insolvent, regard shall be had to the fair market value of the settlor's property (not being property of or relating to the international trust) at the time immediately after the settlement, establishment or disposition and in the event that the fair market value of the property exceeded the value of the creditor's claim at the time, then the international trust so settled or established or the disposition made shall, for the purposes of the Act, be deemed and presumed not have been settled or established or the property disposed of with intent to defraud the creditor.

(4) Where an international 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 bonafide purchaser for value, then the disposition shall be void.

(5) For the purposes of this section, the onus of proof of the settlor's intent to defraud the creditor lies on the creditor, and the required standard of proof is to demonstrate the settlor's intent beyond a reasonable doubt.

[\[Back to the top\]](#)

Limitations

53.— (1) An international trust settled, created, migrated, continued or established or a disposition to or by the international trust shall not be fraudulent as against, or void or voidable by, a creditor of a settlor if —

(a) if the settlement, creation, migration, continuation or establishment of the trust or the disposition takes place after the expiration of two years from the date that such creditor's cause of action accrued;

(b) the creditor fails to commence an action before the expiration of one year from the date such settlement, creation, migration, continuation, establishment or disposition took place; or

(c) the settlement, creation, migration, continuation, establishment or disposition took place before the creditor's cause of action against the settlor accrued.

(2) A settlor shall not have imputed to him or her an intent to defraud a creditor solely by reason that the settlor —

(a) settled, created, migrated, continued or established an international trust, or disposed of property to the international trust within two years from the date that the creditor's cause of action accrued;

(b) retained, possesses or acquires any of the powers or benefits referred to in section 19;

(c) is a beneficiary or a trustee of the international trust.

(3) For the purpose of this Part —

(a) the date the cause of action accrued shall be the date of the act or omission being relied upon to establish, either partly or wholly, the cause of action and, if there is more than one act or omission the first which occurred shall be the date the cause of action shall have accrued; and

(b) in the case of an action upon judgement, the date the cause of action accrued shall be the date of the act or omission upon which the judgement was based and, where there is more than one act or omission or the same is or was continuing, the date of the first act or the date the omission first occurred shall be the date the cause of action accrued.

[\[Back to the top\]](#)

Application

54.— (1) The provisions of this section shall apply to any proceeding by a creditor alleging fraud or a cause of action

sounding in fraud against a settlor, an international trust or an entity owned by an international trust, or against any person who shall settle property upon, dispose of property to, or establish an international trust on behalf of a settlor, to the exclusion of any other remedy, principle or any rule of law whether provided for by an enactment or founded in equity or common law.

(2) In this section the term "creditor" includes any person who alleges a cause of action on behalf of or in the name of a creditor.

[\[Back to the top\]](#)

Certain rights

55.— (1) Where a disposition to an international trust is set aside by a Court, then if the Court is satisfied —

(a) that the transferee of such property has not acted in bad faith—

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

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

(b) that a beneficiary of an international trust has not acted in bad faith, the disposition, shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of an international trust, power or discretion vested in the trustee of such trust or any other person and otherwise properly exercised.

[\[Back to the top\]](#)

Extent of avoidance of relevant dispositions

56. A disposition, shall be set aside pursuant to this Part only to the extent necessary to satisfy the obligation to a creditor at whose instance the disposition has been set aside together with

such costs as the Court may allow.

[\[Back to the top\]](#)

Statute of Elizabeth not applicable

57. The Fraudulent Conveyance Act, 13 Elizabeth 1 chapter 5 (1571), shall not apply to an international trust or to disposition by an international trust.

[\[Back to the top\]](#)

Heirship rights not applicable

58. An international trust and or a disposition to be held on upon the international trust shall not be declared void or voidable or defective by reason that the international trust may avoid or defeat the right, claim or interest of a person held by reason of a personal relationship to the settlor or by way of heirship rights.

[\[Back to the top\]](#)

PART XIII

Tax Exemption

Exemptions of international trusts from income tax

59.— (1) Notwithstanding any provision to the contrary contained in the Income Tax Act, 1989, all income, profit or gain realised or received by an international trust or a beneficiary of a international trust shall not be subject to income tax, directly or indirectly unless —

(a) the international trust is created by or on behalf of, or for the benefit of a person who is a resident;

(b) not all the income of the international trust (other than interest from regular bank accounts or portfolio investments of securities held by the international trust in Saint Lucia) either accrues or is derived outside Saint Lucia or, in the case of income received by the international trust, would, if it had been received directly by the beneficiary of the international trust, be liable to income tax; and

(c) the terms of the international trust does not expressly —

(i) prohibit the ownership of real property having its situs in Saint Lucia by the trust, directly or indirectly, or an interest in the property; and

(ii) exclude a resident as a person who is or may be, under any discretionary power of the trustee or of the settlor under the terms of the international trust, beneficiaries or any class or classes of beneficiaries of an international trust.

(2) Tax shall not be payable by a non-resident beneficiary of an international trust, with respect to any income or assets of the international trust.

(3) Notwithstanding any enactment relating to the payment of a tax —

(a) all instruments relating to a disposition to or by an international trust, and

(b) all instruments relating to transactions in respect of the income or capital of the international trust;

are exempt from the payment of any such tax.

(4) An international trust which is duly registered as of the commencement date of this Act shall be deemed to be exempt from tax as provided under subsection (1) as long as it remains registered as provided in this Act and it complies with paragraph (1) (b) and (c).

(5) An international trust may transfer its funds or other assets to an international business company registered under the International Business Companies Act.

(6) Notwithstanding anything contained in any other law, every transfer which falls under subsection (5) shall be exempt from the payment of any tax.

[\[Back to the top\]](#)

PART XIV

Miscellaneous

Custody of copy of instrument

60.— (1) The registered trustee of an international trust shall

keep as confidential information —

(a) a copy of the instrument creating the international trust and copies of any other instrument amending or supplementing the instrument;

(b) a file in which the following information is set out-

(i) the name of the settlor;

(ii) if a purpose or charitable trust, a summary of the purposes of the trust and the name of the protector or protectors of the international trust; and

(c) such documents as are necessary to show the true financial position of the international trust, which shall be current as of one month following the close of each fiscal quarter.

(2) The instrument, file and documents referred to in subsection (1) shall not be available to the public but the registered trustee shall allow the protector to inspect the instrument, register and the documents described, but no others.

(3) Except where allowed or required by applicable law, a registered trustee of an international trust shall not —

(a) fail to comply with subsection (1);

(b) refuse to allow a person referred to in subsection (2) to inspect the instrument, file or documents referred to in that subsection; or

(c) make or authorise the making in any instrument, file or document referred to in subsection (2) any settlement that the registered trustee knows to be false or does not believe to be true;

(4) A registered trustee who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and in addition to such fine the Court may order the trustee to cease to be a trustee of the international trust for four years or the suspension of the trustee's licence to serve as such.

[\[Back to the top\]](#)

Confidentiality

61.— (1) Without affecting the rights of protectors under Part VII, but subject to the terms of the instrument creating an international trust and subsection (2), a trustee, protector, or other person shall not disclose to any person not legally entitled thereto, any information or documents respecting an international trust, including without limitation —

(a) the name of the settlor or any beneficiary;

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

(c) the reason for the exercise of the power or discretion or the performance of the duty or any evidence upon which such reason might have been based;

(d) any information relating to or forming part of the accounts of an international trust; or

(e) any other matter or thing respect in an international trust.

(2) Notwithstanding subsection (1) but subject to any other more specific terms of the trust instrument, the registered trustee shall, at the written request of a beneficiary named in the international trust, disclose any document or information relating to or forming part of the accounts of the international trust as described in subsection (1) (d) to that beneficiary or the advisor of the beneficiary provided that the beneficiary or the advisor —

(a) shall be bound by the restrictions on disclosure of such information provided for in this section and;

(b) shall not be entitled to any other documents relating to the international trust listed or described in the foregoing paragraph, including without limitation, letters of wishes or like expressions of the settlor's intent.

[\[Back to the top\]](#)

Investments

62. Subject to the limitations in the trust instrument the registered trustee of an international trust may invest any trust property of the international trust in accordance with the law in

force in Saint Lucia relating to the investment of trust funds.

[\[Back to the top\]](#)

Bankruptcy

63. Notwithstanding any provisions of the law of the settlor's domicile or place of ordinary residence or the residence or the settlor's current place of incorporation notwithstanding that an international trust is voluntary and without valuable contribution being given for the same, an international trust shall not be void or voidable in the event of the settlor's bankruptcy, insolvency, or liquidation (other than in the case of an international company registered pursuant to the International Business Companies Act that is in liquidation) or in any action or proceedings at the suit of creditors of creditors of the settlor, but shall remain valid and subsisting and take effect according to its tenor subject to the provision of this Act.

[\[Back to the top\]](#)

Regulations

64.— (1) The Minister may make Regulations for purposes of this Act.

(2) without prejudice to the generality subsection (1) the

Regulations may —

(a) provide the procedure for appeals under section 14;

(b) establish the information to be included in the register; or

(c) prescribe the fees for registration of international trusts.

Passed in the House of Assembly this 2nd day of November, 1999.

MATTHEW ROBERTS,
Speaker of the House of Assembly.

Passed in the Senate this 12th day of November, 1999.

HILFORD DETERVILLE,

President of the Senate.

[\[Back to the top\]](#)

SAINT LUCIA
PRINTED BY THE GOVERNMENT PRINTER AT THE GOVERNMENT PRINTING OFFICE
CASTRIES
2000
