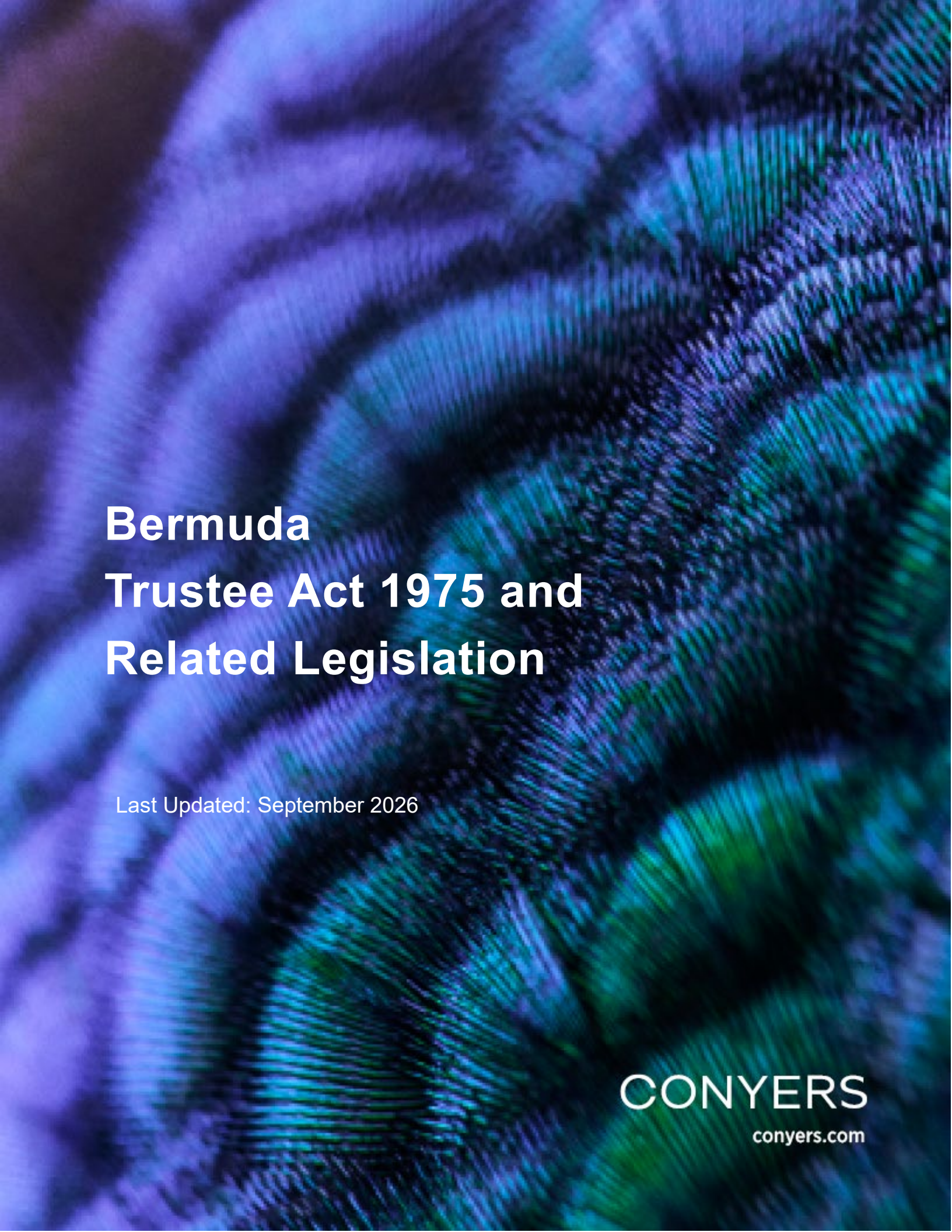


Bermuda Trustee Act 1975 and Related Legislation

Last Updated: September 2026

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Preface

As a service to our clients, we have prepared this compendium of the Trustee Act 1975 and related legislation. This Compendium includes a consolidated version of the Trustee Act 1975, including related statutes and statutory instruments, incorporating all amendments to date, however, in some instances only relevant provisions are provided.

The most recent legislative update includes amendments to the Trustee Act 1975 to streamline record-keeping requirements, to provide for the appointment of a supervisor for certain trustees and to include provision relating to confidentiality and transparency as it relates to information required to be kept by trustees made by the Trustee Amendment Act 2026 effective 14 September 2026. The transitional provision states: “No civil penalty shall be imposed on a non-professional trustee under section 54A(1) of the principal Act (as amended by section 5 of this Act) for any act or omission occurring during the period of six months beginning with the commencement date, if that act or omission would not have constituted a contravention of section 13AA of the principal Act (accounts and records — non-professional trustees) before its repeal by this Act.”

The previous update included amendments to section 55A of the Trustee Act 1975 made by the Trustee Amendment Act 2025, operative 10 October 2025.

Conyers Dill & Pearman

Bermuda

Revised: September 2026

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BERMUDA

TRUSTEE ACT 1975

1975:2

[Date of Assent: 31 January 1975]

[Operative Date: 1 March 1975]

[preamble and words of enactment omitted]

PART I - PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires -

"authorised investments" means investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by any provision of law;

"contingent right" as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

"convey" and "conveyance" as applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seized or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;

"court" means the Supreme Court;

"estate representative" means the executor, original or by representation, or administrator for the time being of a deceased person;

"income" includes rents and profits;

"instrument" includes a statutory provision;

“Minister” means the Minister of Finance;[1]

"mortgage" and "mortgagee" relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

“non-professional trustee” means natural person acting without reward in the context of a family situation or a friendship situation;[2]

"pay" as applied in relation to stocks and securities in connection with the expression "into court" includes a deposit or transfer of the same in or into court;

"possession" includes receipt of rents and profits or the right to receive the same, if any; and

"possessed" applies to receipt of income of and to any vested estate less than a life estate or interest in possession or in expectancy in any land;

“professional trustee” means a natural person or a body corporate engaged as a business, trade, profession or vocation in the provision of services of a trustee; [3]

"property" includes real and personal property, and any estate, share and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

“regulated agents and service providers” includes—[4]

(a) AML/ATF regulated financial institutions, as defined by regulation 2(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

(b) independent professionals, as defined by regulation 2(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

(c) agent, as defined by section 2 of the Real Estate Brokers’ Licensing Act 2017; and

(d) broker, as defined by section 2 of the Real Estate Brokers’ Licensing Act 2017.

"rights" include estates and interests;

"sale" includes an exchange;

"securities" include stocks, funds and shares and "securities payable to bearer" include securities transferable by delivery or by delivery and endorsement;

"stock" includes fully paid up shares, and so far as relates to vesting orders made by the court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

“supervisory authority” means a supervisory authority designated under section 63A; [5]

"transfer" in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee;

"trust" does not include the duties incident to an estate or interest conveyed by way of mortgage, but with this exception the expressions "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of an estate representative, and "trustee" includes an estate representative, and "new trustee" includes an additional trustee;

"trust corporation" means -

(a) a corporation either appointed by the Court in any particular case to be a trustee or holding an unlimited trust licence issued under the Trusts (Regulation of Trusts Business) Act 2001D[6]D; and

(b) the person for the time being holding office as public trustee in his capacity as corporation sole under the Public Trustee Act 1906 of the Parliament of the United Kingdom;

"trust for sale" in relation to land means an immediate trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale;

"trust funds" include any funds in the hands of a trustee, whether at the time in a state of investment or not; [7]

“ultimate effective control” [REPEALED] [8] [9]

[Section 1 "trust corporation" amended by 1999:19 s.2(1) effective 6 September 1991 (see s.2(2) and (3) of 1999:19) and by 2001:22 Sch 2 para 3 effective 25 January 2002; Section 1 definitions "nonprofessional trustee" and "professional trustee" inserted by 2017 : 35 s. 3 effective 3 November 2017; Section 1 definitions "regulated agents and service providers" and "ultimate effective control" inserted by 2018 : 5 s. 3 effective 21 March 2018]

2. Application of Act

(1) This Act, except where otherwise expressly provided, applies to trusts including, so far as this Act applies thereto, executorships and administratorships constituted or created either before, on or after 1 March 1975.

(2) The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) This Act does not affect the legality or validity of anything done before 1 March 1975, except as otherwise herein expressly provided.

PART II - GENERAL POWERS OF TRUSTEES AND ESTATE REPRESENTATIVES

GENERAL POWERS

2A. Identification as trustee obligations[10]

A trustee, when acting on behalf of a trust, shall disclose his status as trustee to regulated agents and service providers whenever he conducts business with them on behalf of the trust for which he is the trustee.

[Section 2A inserted by 2018 : 5 s. 3 effective 21 March 2018]

3. Power of trustees to sell by auction etc.

(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2) Where a trust for sale or a power of sale of land held on lease is vested in a trustee, he may make, on such terms and conditions as he may think proper, a sub-lease of the land or any part thereof with a nominal reversion, where such sub-lease amounts in substance to a sale and the trustees have satisfied themselves that it is the most appropriate method of disposing of the land.

(3) Where trustees lease any land pursuant to any power conferred on them by subsection (2) they may sell any rent reserved on any reversion expectant upon the determination of such lease.

(4) Where any sub-lease purports to have been made in exercise of a power conferred by this section, that power shall, until the contrary is proved, be assumed to have been properly exercised and -

(a) the sub-lessee shall not, either before or on the execution of the sub-lease, be concerned to see or enquire whether a case has arisen to authorise the execution of that sub-lease; and

(b) neither the sub-lessee nor any of his successors in title shall be concerned to see to the application of any moneys paid in consideration of the lease.

(5) A trust or power to sell or dispose of land includes a trust or power to see or dispose of part thereof whether the division is horizontal, vertical, or made in any other way.

(6) (a) A trust or power to sell or dispose of land includes a power, either with or without consideration, to grant by writing an option to purchase or take a lease of the land, or any part thereof, or any easement, right, or privilege over or in relation to the same, at a price or rent fixed at the time of granting the option;

(b) every such option shall be made exercisable within an agreed number of years not exceeding ten.

4. Power to sell subject to depreciatory conditions

(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

(4) This section applies to sales and purchases made before, on or after 1 March 1975.

5. Power of trustee to give receipts

The receipt in writing of any trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

6. Power to compound liabilities

(1) Any one of several estate representatives, or a sole estate representative, or two or more trustees acting together, or a sole acting trustee where by the instrument, if any, creating the trust, or by any statutory provision, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit -

(a) accept any property, real or personal, before the time at which it is made transferable or payable; or

(b) sever and apportion any blended trust funds or property; or

(c) pay or allow any debt or claim on any evidence that he or they may think sufficient; or

(d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or

(e) allow any time for payment of any debt; or

(f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust,

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

7. Power to raise money by sale, mortgage, etc.

(1) Where trustees are authorised by the instrument, if any, creating the trust or by any provision of law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

(2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust.

8. Protection to purchasers and mortgages dealing with trustees

No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in the trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

9. Devolution of powers or trusts

(1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(2) Until the appointment of new trustees, the estate representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust, which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

(3) In this section "estate representative" does not include an executor who has renounced or has not proved.

10. Power to insure

A trustee may insure against loss or damage from any cause any building or other insurable property to any amount, including the amount of any insurance already in force, not exceeding the full value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

11. Application of insurance money where policy kept up under any trust, power or obligation

(1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or settlement, from whatever cause, shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, be capital money for the purposes of the trust or settlement, as the case may be.

(2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into court.

(3) Any such money -

(a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;

(b) in any other case, it shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statutory provision or otherwise.

(6) This section applies to policies effected either before, on or after 1 March 1975, but only to money received after such date.

12. Power of trustees of renewable leaseholds to renew and raise money for the purpose

(1) Subject to subsection (2), a trustee of any leaseholds for lives or years which are renewable from time to time either under any covenant or contract may, if he thinks fit, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting and do all such other acts as are requisite.

(2) Where by the terms of the instrument, if any, creating the trust the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

13. Deposit of documents for safe custody

Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any bank or trust company, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

13A. Accounts and records[REPEALED][11] [12] [13] [14] [15] [16]

13AA. Accounts and records — non-professional trustees [REPEALED][17] [18] [19] [20] [21]

13AB. Exemption — non-professional trustee[22][23]

13B. Information to be retained by exempted company and exempted trustee [REPEALED][24] [25] [26] [27] [28] [29] [30] [31] [32] [33]

14. Reversionary interests, valuations, and audit

(1) Where trust property includes any share, estate or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may -

(a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;

(b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;

(c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;

(d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release,

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission -

(a) to apply for a writ of distringas or any stop or other like order upon any securities or other property out of or on which such share, estate or interest or other thing in action as aforesaid is derived, payable or charged; or

(b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken so, however, that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share, estate or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any Act, from time to time (by suitably qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

15. Power to delegate certain functions by estate representatives

(1) This section is subject to the terms of the will, if any.

(2) Estate representatives may delegate all or any of their functions as estate representative to -

(a) a delegate; or

(b) one of the estate representatives (a "co-estate representative"),

and may pay such delegate or co-estate representative out of the property of the estate, whether income or capital or partly each as they may think fit.

(3) Subsections 15A(3) and (4) apply, with the necessary changes, to the exercise of the power of delegation under subsection (2).

[Section 15 repealed and replaced by 1999:19 s.3(1) effective 10 July 1999]

15A. Power to delegate certain functions by trustees[34]

(1) This section and section 15B are subject to the terms of the trust, and without prejudice to any of the powers conferred by sections 17 and 24.

(2) Trustees of a trust may delegate any or all of their delegable functions to -

(a) a delegate; or

(b) one of the trustees (a "co-trustee"),

and may pay such delegate or co-trustee out of the trust property, whether income or capital or partly each as they may see fit.

(3) In exercising any power to delegate, and in supervising the delegate, the trustees shall exercise reasonable care, skill and caution.

(4) Delegation under this section to a delegate, but not to a co-trustee, may be made on terms which -

(a) limit the liability of the delegate;

(b) do not prohibit actual or potential conflicts of interest in dealing with the trust property; or

(c) permit sub-delegation, including on such terms as are mentioned in paragraphs (a) and (b);

and the trustees shall not, by reason of delegating on such terms, be responsible for the act or default of any delegate or sub-delegate, provided that the trustees honestly believed delegation to that delegate on those terms to be in the best interests of the trust as a whole.

(5) In this section "trustee" does not include an estate representative.

[Section 15A inserted by 1999:19 s.3(2) effective 10 July 1999]

15B. Meaning of "delegable functions"

(1) For the purposes of section 15A, "delegable functions" shall be interpreted in accordance with this section.

(2) Functions of an administrative or managerial nature (including discretionary investment powers) are delegable functions.

(3) The following functions are not delegable -

(a) the formulation of policy criteria governing the investment or other application of trust property, and any decision as to the amount of money that may be raised on the security of trust property;

(b) the exercise of any discretionary duties or powers concerning distribution of income or capital to, or use of the trust property by, persons beneficially interested under the trust, or the appropriation of trust property in satisfaction of a beneficiary's entitlement to any capital;

(c) the exercise of any power to determine or to alter any interest of a person beneficially interested under the trust, including a power to deal with income or capital expenditure or receipts as if they were not of such income or capital nature and a power to bring forward or postpone the closing date for the total or partial termination of the trust;

(d) the exercise of any power to add a person or class of persons to, or exclude a person or class of person from, those who are beneficially interested under the trust;

(e) the exercise of any power to add to, revoke or vary the administrative powers under the trust or to release or restrict any powers under the trust;

(f) the exercise of any power to appoint or remove trustees;

(g) the exercise of any power to change the proper law governing the validity, administration or any other severable aspect of the trust.

[Section 15 B inserted by 1999:19 s.3(2) effective 10 July 1999]

16. Power to concur with others

Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or estate representatives may (without prejudice to any trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or estate representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

17. Power to delegate trusts during absence abroad

(1) A trustee intending to remain out of Bermuda[35] may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from Bermuda of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons so, however, that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this subsection.

(2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(3) The power of attorney shall not come into operation unless and until the donor is out of Bermuda, and shall be revoked by his return.

(4) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has been revoked by the act of the donor or by his death or return to Bermuda or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed.

(5) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by any Act or by the instrument creating the trust, including power, for the purpose of the transfer of any securities, himself to delegate to an attorney power to transfer such securities but not including the power of delegation conferred by this section.

(6) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any securities the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the securities are registered with any notice of the trust.

[Section 17(1) amended by 1999:19 s.4 effective 10 July 1999]

INDEMNITIES

18. Protection against liability in respect of rents and covenants

(1) Where an estate representative or trustee liable for -

(a) any rent, covenant, or agreement reserved by or contained in any lease; or

(b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent charge; or

(c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs,

satisfies all liabilities under the lease or grant which may have accrued, and been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the estate representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter -

(i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to, meet any future liability under the said lease or grant;

(ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) In this section "lease" includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; "grant" applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; "lessee" and "grantee" include persons respectively deriving title under them.

19. Protection by means of advertisements

(1) With a view to the conveyance to, or distribution among, the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale may give notice by advertisement published three times at intervals of not less than one week in a newspaper for the time being approved as the Gazette, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees within the time, not being less than one month from the publication of the last of the notices, fixed in the notice, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(2) At the expiration of the time fixed by the notice the trustees may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person whose claim the trustees have not had notice at the time of conveyance or distribution; but nothing in this section -

(a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or

(b) frees the trustees from any obligation to make inquiries and searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.

(3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(4) This section does not apply to the protection of estate representatives by means of advertisements under section 53 of the Administration of Estates Act 1974 [title 26 item 12].

20. Protection in regard to notice

A trustee or estate representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

21. Power of trustees to pay to attorney appointed by beneficiary

A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying so, however, that -

(a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;

(b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

22. Implied indemnity of trustees

(1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for those of any bank, broker, or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own deliberate, reckless or negligent breach of an equitable duty.[36]

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

[Section 22(1) amended by 1999:19 s.5 effective 10 July 1999]

22A. Remuneration of trust corporations[37]

Subject to -

(a) any contrary intention in the terms of the trust; or

(b) any order of a court,

a trust corporation shall be entitled to reasonable remuneration for its services as trustee, in addition to reimbursement of its expenses under section 22(2).

[Section 22A inserted by 1999:19 s.6 effective 10 July 1999]

MAINTENANCE, ADVANCEMENT AND PROTECTIVE TRUSTS

23. Power to apply income for maintenance and to accumulate surplus income during a minority

(1) Where any property is held by trustees in trust for any person for any estate or interest whatsoever, whether vested or contingent, then, subject to any prior estates or interests or charges affecting that property -

(a) during the infancy of any such person, if his estate or interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance or education, or otherwise for his benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is -

(i) any other fund applicable to the same purpose; or

(ii) any person bound by law to provide for his maintenance or education; and

(b) if such person on attaining the age of eighteen[38] years has not a vested estate or interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (3) to him, until he either attains a vested estate or interest therein or dies, or until failure of his estate or interest.

(2) In deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(3) During the infancy of any such person, if his estate or interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations as follows: -

(a) if any such person -

(i) attains the age of eighteen[39] years, or marries under that age, and his estate or interest in such income during his infancy or until his marriage is a vested estate or interest; or

(ii) on attaining the age of eighteen[40] years or on marriage under that age becomes entitled to the property from which such income arose in fee simple, or absolutely, or for an entailed estate or interest,

the trustees shall hold the accumulation in trust for such person absolutely, but without prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers during his infancy, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

(b) in any other case the trustees shall, notwithstanding that such person had a vested estate or interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom,

but the trustees may, at any time during the infancy of such person if his estate or interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(4) This section applies in the case of a contingent estate or interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under any provision of law, the legacy carries interest for the maintenance of the legatee, and in any such case at

last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five per centum per annum.

(5) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his estate representatives absolutely.

(6) This section does not apply where the instrument, if any, under which the interest arises came into operation before 1 March 1975.

[Section 23 subsection (1)(b), (3)(a)(i) and (ii) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

24. Power of advancement

(1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the estate or interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs so, however, that -

(a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether the amount of the presumptive or vested share, estate or interest of that person in the trust property; and

(b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and

(c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other estate or interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(2) This section applies only where the trust property consists of -

(a) money or securities which are not by any provision of law or in equity considered as land; or

(b) property held upon trust for sale, calling in and conversion and the proceeds of such sale, calling in and conversion are not in equity considered as land.

(3) [REPEALED][41]

(4) For the avoidance of doubt, when exercising the power of advancement the trustees may -[42]

(a) create any provisions, including -

(i) discretionary trusts and dispositive, administrative or managerial powers exercisable by any person; and

(ii) the delegation of discretions and duties to any person; and

(b) provide that the capital money may become subject to the terms of any other trust,

provided that the requirements of subsection (1) are satisfied.

[Section 24 subsection (4) added by 1999:19 s.7 effective 10 July 1999; subsection (3) repealed by 2004:34 s.2 effective 17 December 2004]

25. Protective trusts

(1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section referred to as "the principal beneficiary") for the period of his life or any less period, then, during that period (in this section referred to as "the trust period") the said income shall, without prejudice to any prior estate or interest be held -

(a) upon trust for the principal beneficiary until whichever of the following events shall first occur -

(i) the trust period expires; or

(ii) the principal beneficiary (whether before or after the termination of any prior estate or interests) does or attempts to do or suffers any act or thing, or until any other event (not being an advance under any statutory or express power) happens whereby, if during the trust period the said income were payable to the principal beneficiary absolutely, he would be deprived of the right to receive the same or any part thereof; and

(b) upon trust, where any of the events referred to in subparagraph (ii) of paragraph (a) happens during the subsistence of the trust period, to apply the said income (as the trustees in their absolute discretion, without being liable to account for the exercise of their discretion, think fit) for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons -

(i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; and

(ii) if as often as and while there is no living issue of the principal beneficiary, the principal beneficiary and his or her wife or husband, if any, and the persons who, if the principal beneficiary were actually dead without having married would for the time being be his next of kin,

so that the trustees in the exercise of their discretion may apply any income accrued but unapplied in any previous year for the purposes of the trusts implied as aforesaid in any subsequent year.

(2) This section does not apply to trusts coming into operation before 1 March 1968, and has effect subject to any variation of the trusts implied as aforesaid contained in the instrument creating the trust.

(3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

PART IIA - RECORD-KEEPING REQUIREMENTS AND COMPLIANCE [43]

25A. Accounts and records [44]

(1) A trustee shall keep or cause to be kept accurate and adequate records (including underlying documentation) with respect to proof of the identity and residential address of each of the following persons in relation to the trust—

(a) the settlor;

(b) the trustees;

(c) the protector (if any);

(d) the beneficiaries;

(e) where the beneficiaries have not (or have not all) been determined, the class of persons in whose main interest the trust is set up, or operates;

(f) any other individual who has control over the trust (as defined in section 25B).

(2) A trustee shall keep or cause to be kept accurate and adequate accounts and records (including underlying documentation) of the trustee's trusteeship appropriate to the trust and trust property with respect to—

(a) assets;

(b) liabilities;

(c) additions to trust and distributions, purchases and sales; and

(d) income and expenses.

(3) A trustee shall keep or cause to be kept an accurate and adequate record of the names and addresses of the regulated agents and service providers who provide service to the trust of which he is the trustee.

(4) All accounts and records required to be kept under this section shall be—

(a) kept current, accurate and updated on a timely basis; and

(b) retained for at least five years after the trustee's involvement with the trust ceases.

(5) Failure to comply with this section may render a trustee liable to a civil penalty under section 54A.

(6) Subject to section 25C, this section applies to trustees—

(a) whether they are professional or non-professional trustees;

(b) whether they are individuals or a body corporate;

(c) whether or not they are required to hold a licence under the Trusts (Regulation of Trust Business) Act 2001;

(d) whether or not they are exempted by or under an exemption order made under section 10 of that Act; and

(e) whether or not they are subject to the requirements of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

25B. Meaning of "control" [45]

(1) For the purposes of section 25A(1), "control" means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—

(a) dispose of, advance, lend, invest (other than as an investment manager), pay or apply trust property;

(b) direct, make or approve trust distributions;

(c) vary or terminate the trust;

(d) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(e) appoint or remove trustees or give another individual control over the trust; or

(f) direct, withhold consent to or veto the exercise of a power mentioned in the preceding paragraphs.

(2) Where an individual is the beneficial owner, as defined by section 6 of the Beneficial Ownership Act 2025 ("the 2025 Act"), of a body corporate or other entity which has control over the trust, the individual is to be regarded as having control over the trust.

(3) But an individual does not have control over a trust solely as a result of—

(a) his consent being required in accordance with section 24(1)(c) (power of advancement); or

(b) the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust.

(4) Any requirement in this Act to keep information relating to a person listed in section 25A(1) who is a body corporate or other entity includes information relating to the beneficial owner of that body or entity, as defined by section 6 of the 2025 Act.

(5) For the purposes of subsections (2) and (4), it is immaterial whether the 2025 Act applies to the body corporate or entity in question.

25C. Exemption — non-professional trustee [46]

A non-professional trustee shall be exempt from the requirements of section 25A in circumstances where he—

(a) is co-trustee of a trust and at least one other co-trustee is a licensed trustee under the Trusts (Regulation of Trust Business) Act 2001; or

(b) appoints a person who is a licensed trustee under the Trusts (Regulation of Trust Business) Act 2001 to maintain the trust records of the trust of which he is a trustee.

25D. Confidentiality [47]

(1) Subject to section 25E, a requirement imposed by or under this Act has effect despite any obligation as to confidentiality or other restriction on the disclosure of information relating to the persons listed in section 25A(1) in relation to a trust imposed by statute, contract or otherwise.

(2) Accordingly, a disclosure made or the sharing of such information in accordance with this Act does not breach—

(a) any obligation of confidence in relation to the information so disclosed; or

(b) any other restriction on access to or disclosure of the information so accessed (however imposed).

(3) Compliance by a person with any requirement under this Act to disclose or provide information is an absolute defence to any claim brought against that person in respect of any act done or any omission made by him in good faith in compliance with this Act.

25E. Privileged information [48]

A person shall not be required under this Act to provide or produce information or to answer questions which the person would be entitled to refuse to provide, produce or answer on the grounds of legal professional privilege in proceedings in the Court.

25F. Application of Public Access to Information Act 2010 [49]

(1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Act, no person who—

(a) obtains information relating to the persons listed in section 25A(1) in relation to a trust directly or indirectly for the purposes of, or pursuant to, this Act; and

(b) receives a request under the Public Access to Information Act 2010 for such information relating to information so requested,

shall disclose the request or such information so requested.

25G. Application of Personal Information Protection Act 2016 [50]

Nothing in this Act authorises a disclosure in contravention of any provision of the Personal Information Protection Act 2016 of personal information (as defined by that Act).

25H. Other identification and record-keeping etc. requirements not limited or restricted [51]

Nothing in this Act, unless expressly provided to the contrary, shall limit or otherwise restrict any obligation or requirement imposed by or under the Beneficial Ownership Act 2025, the Proceeds of Crime Act 1997, or any other statutory provision requiring the identification, collection, maintenance, updating, verification or production of information relating to persons listed in section 25A and 25B of this Act.

PART III - APPOINTMENT AND DISCHARGE OF TRUSTEES

26. Power of appointing new or additional trustees

(1) Where a trustee, whether original, substituted or additional, and whether appointed by a court or otherwise, is dead, or remains out of Bermuda for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then -

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the estate representatives of the last surviving or continuing trustee,

may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of Bermuda, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and this section shall apply accordingly.

(3) Where a corporation being a trustee is or has been dissolved, either before, on or after 1 March 1975, then, for the purposes of this section and of any statutory provision replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

(4) The power of appointment given by subsection (1) or any similar previous statutory provision to the estate representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.

(6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) whether original, substituted or additional and whether appointed by the court or otherwise, then and in any such case -

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,

may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee unless the instrument, if any, creating the trust, or any statutory provision provides to the contrary.

(7) Every new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(9) Where a trustee is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1968 [title 11 item 36], of exercising his functions as trustee and is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by virtue of subsection (1)(b) unless leave to make the appointment has been given by the judicial authority appointed to act for the purposes of Part IV of the Mental Health Act 1968.

27. Supplemental provisions as to appointment of trustees

On the appointment of a trustee for the whole or any part of trust property -

(a) the number of trustees may be increased; and

(b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed; and

(c) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed but, except where only one trustee was originally appointed, a trustee shall not be discharged from his trust unless there will be[52] a trust corporation, any other body corporate, wherever incorporated, with power to act as a trustee or at least two individuals to act as trustees[53] to perform the trust; and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

[Section 27 amended by 1999:19 effective 10 July 1999]

28. Evidence as to a vacancy in a trust

(1) A statement, contained in any instrument coming into operation after 1 March 1975 by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of Bermuda for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a bona fide purchaser, be conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

29. Retirement of trustee without a new appointment

(1) Where a trustee is desirous of being discharged from the trust or a severable part of the trust, and after his discharge there will be[54] a trust corporation, any other body corporate, wherever incorporated, with power to act as a trustee[55] or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust or the severable part thereof, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust or a severable part thereof, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

[Section 29 amended by 1999:19 s.8 effective 10 July 1999]

30. Vesting of trust property in new or continuing trustees

(1) Where by a deed a new trustee is appointed to perform any trust, then -

(a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and

(b) if the deed is made after 1 March 1975 and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then -

(a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates; and

(b) if the deed is made after 1 March 1975 and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before, on or after 1 March 1975, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) This section does not extend -

(a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;

(b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;

(c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under any statutory provision.

In this subsection "lease" includes an underlease and an agreement for a lease or underlease.

PART III A - MANAGING TRUSTEES[56]

30A. Managing trustees

A trust instrument may contain provisions by virtue of which the exercise of any of the trustees' powers may be reserved to a managing trustee, and no other trustee is liable for any of the decisions, acts or transactions of the managing trustee in so far as they amount to exercise of powers reserved by the trust instrument to the managing trustee.

[Part III A, Section 30A inserted by 1999:19 s.9 effective 10 July 1999]

PART IV - POWERS OF THE COURT

APPOINTMENT OF NEW TRUSTEES

31. Power of court to appoint new trustees

(1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(2) In particular and without prejudice to the generality of subsection (1), the court may make an order appointing a new trustee in substitution for a trustee who is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1968 [title 11 item 36], of exercising his functions as trustee, or is

a bankrupt, or is a corporation which is in liquidation or has been dissolved, or who for any other reason whatsoever appears to the court to be undesirable as a trustee.

(3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) Nothing in this section gives power to appoint an executor or administrator.

32. Power of court to authorise remuneration

The court may, in any case in which the circumstances appear to it so to justify, authorise any person to charge such remuneration for his services as trustee as the court may think fit.

33. Powers of new trustee appointed by the court

Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

VESTING ORDERS

34. Vesting orders of land

(1) Subject to subsection (2), where -

(a) the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power; or

(b) a trustee entitled to or possessed of any land or estate or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person -

(i) is an infant; or

(ii) is out of the jurisdiction of the court; or

(iii) cannot be found, or, being a corporation, has been dissolved; or

(c) it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any estate or interest in land; or

(d) it is uncertain whether the last trustee known to have been entitled to or possessed of any estate or interest in land is living or dead; or

(e) there is no estate representative of a deceased trustee who was entitled to or possessed of any estate or interest in land, or where it is uncertain who is the estate representative of a deceased trustee who was entitled to or possessed of any estate or interest in land; or

(f) a trustee jointly or solely entitled to or possessed of any estate or interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or estate or interest or a release of the right, to convey the land or estate or interest or to release the right, and has wilfully refused or neglected to convey the land or estate or interest or release the right for twenty-eight days after the date of the requirement; or

(g) land or any estate or interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient;

the court may make an order (in this Act referred to as a "vesting order") vesting the land or estate or interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct.

(2) Where an order made under subsection (1) -

(a) is consequential on the appointment of a trustee the land or estate or interest therein shall be vested for such estate or interest as the court may direct in the persons who on the appointment are the trustees; and

(b) relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is an infant or out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved, the land estate interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

35. Orders as to contingent rights of unborn persons

Where any estate or interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that estate or interest on any trust, the court may make an order -

(a) releasing the land or estate or interest therein from the contingent right; or

(b) vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

36. Vesting order in place of conveyance by infant mortgagee

Where any person entitled to or possessed of any estate or interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the court may make an order vesting or releasing or disposing of the estate or interest in the land or the right in like manner as in the case of an infant trustee.

37. Vesting order in place of conveyance by estate representative of mortgagee

Where -

(a) a mortgagee of land has died without having entered into possession or into the receipt of the rents and profits thereof; and

(b) the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that person consents to an order for the reconveyance of the land,

the court may make an order vesting the land in such person in such manner and for such estate or interest as the court may direct, where -

(i) an estate representative or devisee of the mortgagee is out of the jurisdiction of the court or cannot be found, or, being a corporation, has been dissolved; or

(ii) an estate representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same or does not convey the same for the space of twenty-eight days after a proper instrument for conveying the land has been tendered to him by or on behalf of the person so entitled; or

(iii) it is uncertain which of several devisees of the mortgagee was the survivor; or

(iv) it is uncertain whether the estate representative of the mortgagee or the survivor of several devisees of the mortgagee is living or dead; or

(v) there is no estate representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died, and it is uncertain who is his estate representative or devisee.

38. Vesting order consequential on order for sale or mortgage of land

Where the court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any estate or interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the court thinks fit in the purchaser or mortgagee or in any other person.

39. Vesting order consequential on judgment for specific performance, etc.

Where a judgment is given for the specific performance of a contract concerning any estate or interest in land, or for the partition, or for sale or exchange of any estate or interest in land, or generally where any judgment is given for the conveyance of any estate or interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare -

(a) that any of the parties to the action are trustees of any estate or interest in the land or any part thereof within the meaning of this Act; or

(b) that the estates or interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the estates or interests of persons who, on coming into existence, would be trustees within the meaning of this Act;

and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

40. Effect of vesting order

A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect -

(a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the court directs; or

(b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the court directs,

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

41. Power to appoint person to convey

Where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

42. Vesting orders as to stock and things in action

(1) Subject to subsection (2), where -

(a) the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power; or

(b) a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action -

(i) is an infant; or

(ii) is out of the jurisdiction of the court; or

(iii) cannot be found, or, being a corporation, has been dissolved; or

(iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled; or

(v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him; or

(c) it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead; or

(d) stock is standing in the name of a deceased person whose estate representative is under disability; or

(e) stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient,

the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the court may appoint.

(2) Where -

(a) an order made under subsection (1) is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(b) the person whose right is dealt with by an order made under subsection (1) was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.

(3) Where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer so, however, that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.

(4) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act, may transfer the stock to himself or any other person, according to the order, and the bank and all other companies shall obey every order under this section according to its tenor.

(5) After notice in writing of an order under this section it shall not be lawful for the bank or any other company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(6) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under this Act is to be exercised.

(7) The provisions of this Act as to vesting orders shall apply to shares in British ships registered in Bermuda as if they were stock.

43. Vesting orders of charity property

The powers conferred by this Act as to vesting orders may be exercised for vesting any estate or interest in land, stock, or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

44. Vesting orders in relation to infant's beneficial interests

Where an infant is beneficially entitled to any property the court may, with a view to the application of the capital or income thereof for the maintenance, or education, or otherwise for the benefit of the infant, make an order -

(a) appointing a person to convey such property; or

(b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit.

45. Orders made upon certain allegations to be conclusive evidence

Where a vesting order is made as to any land under this Act or under any Act relating to persons of unsound mind founded on an allegation -

(a) of the personal incapacity of a trustee or mortgagee; or

(b) that a trustee or mortgagee or the estate representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved; or

(c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or

(d) that it is uncertain whether the last trustee or the estate representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or

(e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his estate representative or the person interested,

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

46. Application of vesting order to property out of Bermuda

The powers of the court to make vesting orders under this Act shall extend to all property wherever situated.

JURISDICTION TO MAKE OTHER ORDERS

47. Power of court to authorise transactions relating to trust property

(1) Where any transaction affecting or concerning any property vested in trustees, 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 trustees by the instrument, if any, creating the trust, or by any provision of law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The court may, from time to time, rescind or vary any order made under this section or may make any new or further order.

(3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

(4) In this section, "transaction" includes any sale, exchange, assurance, grant, lease, partition, surrender, reconveyance, release, reservation, or other disposition, and any purchase or other acquisition, and any covenant, contract, or option, and any investment or application of capital, and any compromise or other dealing, or arrangement.

47A Jurisdiction of court to set aside flawed exercise of fiduciary power[57]

(1) If the court, in relation to the exercise of a fiduciary power, is satisfied on an application by a person specified in subsection (5) that the conditions set out at subsection (2) are met, the court may—

(a) set aside the exercise of the power, either in whole or in part, and either unconditionally or on such terms and subject to such conditions as the court may think fit; and

(b) make such order consequent upon the setting aside of the exercise of the power as it thinks fit.

(2) The conditions referred to in subsection (1) are that—

(a) in the exercise of the power, the person who holds the power did not take into account one or more considerations (whether of fact, law, or a combination of fact and law) that were relevant to the exercise of the power, or took into account one or more considerations that were irrelevant to the exercise of the power; and

(b) but for his failure to take into account one or more such relevant considerations or his having taken into account one or more such irrelevant considerations, the person who holds the power —

(i) would not have exercised the power;

(ii) would have exercised the power, but on a different occasion to that on which it was exercised; or

(iii) would have exercised the power, but in a different manner to that in which it was exercised.

(3) If and to the extent that the exercise of a power is set aside under this section, to that extent the exercise of the power shall be treated as never having occurred.

(4) The conditions set out in subsection (2) may be satisfied without it being alleged or proved that in the exercise of the power, the person who holds the power, or any adviser to such person, acted in breach of trust or in breach of duty.

(5) An application to the court under this section may be made by—

(a) the person who holds the power;

(b) where the power is conferred in respect of a trust or trust property, by any trustee of that trust, or by any person beneficially interested under that trust, or (in the case of a purpose trust) by any person appointed by or under the trust for the purposes of section 12B(1) of the Trusts (Special Provisions) Act 1989;

(c) where the power is conferred in respect of a charitable trust or otherwise for a charitable purpose, the Attorney-General; or

(d) with the leave of the court, any other person.

(6) No order may be made under subsection (1) which would prejudice a bona fide purchaser for value of any trust property without notice of the matters which allow the court to set aside the exercise of a power over or in relation thereto.

(7) The jurisdiction conferred upon the court by this section may be exercised by the court in respect of fiduciary powers, whether conferred or exercised before, on or after the commencement date of the Trustee Amendment Act 2014.

(8) In this section—

"fiduciary power" means any power that, when exercised, must be exercised for the benefit of or taking into account the interests of at least one person other than the person who holds the power; and

"power" includes a discretion as to how an obligation is performed;

"person who holds the power" includes any person on whom a power has been conferred, whether or not that power is exercisable by that person alone, and any person to whom the exercise of a power has been delegated.

[Section 47A inserted by 2014 : 28 s. 2 effective 29 July 2014]

48. Jurisdiction of court to vary trusts

(1) Subject to subsection (2), where property is held on any trusts or settlements arising under any will, settlement or other disposition, the court may if it thinks fit by order approve on behalf of -

(a) any person having, directly or indirectly, an estate or interest, whether vested or contingent, under the trusts or settlements who by reason of infancy or other incapacity is incapable of assenting; or

(b) any person (whether ascertained or not) who may become entitled, directly or indirectly, to an estate or interest under the trusts or settlements 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 persons so, however, that this paragraph shall not include any person who would be of that description, or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the court; or

(c) any person unborn; or

(d) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary 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 trusts or settlements,

or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts or settlements.

(2) Except by virtue of subsection (1)(d) the court shall not approve an arrangement on behalf of any person unless the carrying out of the arrangement would be for the benefit of that person.

(3) In subsection (1), "protective trusts" means the trusts specified in section 25(1)(a) and (b) or any like trusts, "the principal beneficiary" has the same meaning as in section 25(1) and "discretionary interest" means an interest arising under the trust specified in section 25(1)(b) or any like trust.

(4) Nothing in this section shall be taken to limit the powers conferred by section 47.

49. Persons entitled to apply for orders

(1) An order under this Act for the appointment of a new trustee or concerning any estate or interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any estate or interest in land, stock, or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

50. Power to give judgment in absence of a trustee

Where in any action the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

51. Power to charge costs on trust estate

The court may order the costs and expenses of and incidental to any application for an order under this Act or for any order or declaration in respect of any property subject to a trust, or of and incidental to any such order or declaration, or any document executed or act performed in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made or performed, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

52. Power to relieve trustee from personal liability

(1) If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before, on or after 1 March 1975, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same.

(2) In this section "trustee" includes a person who has ceased to be a trustee and the estate representative of a deceased trustee.

53. Power to make beneficiary indemnify for breach of trust

(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, make such order as to the court seems just, for impounding all or any part of the estate or interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

(2) This section applies to breaches of trust committed as well before as on or after 1 March 1975.

PAYMENT INTO COURT

54. Payment into court by trustees

(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court; and the same shall, subject to rules of court, be dealt with according to the orders of the court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any bank, broker, or other depositary, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(5) Every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid, or delivered.

54A. Civil penalty[58]

(1) Where a trustee knowingly and wilfully contravenes—[59] [60]

(a) section 25A; or

(b) regulations made under section 63B requiring registration with, and provision of information or submission of returns to, a supervisory authority,

the court may impose a civil penalty up to a maximum amount of $20,000 for each contravention.

(2) A civil penalty levied under subsection (1) shall be enforced as a civil debt. [61]

(3) For the avoidance of doubt—

"court" shall have the same meaning as in section 1 of this Act.

(4) A trustee, being a recipient of a civil penalty under subsection (1), may appeal the imposition of the penalty within seven days of the order being issued by the court. [62]

(5) Any appeal under subsection (4) shall be commenced by notice of motion filed within seven days of the notification of the decision of the court; and the Attorney-General shall be served with a copy of the notice.

[Section 54A inserted by 2017:35 s. 3 effective 3 November 2017; Section 54A subsection (1) amended by 2018:51 s. 14 effective 10 August 2018]

54B. Civil penalty - Chief Justice may make rules[63]

(1) For the purposes of section 54A, the Chief Justice may make rules generally for regulating civil penalty proceedings under this Act and, without prejudice to the generality of the foregoing, may make rules in respect of any matter which he considers necessary for the purposes of any proceedings under this Act.

(2) Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.

[Section 54B inserted by 2017:35 s. 3 effective 3 November 2017]

54C. Civil penalty - service of notices[64]

(1) Any notice, order or other document which is required to be served under this Act on any person may be served—

(a) by delivering it to the person on whom it is to be served;

(b) by leaving it at the usual or last known place of abode of that person;

(c) by sending it by prepaid post addressed to that person at his usual or last known place of abode;

(d) in the case of a body corporate, by delivering it or sending it by prepaid post to the secretary or clerk of that body at its registered office or other place of business;

(e) if it is not practicable after reasonable enquiry to ascertain the name or address of the owner of any land on whom it should be served, by addressing it to him by the description of "owner" or as the case may be "occupier" of the land to which it relates and by delivering it to some person occupying any premises on the land; or if there is no such person to whom it can be delivered, by affixing it or a copy thereof to some conspicuous part of the premises.

(2) Service effected by delivery pursuant to subsection (1)(a) or (d) shall have effect from the time of delivery.

(3) Service effected otherwise than by delivery shall be deemed to have been effected three days after the steps taken pursuant to any provisions of subsection (1) have been taken, unless and to the extent that the contrary is proved.

[Section 54C inserted by 2017:35 s. 3 effective 3 November 2017]

PART V - INVESTMENTS[65]

[Part V, Sections 55 – 63 substituted by 1999:19 s. 10(1) effective 10 July 1999 subject to savings in s. 10(3) of 1999:19]

55 [OMITTED]

PART VA - INVESTMENTS[66]

55A. Investment powers

(1) A trustee's power of investment under this section shall be subject to any enlargement or restriction of his powers of investment set out in the instrument creating the trust.

(2) Nothing in this section shall restrict the powers of the court under section 47.

(3) A trustee may invest or otherwise apply trust property in the purchase or acquisition of property of any kind, whether or not situated in Bermuda, whether or not income-producing, with or without security, and whether for the purpose of -

(a) receiving an appropriate total return from income and capital appreciation;

(b) controlling or limiting risk; or

(c) benefiting persons interested in any way whatsoever in the income produced by trust property;

or for a mixture of such purposes.

(4) In so investing or otherwise applying trust property, a trustee shall act as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust and by exercising reasonable care, skill and caution.

(5) In determining whether a trustee has acted in accordance with this section, any decision to invest or otherwise apply trust property shall be evaluated in the context of the trust property as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the purposes, terms, distribution requirements and other circumstances of the trust.[67]

(6) In this section, "other circumstances of the trust" includes the wishes of beneficiaries and settlors, including in respect of investment strategies that align with their views regarding— [68]

(a) the impact of investments on the environment, wider society in Bermuda or overseas, and otherwise whether in Bermuda or overseas; and

(b) appropriate governance related to investments,

insofar as such wishes or views may be known to the trustee from time to time.

[Part VA, Section 55A inserted by 1999:19 s.10(1) effective 10 July 1999;]

PART VI - GENERAL PROVISIONS

63A. Designation of supervisory authority [69]

(1) The Minister may by order designate one or more supervisory authorities for the purpose of overseeing compliance with this Act by trustees.

(2) Different supervisory authorities may be designated in relation to different descriptions of trustees.

(3) This section does not apply to trustees who are prohibited from carrying on trust business without a licence granted by the Bermuda Monetary Authority under the Trusts (Regulation of Trust Business) Act 2001.

63B. Regulations and orders [70]

(1) The Minister may make regulations for the purposes of this Act, prescribing anything that is necessary or expedient for the carrying out of the provisions of this Act or to give effect to it.

(2) Without prejudice to the generality of subsection (1), the regulations may in particular—

(a) require trustees to register with a supervisory authority, on payment of such fee as may be prescribed;

(b) require trustees to provide information and submit such returns as may be required by the supervisory authority within prescribed timelines;

(c) prescribe the purposes for which, and the persons to whom, the supervisory authority may disclose information provided by the trustees;

(d) provide that failure to comply with the regulations may result in the imposition of a civil penalty under this Act.

(3) Regulations and orders made under this Act shall be subject to the negative resolution procedure; save that regulations prescribing a fee for registration with a supervisory authority shall be subject to the affirmative resolution procedure.

64. Indemnify to banks and others

This Act, and every order purporting to be made under this Act, shall be a complete indemnity to banks and to all persons for any acts done pursuant thereto, and it shall not be necessary for a bank or for any person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it.

65. Enactments repealed - [OMITTED]

66. Commencement - [OMITTED]

FIRST SCHEDULE - [OMITTED]

[OMITTED]

[First Schedule substituted by Part VA by 1999:19 s.10(1) effective 10 July 1999 subject to savings in s.10(3) of 1999:19]

SECOND SCHEDULE - ENACTMENTS REPEALED [OMITTED]

[OMITTED]

[Assent Date: 31 January 1975]

[This Act was brought into operation on 1 March 1975]

[Amended by:

1977:35

BR 34/1978

1984:10

BR 81/1999

1999:19

2001:20

2001:22

2004:34

2012:27

2014:28

2017:35

2018:5

2018:51

2025:24

2026:26]

BERMUDA

TRUSTS (SPECIAL PROVISIONS) ACT 1989

1989:62

WHEREAS it is expedient to make provision on the law respecting trusts, to make provision respecting a trust for a purpose or purposes, to make provision for administrative powers in trusts and for matters connected therewith and incidental thereto:

[words of enactment omitted]

1. Short Title and commencement

This Act may be cited as the Trusts (Special Provisions) Act 1989 and shall come into operation on 31 January 1990.

1A Interpretation[71] [72]

(1) In this Act, unless the context provides otherwise—

"Bermuda trust" means a trust governed in whole or in part by the law of Bermuda;

"child" has the meaning given in subsection (2); [73]

"foreign court" means any court or tribunal (including an arbitral tribunal), or any other person or body exercising judicial or quasi-judicial functions, in a territory other than Bermuda;

"foreign law" means any law of a jurisdiction other than Bermuda;

"foreign order" means any interim or final judgment, award, order or other decision of a foreign court;

"foreign trust" means any trust other than a Bermuda trust;

"settlor" includes—

(a) a testator who grants powers under a testamentary trust by the terms of his last will and testament; and

(b) a person who by a declaration of trust declares that assets held by him beneficially shall be held by him on the terms of the trust so declared.

(2) A reference to a child or children in a trust instrument shall be construed as provided under section 18A of the Children Act 1998, unless an express contrary intention appears in the trust instrument. [74]

[Section 1A inserted by 2020:43 s. 2 effective 5 August 2020; amended by 2020:44 s. 2 effective 5 August 2020]

PART I - TRUSTS

2. Trust described

(1) For the purpose of this part, the term "trust" refers to the legal relationship created, either inter vivos or on death, by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

(2) A trust has the following characteristics:

(a) the assets constitute a separate fund and are not a part of the trustee's own estate;

(b) title to the trust stands in the name of the trustee or in the name of another person on behalf of the trustee;

(c) the trustee has the power and the duty in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

(3) The reservation or grant[75] by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

[Section 2 subsection (3) amended by 2014:22 s. 2 effective 16 July 2014]

2A. Reserved powers[76] [77]

(1) Without prejudice to the generality of section 2(3), the reservation by the settlor to himself or grant to any other person in a trust instrument governed by the laws of Bermuda of any limited beneficial interest in the trust property whether of income or capital, or any or all of the powers specified in subsection (2) (or both such an interest and any or all of such powers) shall not —

(a) invalidate the trust; or

(b) prevent the trust taking effect according to its terms; or

(c) cause any or all of the trust property to be part of the real estate or personal estate of the settlor for the purposes of the Wills Act 1988.

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

(a) in the case of a reservation to the settlor or other donor of trust property, power to revoke the trusts in whole or in part;

(b) power to vary or amend the terms of a trust instrument or any of the trusts, purposes or powers arising thereunder in whole or in part;

(c) a general, intermediate or special power to advance, appoint, pay, apply, distribute or transfer trust property (whether income or capital or both) or to give directions for the making of any such advancement, appointment, payment, application, distribution or transfer;

(d) power to act as, or give binding directions as to the appointment or removal of, a director or an officer of any company wholly or partly owned by the trust or to direct the trustee as to the manner of exercising voting rights attaching to any of the shares held in such company;

(e) power to give binding directions in connection with the purchase, retention, holding, sale or other commercial or investment dealings with trust property or any investment or reinvestment thereof or the exercise of any powers or rights arising from such trust property;

(f) power to appoint, add, remove or replace any trustee, protector, enforcer or any other office holder or any advisor including any investment advisor or any investment manager;

(g) power to add, remove or exclude any beneficiary, class of beneficiaries or purpose;

(h) power to change the governing law and the forum for administration of the trust; and

(i) power to restrict the exercise of any powers, discretions or functions of a trustee by requiring that they shall only be exercisable with the consent, or at the direction of, any person specified in the trust instrument.

(3) A trustee who—

(a) has acted, or refrained from acting, in compliance with, or as a result of, a valid exercise of any of the powers set out in subsection (2), shall not, by reason only of such compliance, commit a breach of trust or other fiduciary or equitable duty; or

(b) is or has been prevented from acting in accordance with any of the powers specified in subsection (2), or any exercise of those powers by reason of the provisions of any applicable law or because insufficient rights or powers are exercisable by the trustee in relation to the trust property, shall not, by reason only of such non-compliance or failure to act, commit a breach of trust or other fiduciary or equitable duty.

(4) Where a power to revoke, a general power of appointment or the present beneficial interest in respect of all or part of the trust property is reserved or granted to a person, a trust instrument may provide that for so long as the settlor, beneficiary or other holder of the power is not the sole trustee, the trustee shall owe no duty to any other person in relation to all or such part of the trust property and accordingly shall have no responsibility to any other person for acts or omissions occurring during that person's lifetime in respect of that property.

(5) No person other than a person in whom trust property or an interest in trust property is vested and who is formally appointed as a trustee, shall be or become a trustee by reason only of the reservation or grant of any of the powers set out in subsection (2).

(6) A trust instrument governed by the laws of Bermuda may provide that the reservation or grant of any of the powers set out in subsection (2) shall not impose a fiduciary duty on the holder of such powers.

(7) In relation to any trust governed by the laws of Bermuda created after the commencement date of the Trusts (Special Provisions) Amendment Act 2014, in the absence of any contrary provision of the trust—

(a) in the case of the reservation by a settlor or the grant to a beneficiary of any of the powers specified in subsection (2), where so long as the holder of the power is not the sole trustee, such powers shall be personal and non-fiduciary; and

(b) in any other case, such powers shall be fiduciary.

(8) Subject to any contrary provision herein, this section and section 2(3) apply to any trusts governed by the laws of Bermuda, whether created before, on or after the commencement date of the Trusts (Special Provisions) Amendment Act 2014, and to acts and omissions occurring while the trust was governed by the laws of Bermuda.

(9) [REPEALED][78]

[Section 2A inserted by 2014:22 s. 3 effective 16 July 2014; section 2A(9) repealed by 2020:43 s. 3 effective 5 August 2020]

3. Application

This Part applies to trusts created voluntarily and evidenced in writing and also to any other trusts of property arising under the law of Bermuda or by virtue of a judicial decision whether in Bermuda or elsewhere.

4. Non-application

This Part does not apply to the extent that the law specified by section 5 or 6 does not provide for trusts or the category of trusts involved.

5. Governing law

(1) A trust shall be governed by the law chosen by the settlor whose choice shall be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of circumstances of the case.

(2) Where the law chosen under subsection (1) does not provide for trusts or the category of trusts involved, the choice shall not be effective and the law specified in section 6 applies.

6. No applicable law chosen

(1) Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected and in ascertaining the law with which a trust is most closely connected references 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.

(2) A Bermuda trust may provide terms to change the law governing the trust from the law of Bermuda to a new governing law but such change is valid and effective only if the new governing law recognises the validity of the trust and the respective interests of the beneficiaries.[79] [80]

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

[Section 6(2) amended by 2020:43 s. 4 effective 5 August 2020]

7. Law governing validity and construction of trust

The law specified by section 5 or 6 shall govern the validity of the trust, its construction, its effects and the administration of the trust and in particular the law shall govern -

(a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;

(b) the rights and duties of trustees among themselves;

(c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;

(d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;

(e) the powers of investment of trustees;

(f) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;

(g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;

(h) the variation or termination of the trust;

(i) the distribution of the trust assets;

(j) the duty of trustees to account for their administration.

8. Choosing different laws

In applying this part a severable aspect of the trust, particularly matters of administration, may be governed by a different law.

9. Jurisdiction of Supreme Court[81]

(1) The Supreme Court has jurisdiction to hear and determine any claim concerning the validity, construction, effects or administration (including in respect of any of the matters referred to in section 7(a) – (j)) of—

(a) a Bermuda trust; or

(b) a foreign trust to which subsection (2) applies.

(2) A foreign trust referred to in subsection (1)(b), is a trust where—

(a) the trust instrument contains a clause conferring jurisdiction on the courts of Bermuda;

(b) all or part of the administration of the trust is carried on in Bermuda;

(c) a trustee is incorporated or resident in Bermuda; or

(d) trust property is situated in Bermuda (but only in relation to a claim concerning that property).

(3) The jurisdiction of the Supreme Court is applicable as provided under this section notwithstanding that the person against whom the claim is made is not in Bermuda or (where applicable) that any wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.

[Section 9 repealed and replaced by 2020:43 s. 5 effective 5 August 2020]

10. Exclusion of application of foreign law[82]

(1) No foreign law that is excluded under subsection (2) shall apply to the determination of any question concerning a Bermuda trust, including any question concerning—

(a) the capacity of a settlor to dispose of property upon the trusts of a Bermuda trust;

(b) any right or interest in or to property disposed upon the trusts of a Bermuda trust;

(c) the validity of a disposition of, or a declaration of trust in respect of, property upon the trusts of a Bermuda trust, including whether any such disposition should be declared void or invalid, rescinded, set aside, varied or amended; or

(d) any obligation or liability of a settlor, trustee or beneficiary of a Bermuda trust.

(2) For the purposes of subsection (1), a foreign law is excluded if it creates, recognises, or defeats, or gives a foreign court power to create, recognise, or defeat, any right or interest in or to property, or any obligation or liability on any person, by virtue or in consequence of, or in anticipation of—

(a) the death of a person (other than as a result of a voluntary disposition, whether testamentary or otherwise, by the deceased);

(b) the creation, existence or dissolution of a relationship of marriage, domestic partnership (or analogous relationship), cohabitation or other familial relationship, whether by blood or adoption; or

(c) bankruptcy, liquidation or an analogous insolvency process, including a provisional process or a process for the restructuring of debts.

(3) No foreign law shall apply to the determination of any question concerning the validity, construction, effects or administration of a Bermuda trust, including any of the matters referred to under section 7(a) – (j).

(4) If and to the extent that this section excludes the application of foreign law, to that extent the court shall apply instead the law of Bermuda excluding rules of conflict of laws (save for those set out herein).

(5) This section shall not apply to the determination of any question to the extent that the question—

(a) concerns immovable property outside Bermuda; or

(b) relates to a severable aspect of a Bermuda trust governed by foreign law. [83] [84]

[Section 10 subsection (3) inserted by 2004:35 s.2 effective 17 December 2004; section 10 repealed and replaced by 2020:43 s. 6 effective 5 August 2020]

11. Restriction on effect of foreign orders[85]

(1) The court shall not give effect to any foreign order that is inconsistent with section 10.

(2) In this section, to give effect to a foreign order means to recognise, enforce, or otherwise give effect directly or indirectly to that foreign order, including by the conferral of any right, the imposition of any obligation or liability, or the raising of any estoppel.

[Section 11 substituted by 2004:35 s.3 effective 17 December 2004; section 11 repealed and replaced by 2020:43 s. s. 7 effective 5 August 2020]

PART II - PURPOSE TRUSTS

[Part II substituted by 1998:24 effective 1 September 1998]

12A. Purpose trusts

(1) A trust may be created for a non-charitable purpose or purposes provided that the conditions set out in subsection (2) are satisfied; and in this Part such a trust is referred to as a "purpose trust".

(2) The conditions are that the purpose or purposes are -

(a) sufficiently certain to allow the trust to be carried out,

(b) lawful, and

(c) not contrary to public policy.

(3) A purpose trust may only be created in writing.

(4) The rule of law (known as the rule against excessive duration or the rule against perpetual trusts) which limits the time during which the capital of a trust may remain unexpendable to the perpetuity period under the rule against perpetuities shall not apply to a purpose trust.

(5) [REPEALED by 2009:23][86]

[Section 12A amended by 2009:23 s.11 effective 1 August 2009]

12B. Enforcement and variation of purpose trust by the court

(1) The Supreme Court may make such order as it considers expedient for the enforcement of a purpose trust on the application of any of the following persons -

(a) any person appointed by or under the trust for the purposes of this subsection;

(b) the settlor, unless the trust instrument provides otherwise;

(c) a trustee of the trust;

(d) any other person whom the court considers has sufficient interest in the enforcement of the trust;

and where the Attorney-General satisfies the court that there is no such person who is able and willing to make an application under this subsection, the Attorney-General may make an application for enforcement of the trust.

(2) On an application in relation to a purpose trust by any of the following persons -

(a) any person appointed by or under the trust for the purposes of this subsection;

(b) the settlor, unless the trust instrument provides otherwise;

(c) a trustee of the trust,

the court may if it thinks fit approve a scheme to vary any of the purposes of the trust, or to enlarge or otherwise vary any of the powers of the trustees of the trust.

(3) Where any costs are incurred in connection with any application under this section, the Supreme Court may make such order as it considers just as to payment of those costs (including payment out of the property of the trust).

12C. Effect of non-compliance

Nothing in this Part affects the creation, termination or validity of any trust created under any other law, but, save as aforesaid, purpose trusts which do not comply with section 12A are invalid.

12D. Land in Bermuda

No interest in land in Bermuda shall be held, directly or indirectly, in a purpose trust.

PART III - INCORPORATION OF ADMINISTRATIVE POWERS BY REFERENCE

17. Incorporation by reference

Any instrument creating any trust may incorporate by reference any of the provisions set out in the Schedule, in which case the following expressions appearing in the provisions have, unless a contrary intention appears, the meanings respectively assigned to them:

"the Settlor" includes a person who provides trust property or makes a testamentary disposition on trust or to a trust;

"the Trustees" means the trustees for the time being of the trust;

"the Trust Fund" means -

(a) the property in respect of which trusts are declared;

(b) all property paid or transferred to or otherwise vested in and accepted by the Trustees and in respect of which a memorandum signed by the Trustees is conclusive evidence;

(c) all income which, in accordance with the provisions of the trust, is accumulated by the Trustees and added to the capital thereof;

(d) all money, investments and other property from time to time representing all property and income mentioned in paragraphs (a), (b) and (c) and any part of the said property or income.

SCHEDULE – TRUST FOR SALE

(Section 17)

1. Trust for Sale

(1) The Trustees shall stand possessed of any real property from time to time comprised in the Trust Fund Upon Trust to sell the same with power to postpone the sale thereof or of any part thereof for such period as they shall in their absolute discretion think fit and shall stand possessed of all other investments comprised in the Trust Fund Upon Trust at such discretion either to retain the same in the existing state thereof for such period as they shall think fit or at any time or times to sell the same or any part thereof.

(2) The Trustees shall hold the net proceeds of any sale of investments comprised in the Trust Fund and all other monies held or received by them as capital monies Upon Trust to invest the same at their discretion in or upon any of the investments by this instrument authorised with power to vary or transpose such investments for or into any others of a like nature.

2. Powers of Investment

TRUST moneys to be invested under the trusts of this instrument may be applied or invested in any currency and in any part of the world in the purchase of or upon the security of such common or preferred stocks shares mutual fund shares unit trust units or other securities or commodities (including precious metals) bonds notes debentures certificates of deposit or time deposits land or other investments or property of whatever nature (and whether or not income-producing or paying dividends or interest) and whether involving liabilities or not or upon such personal credit with or without security as the Trustees in their absolute discretion think fit without being restricted to trustee investments prescribed under the proper law governing this instrument and to the intent that the Trustees shall have the same powers in all respects as if they were absolute owners beneficially entitled And in addition (but without prejudice to the generality of the foregoing) the Trustees may invest the Trust Fund in the shares or debenture of any company whatsoever and wheresoever incorporated without the need for diversification and without being liable for any loss occasioned thereby.

3. Power with regard to mode of application of capital and income

ANY power by this instrument or by law conferred on the Trustees to pay transfer appropriate or apply the Trust Fund or any income thereof for the benefit of any beneficiary may at the discretion of the Trustees be validly exercised (without prejudice to the generality of such power or to any other mode of application) -

(a) by paying or transferring the same to the trustees of any settlement (whether or not such trustees are resident in Bermuda and whether or not the proper law of such settlement is the law of Bermuda) the provisions of which are in the opinion of the Trustees for the benefit of such beneficiary notwithstanding that such settlement may also contain trusts powers or provisions (discretionary or otherwise) in favour of other persons or objects Provided however that no such payment or transfer shall be made so as to infringe the rule against perpetuities as applicable to the trusts created by this instrument; or

(b) (in the case of any such person who is a minor) by paying or transferring the same to such minor's parent or guardian or some other person for the time being having the care or custody of such minor upon the recipient undertaking to apply the same for the benefit of the minor;

And the Trustees shall not thereafter be under any obligation to see to the further application of the capital or income so paid or transferred and the receipt of such trustees parent guardian or other person shall be a full sufficient and complete discharge to the Trustees.

4. Additional Powers

THE Trustees shall have the following powers in addition to those conferred by law:

(1) Power to receive any property from any person as an addition to the Trust Fund either by gift inter vivos or by will or under the provision of any other settlement or trust or otherwise;

(2) Power to borrow on the security of the Trust Fund and for such purpose to make any outlay out of the Trust Fund or the income thereof and to enter into such contracts mortgages charge or undertakings relating thereto as the Trustees may in their absolute discretion think fit;

(3) Power to lend any part of the Trust Fund to any person (whether or not a beneficiary) upon such terms (if any) as to security repayment rate of interest and otherwise as the Trustees in their absolute discretion may determine;

(4) With respect to any property comprised in the Trust Fund power to exercise all powers relating thereto as if beneficially entitled thereto and without being restricted in any way by the office of trustee including (without prejudice to the generality of the foregoing power) -

(a) Power to vote upon or in respect of any shares securities bonds notes or other evidence of interest in or obligations of any corporation trust association or concern whether or not the exercise of such power affects the security or the apparent security of the Trust Fund or the purchase or sale or lease of the assets of any such corporation trust association or concern;

(b) Power to deposit any such shares securities or property in any voting trust with any depository designated thereby;

(c) Power to give proxies or powers of attorney with or without power of substitution for voting or acting on behalf of the Trustees as the owners of any such property; and

(d) Power to omit to register bonds or securities;

(5) Power (at the expense of the Trust Fund) to incorporate or register or to procure the incorporation or registration of any company (with limited or unlimited liability) in any part of the world for any purpose including the acquisition of the Trust Fund or any part thereof and so that (if thought fit) the consideration on the sale of the Trust Fund to any such company may consist wholly or partly of fully paid shares debentures debenture stock or other securities of the company credited as fully paid which shall be allotted to or otherwise vested in the Trustees and be capital moneys in the Trustees' hands;

(6) Power at any time to apply any part of the Trust Fund of [sic] the income thereof in effecting or joining in effecting or otherwise acquiring any policy of assurance on the life of any beneficiary or of any other person or any endowment or other policy and to maintain surrender exchange exercise any option thereunder or otherwise deal with such policies as if the Trustees were absolutely entitled thereto;

(7) Power to pay out at any time any part of the Trust Fund in purchasing or acquiring or making improvements in or repairs to or on any land or building (whether freehold leasehold or of any other tenure or interest and ofwhatsoever *[sic]* description by any beneficiary And power to permit any beneficiary to occupy until sale any land or building purchased or acquired as aforesaid or otherwise comprised in the Trust Fund upon such terms (as to payment or non-payment of rent outgoings repairs or otherwise) as the Trustees may think fit;

(8) Power at any time or times to lay out any part of the Trust Fund in the purchase or other acquisition of any yachts boats motor vehicles works of art household furniture plate linen china cutlery other articles of household use ornament or equipment and other chattels for the use of any beneficiary whether occupying a building purchased or acquired as aforesaid or otherwise And power to hand over to any such beneficiary for his use any property so purchased or acquired by the Trustees as aforesaid or

otherwise forming part of the Trust Fund upon and subject to such terms and conditions (if any) as to insurance preservation maintaining inventories and otherwise as the Trustees think fit;

(9) Power to grant options for such consideration and exercisable at such time or times or within such period as the Trustees think fit for the purchase of any property subject to the trusts of this instrument or the acquisition of any interest therein;

(10) Power to keep the Trust Fund either in or out of Bermuda and if the Trustees think fit to hold in any part of the world all or any securities or other property in bearer form or registered in the name of the Trustees or nominees without disclosing the fiduciary relationship;

(11) In the event of any duties fees or taxes whatsoever becoming payable in any part of the world in respect of the Trust Fund or any part thereof in any circumstances whatsoever power to pay all such duties fees or taxes out of the Trust Fund or the income thereof with discretion as to the time and manner in which the said duties fees or taxes shall be paid and the Trustees may pay such duties fees or taxes notwithstanding that the same shall not be recoverable from the Trustees or from any persons interested under the trusts of this instrument or that the payment shall not be to the advantage of such persons;

(12) Power to make such reserves out of the Trust Fund or the income thereof as the Trustees deem proper for expenses taxes and other liabilities and to pay from capital or income or to apportion between capital and income any expenses of making or changing investments and selling exchanging or leasing (including brokers commissions and charges) and generally to determine what part of the expenses of administering the trusts of this instrument shall be charged to capital and what part to income;

(13) Power to make execute and deliver deeds assignments transfers leases mortgages instruments of pledge creating liens contracts and other instruments sealed and unsealed;

(14) Power to institute prosecute and defend any suits or actions or other proceedings affecting the Trustees or the Trust Fund and to compromise any matter of difference or to submit such matter to arbitration and to compromise or compound any debt owing to the Trustees or any other claims and to adjust any disputes in relation to debts or claims against them as trustees upon evidence that the Trustees shall deem sufficient and to make partition upon such terms (including if thought fit the payment or receipts of equality money) as the Trustees shall deem desirable with co-owners or joint tenants besides the Trustees having any interest in any property in which the Trustees are interested and to make partition either by sale or by set-off or by agreement or otherwise;

(15) Power to make any distribution of the Trust Fund pursuant to the trusts of this instrument in cash or in kind or partly in cash and partly in kind and in the case of a distribution to more than one person not strictly rateably but on the basis of equal or other proportionate value (as the case may require) according to the judgement of the Trustees which shall be binding on all persons interested under this instrument;

(16) Power to take at the expense of the Trust Fund or the income thereof the opinion of legal counsel concerning any question arising under this instrument or on any matter in any way relating to the Trust Fund or the duties of the Trustees in connection with this instrument And the Trustees shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the opinion or advice of such counsel;

(17) Power -

(a) to engage the services of such investment counsel adviser or manager ("the Investment Adviser") as the Trustees may from time to time think fit (including the Settlor or any trustee of this instrument or any corporate trustee or any parent subsidiary or affiliate of such corporate trustee) in order to obtain advice on the investment and reinvestment of the Trust Fund AND to delegate to the Investment Adviser without being liable for any consequential loss discretion to manage the portfolio or any part thereof within the limits and for the period stipulated by the Trustees and the Trustees

(i) shall settle the terms and conditions for the remuneration of the Investment Adviser and the reimbursement of the Investment Adviser's expenses as in their uncontrolled discretion they deem proper and such remuneration and expenses may be paid by the Trustees from and out of the Trust Fund; and

(ii) shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the advice of the Investment Adviser;

(b) to employ and pay at the expense of the capital or income of the Trust Fund any agent or agents in any part of the world whether solicitors bankers accountants stockbrokers managers or other persons (including the Settlor or any trustee of this instrument or any corporate trustee or any parent subsidiary or affiliate of such corporate trustee) to transact any business or to do any act requiring to be transacted or done in execution of the trusts of this instrument including the receipt and payment of money and the execution of documents and in any such event the trustee, the corporate trustee or the parent subsidiary or the affiliate of such corporate trustee is entitled to charge and be paid and to retain for his or its own account all usual professional and other fees and commissions normally paid for such services including fees and commissions shared with other agents;

Trustee may exercise power despite personal interest

(18) Power for all or any of the Trustees

(a) to exercise or join or concur in exercising all or any of the powers and discretions by this instrument or by law given to the Trustees notwithstanding that such trustee may have a personal interest in the mode or result of exercising any such power or discretion or may be interested therein in some other fiduciary capacity but any trustee may abstain from acting except as a merely formal party in any matter in which he may be so interested as aforesaid and may allow his co-trustees to act alone in the exercise of such powers and discretions in relation to such matter; and

To effect transactions

(b) to purchase or sell any property notwithstanding that the vendor or purchaser is the same as or includes the Trustees or any of them PROVIDED that the price payable on any such purchase or sale is certified as fair and reasonable by an independent valuer employed for the purpose by the Trustees;

Residuary powers

(19) Power to effect any transaction concerning or affecting the Trust Fund or any other property whatsoever and to do all other acts and things which the Trustees may in their absolute discretion think expedient in the interests of the Trust Fund or any beneficiary And for the purpose of this sub-paragraph "transaction" includes any sale exchange assurance conveyance grant lease surrender reconveyance release reservation or other disposition and any purchase or other acquisition and any covenant contract licence option right of pre-emption and any compromise or partition and any company reconstruction or amalgamation and any other dealing or arrangement And "effect" has the meaning appropriate to the particular transaction And references to property include references to restrictions and burdens affecting the property;

Powers of Sale, etc.

(20) All the powers of sale (by public auction or private contract) exchange mortgaging leasing or other disposition management repair building and improvement and all other powers of an absolute beneficial owner in respect of any property for the time being comprised in the Trust Fund including (without prejudice to the generality of the foregoing) the power of borrowing on the security of the Trust Fund and for such purpose to make any outlay out of the income or capital of the Trust Fund and to make such

contracts and to enter into such undertakings relating thereto as the Trustees in their absolute discretion shall think fit;

Power to give guarantees

(21) Power at any time in the Trustees' discretion and on such terms as they deem fit to appropriate or to apply the capital or income of the Trust Fund or any part thereof in order to secure the payment of money owed by any beneficiary or the performance of any obligations of any beneficiary and to give any guarantee or to become surety for any beneficiary and for such purposes to mortgage or charge any investments or property for the time being forming part of the Trust Fund or to deposit or transfer any such investments or property with or to any person by way of security.

To release fiduciary power

(22) Power from time to time by deed revocable or irrevocable wholly or partially to release extinguish or restrict any power by this instrument of by law conferred on the Trustees notwithstanding the fiduciary nature of any such power (but not so as to invalidate any prior exercise thereof).

5. Exclusion of apportionments

UNLESS the Trustees in their absolute discretion shall otherwise determine all dividends and other income received shall be treated for all purposes as income accruing at the due date of payment whether or not such dividends or income may have been earned and accrued wholly or partially in respect of a period prior to such date.

6. Protection of third parties in dealings with trustees

(1) NO person or corporation dealing with the Trustees and no purchaser on any sale made by the Trustees shall be concerned to enquire into the propriety or validity of any act of the Trustees or to see to the application of any money paid or property transferred to or upon the order of the Trustees.

(2) NO firm association or corporation any of whose securities are comprised in the Trust Fund and no purchaser or person dealing with any trustee purporting to act under any delegation of authority from any other trustee shall be required to ascertain or enquire whether a case exists in which such delegation is permitted or whether such delegated authority is still subsisting.

(3) WHEN anything is dependent upon the value of any property or the existence of any fact a certificate of the Trustees as to such value or fact shall be conclusive in favour of anyone acting thereon in good faith.

7. Power in relation to underlying company/ies

ANY trustee of this instrument and any director officer or employee of a corporate trustee or of a parent subsidiary or affiliate of such corporate trustee may act as a director officer manager or employee of any company whose shares or debentures may be comprised in the Trust Fund or as a director officer manager or employee of any subsidiary or holding company of any such company and may retain for himself or itself any remuneration which he or it may receive as such director officer manager or employee notwithstanding that any votes or other rights attaching to such shares or debentures may have been instrumental either alone or in conjunction with other matters or by reason of their non-exercise in procuring or continuing for him or it his or its position as such director officer manager or employee or that his or its qualifications for any such position may be constituted in part or in whole by any such shares or debentures.

8. Trustee not bound to interfere with company management

THE Trustees shall not be bound or required to interfere in the management or conduct of the affairs or business of any company in which the Trust Fund may be invested (and whether or not the Trustees have the control of such company) And so long as no trustee of this instrument has notice of any wilful negligence wilful default or fraud or dishonesty on the part of the directors having the management of

such company they may leave the same (including the payment or non-payment of dividends) wholly to such directors And no beneficiary is entitled as such beneficiary in any way to compel control or forbid the exercise (including in any particular manner) of any voting or other rights at any time vested in the Trustees with regard to such company including without prejudice to the generality of the foregoing any powers the Trustees may have (even if also directors of such company) of compelling such company to distribute any dividend

[Amended by:

1998:24

2004:35

2009:23

2014:22]

BERMUDA

PERPETUITIES AND ACCUMULATIONS ACT 1989

1989:60

[28 December 1989]

WHEREAS it is expedient to modify the law relating to the avoidance of future interests in property on grounds of remoteness and governing accumulations of income from property and to amend the Pension Trust Funds Act 1966:

[words of enactment omitted]

1. Short title and commencement

This Act may be cited as the Perpetuities and Accumulations Act 1989 and shall come into operation on such date as the Premier may appoint by notice published in the Gazette.

PRELIMINARY

2. Interpretation

(1) In this Act unless the context otherwise requires—

"disposition" includes the conferring of a power of appointment and any other disposition of an interest in or right over property, and references to the interest disposed of shall be construed accordingly;

"in being" means living or en ventre sa mere;

"power of appointment" includes any discretionary power to create or transfer[87] a beneficial interest in property without the furnishing of valuable consideration;

"will" includes a codicil.

(2) For the purposes of this Act a disposition contained in a will shall be deemed to be made at the death of the testator.

(3) For the purposes of this Act a person shall be treated as a member of the class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

[Section 2 subsection (1) amended by 2009:23 s.10 effective 1 August 2009]

PERPETUITIES

3. Power to specify perpetuity period

(1) Subject to section 11(3) and subsection (2) of this section, where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, shall be of a duration equal to such number of years not exceeding one hundred as is specified in that behalf in the instrument.

(2) Subsection (1) shall not have effect where the disposition is made in exercise of a special power of appointment, but where a period is specified under that subsection in the instrument creating such a

power the period shall apply in relation to any disposition under the power as it applies in relation to the power itself.

4. Presumptions and evidence as to future parenthood

(1) Where in any proceedings there arises on the rule against perpetuities a question which turns on the ability of a person to have a child at some future time, then—

(a) subject to paragraph (b), it shall be presumed that a male can have a child at the age of fourteen years or over, but not under that age, and that a female can have a child at the age of twelve years or over, but not under that age or over the age of fifty-five years; but

(b) in the case of a living person evidence may be given to show that he or she will or will not be able to have a child at the time in question.

(2) Where an such question referred to in subsection (1) is decided by treating a person as unable to have a child at a particular time, and he or she does so, the Supreme Court may make such order as it thinks fit for placing the persons interested in the property comprised in the disposition, so far as may be just, in the position they would have held if the question had not been so decided.

(3) Subject to subsection (2), where any such question referred to in subsection (1) is decided in relation to a disposition by treating a person as able or unable to have a child at a particular time, then he or she shall be so treated for the purpose of any question which may arise on the rule against perpetuities in relation to the same disposition in any subsequent proceedings.

(4) In the provisions of this section references to having a child are references to begetting or giving birth to a child, but those provisions (except subsection (1)(b)) shall apply in relation to the possibility that a person will at any time have a child by adoption, legitimation or other means as they apply to his or her ability at that time to beget or give birth to a child.

5. Uncertainty as to remoteness

(1) Where, apart from the provisions of this section and sections 6 and 7, a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time, the disposition shall be treated, until such time (if any) as it becomes established that the vesting must occur, if at all, after the end of the perpetuity period, as if the disposition were not subject to the rule against perpetuities; and its becoming so established shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

(2) Where, apart from the provisions of subsection (1), a disposition consisting of the conferring of a general power of appointment would be void on the ground that the power might not become exercisable until too remote a time, the disposition shall be treated, until such time (if any) as it becomes established that the power will not be exercisable within the perpetuity period, as if the disposition were not subject to the rule against perpetuities.

(3) Where, apart from the provisions of subsection (1), a disposition consisting of the conferring of any power, option or other right would be void on the ground that the right might be exercised at too remote a time, the disposition shall be treated as regards any exercise of the right within the perpetuity period as if it were not subject to the rule against perpetuities and, subject to the said provisions, shall be treated as void for remoteness only if, and so far as, the right is not fully exercised within that period.

(4) Where this section applies to a disposition and the duration of the perpetuity period is not determined by virtue of section 3 or 11(3), it shall be determined as follows:

(a) where any persons falling within subsection (5) are individuals in being and ascertainable at the commencement of the perpetuity period the duration of the period shall be determined by reference to their lives and no others, but so that the lives of any description

of persons falling within paragraph (b) or (c) of that subsection shall be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor;

(b) where there are no lives under paragraph 9(a) the period shall be twenty-one years.

(5) The said persons are as follows:

(a) the person by whom the disposition was made;

(b) a person to whom or in whose favour the disposition was made, that is to say—

(i) in the case of a disposition to a class of persons, any member or potential member of the class;

(ii) in the case of an individual disposition to a per-son taking only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;

(iii) in the case of a special power of appointment exercisable in favour of members of a class, any member or potential member of the class;

(iv) in the case of a special power of appointment exercisable in favour of one person only, that person or, where the object of the power is ascertainable only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;

(v) in the case of any power, option or other right, the person on whom the right is conferred;

(c) a person having a child or grandchild within subparagraphs (i) to (iv) of paragraph (b), or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within those sub-paragraphs;

(d) any person on the failure or determination of whose prior interest the disposition is limited to take effect.

6. Reduction of age and exclusion of class members to avoid remote-ness

(1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding twenty-one years, and it is apparent at the time the disposition is made or becomes apparent at a subsequent time—

(a) that the disposition would, apart from this section, be void for remoteness, but

(b) that it would not be so void if the specified age had been twenty-one years,

the disposition shall be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to that age which would, if specified instead, have prevented the disposition from being so void.

(2) Where in the case of any disposition different ages exceeding twenty-one years are specified in relation to different persons—

(a) the reference in paragraph (b) of subsection (1)(b) to the specified age shall be construed as a reference to all the specified ages, and

(b) that subsection shall operate to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

(3) Where the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents the foregoing provisions of this section from operating to save disposition from being void for remoteness, those persons shall thenceforth be deemed for all purposes of the disposition to be excluded from the class, and the said provisions shall thereupon have effect accordingly.

(4) Where, in the case of a disposition to which subsection (3) does not apply, it is apparent at the time the disposition is made or be-comes apparent at a subsequent time that, apart from this subsection, the inclusion of any persons, being potential members of a class or un-born persons who at birth would become members or potential members of the class, would cause the disposition to be treated as void for remoteness, those persons shall, unless their exclusion would exhaust the class, thenceforth be deemed for all the purposes of the disposition to be excluded from the class.

(5) Where this section has effect in relation to a disposition to which section 5 applies, the operation of this section shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

[NB Section 6(1), 6(1)(b) and 6(2) references to 21 years not amended by 2001:20 – see s.6(3) & Sch 1 to that Act.]

7. Condition relating to death of surviving spouse

Where a disposition is limited by reference to the time of death of the survivor of a person in being at the commencement of the perpetuity period and any spouse of that person, and that time has not arrived at the end of the perpetuity period, the disposition shall be treated for all purposes, where to do so would save it from being void for remoteness, as if it had instead been limited by reference to the time immediately before the end of that period.

8. Saving and acceleration of expectant interests

A disposition shall not be treated as void for remoteness by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so void, and the vesting of an interest shall not be prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remote-ness.

9. Powers of appointment

For the purposes of the rule against perpetuities, a power of appointment shall be treated as a special power unless—

(a) in the instrument creating the power it is expressed to be exercisable by one person only, and

(b) it could, at all times during its currency when that per-son is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power:

Provided that for the purpose of determining whether a disposition made under a power of appointment exercisable by will only is void for remoteness, the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed.

10. Administrative powers of trustees

(1) The rule against perpetuities shall not operate to invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property for full consideration, or to do any

other act in the administration (as opposed to the distribution) of any property, and shall not prevent the payment to trustees of [sic] other persons of reasonable remuneration for their services.

(2) Subsection (1) shall apply for the purpose of enabling a power to be exercised at any time after the commencement of this Act notwithstanding that the power is conferred by an instrument which took effect before the commencement.

11. Options relating to land

(1) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reversionary (whether directly or indirectly) on the term of a lease if—

(a) the option is exercisable only by the lessee or his successors in title, and

(b) it ceases to be exercisable at or before the expiration of one year following the determination of the lease.

(2) This subsection applies in relation to an agreement for a lease as it applies in relation to a lease, and "lessee" shall be construed accordingly.

(3) In the case of a disposition consisting of the conferring of an option to acquire for valuable consideration any interest in land, the perpetuity period under the rule against perpetuities shall be twenty-one years, and section 3 does not apply; however, this subsection does not apply to a right of pre-emption conferred on a government or municipal authority or statutory corporation in respect of land used or to be used for religious purposes where the right becomes exercisable only if the land ceases to be used for such purposes.

12. Avoidance of contractual and other rights in cases of remoteness

Where a disposition inter vivos would fall to be treated as void for remoteness if the rights and duties thereunder were capable of transmission to persons other than the original parties and had been so transmitted, it shall be treated as void as between the person by whom it was made and the person to whom or in whose favour it was made or any successor of his, and no remedy shall lie in contract or otherwise for giving effect to it or making restitution for its lack of effect.

13. Possibilities of resulting trust, conditions subsequent, exceptions and reservations

(1) In the case of a possibility of a resulting trust on the de-termination of any determinable interest in property the rule against perpetuities shall apply in relation to the provision causing the interest to be determinable as it would apply if that provision were expressed in the form of a condition subsequent giving rise, on breach thereof, to a right of re-entry or an equivalent right in the case of property other than land, and where the provision falls to be treated as void for remoteness the determinable interest shall become an absolute interest.

(2) Where a disposition is subject to any such provision, or to any such condition subsequent, or to any exception or reservation, the disposition shall be treated for the purposes of this Act as including a separate disposition of any rights arising by virtue of the provision, condition subsequent, exception or reservation.

14. Restrictions on perpetuity rule

The rule of law relating to perpetuities does not apply and shall be deemed never to have applied—

(a) to any power to take possession of land or the income thereof given by way of indemnity against a rent, whether charged upon or payable in respect of any part of that land or not; or

(b) to any grant, exception, or reservation of any right of entry on, or user of, the surface of land or of any easements, rights, or privileges over or under land for the purpose of—

(i) executing repairs, alterations, or additions to any adjoining land, or the buildings and erections thereon;

(ii) constructing, laying down, altering, repairing, renewing, cleansing and maintaining any works.

ACCUMULATIONS

15. [REPEALED][88]

[Repealed by 2009:23 s.6 effective 1 August 2009]

16. Right to stop accumulations

Section 4 applies to any question as to the right of beneficiaries to put an end to accumulations of income under any disposition as it applies to questions arising on the rule against perpetuities.

17. Application

(1) Subject to section 12A of the Trusts (Special Provisions) Act 1989[89], nothing in this Act shall affect the operation of the rule of law rendering void for remoteness certain dispositions under which property is limited to be applied for purposes other than the benefit of any person or class of persons in cases where the property may be so applied after the end of the perpetuity period.

(2) This Act shall apply (except as provided in section 10(2)) only in relation to instruments taking effect after the commencement of this Act, and in the case of an instrument made in the exercise of a special power of appointment shall apply only where the instrument creating the power takes effect after that commencement; however, section 9 shall apply in all cases for construing the foregoing reference to a special power of appointment.

[This Act was brought into operation on 31 January 1990 by BR 8/1990]

(3) This Act shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

(4) This Act binds the Crown.

[Section 17 amended by 1998:24 effective 1 September 1998]

18. Amendment of Pension Trust Funds Act 1966 - [OMITTED]

[OMITTED]

[Amended by:

1998:24

2001:20

2009:23]

BERMUDA

PERPETUITIES AND ACCUMULATIONS ACT 2009

2009:23

[Date of Assent: 19 June 2009]

[Operative Date: 1 August 2009]

WHEREAS it is expedient to limit the application of the rule against perpetuities, to codify the rule as it applies to charities, and to amend the law relating to accumulations of income:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

1. Short title

This Act may be cited as the Perpetuities and Accumulations Act 2009.

2. Interpretation

In this Act—

"commencement day" means 1 August 2009;[90]

"power of appointment" includes any discretionary power to create or transfer a beneficial interest in property without the provision of valuable consideration;

"the rule against perpetuities"—

(a) means the rule of law by that name, also known as the rule against remoteness of vesting, which restricts the time within which future interests in property must either vest or take effect, or within which certain powers may be exercisable; and

(b) includes any other rule of law which limits the period during which income may be accumulated or for which capital may remain unexpended or inalienable;

"will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power, and any other testamentary disposition.

3. Application of rule against perpetuities limited to land in Bermuda

(1) In relation to instruments taking effect on or after the commencement day, the rule against perpetuities applies (and applies only) as provided by this section.

(2) If an instrument limits property in trust so as to create successive estates or interests, the rule against perpetuities applies to each of the estates or interests only to the extent that the property is land in Bermuda.

(3) If an instrument limits property in trust so as to create an estate or interest which is subject to a condition precedent and which is not one of successive estates or interests, the rule against perpetuities applies to the estate or interest only to the extent that the property is land in Bermuda.

(4) If an instrument limits property in trust so as to create an estate or interest which is subject to a condition subsequent, the rule against perpetuities applies to any right of re-entry exercisable if the condition is broken only to the extent that the property is land in Bermuda.

(5) If an instrument creates a power of appointment, the rule against perpetuities applies to the power only to the extent that it is exercisable over land in Bermuda.

(6) In this section "instrument" does not include a will executed before the commencement day.

(7) For the avoidance of doubt, the reference to land in Bermuda does not include—

(a) the income from any land in Bermuda, or

(b) the proceeds of sale of any land in Bermuda.

4 Court order declaring that rule against perpetuities does not apply to certain instruments[91]

(1) This section applies in relation to an instrument which takes effect—

(a) before the commencement day; or

(b) on or after the commencement day but to which section 3 does not apply to limit the application of the rule against perpetuities.

(2) Subject to subsection (3), the Supreme Court may, on an application made by the trustee or trustees of an instrument to which this section applies, make an order on such terms as it thinks fit declaring that—

(a) the rule against perpetuities; or

(b) any other similar rule of law that may limit or restrict the time under which property may be held in or subject to any trust,

shall not apply to such instrument and the property held thereunder.

(3) An order under subsection (2) may not be made to the extent that it would affect the residual application of the rule against perpetuities as provided by section 3 if the instrument had been one to which section 3 applies (so that the rule against perpetuities will continue to apply to all instruments to the extent that the property is land in Bermuda as provided by section 3).

(4) The terms upon which an order under subsection (2) may be made include (but are not limited to), terms—

(a) extending the duration of a trust;

(b) extending the time within which an interest in property must vest or take effect;

(c) extending the time within which certain powers are exercisable;

(d) providing that anything done by any person before the order is made on the basis that the instrument was void by virtue of the application of the rule against perpetuities or other similar rule of law shall have effect as if the order had not been made;

(e) protecting or preserving the interest of any person in trust property where such interest will or may be defeated or its vesting in possession deferred by virtue or in consequence of the terms of any order made under this section;

(f) varying or deleting any provision of the trust which restricts (to or by reference to the perpetuity period or limitation on duration applicable to the trust) the exercise of any power arising under or in consequence of the instrument;

(g) providing that the order shall be deemed always to have applied to the instrument.

(5) An application under subsection (2) shall be made by originating summons and the Rules of the Supreme Court applicable to applications under the Trustee Act 1975 shall, so far as is appropriate, apply.

(6) In subsection (4)(e), "interest" includes an interest arising by virtue or in consequence of the disposition being void as a result of the application of the rule against perpetuities to that disposition.

[Section 4 repealed and replaced by 2015:45 s. 3 effective 11 December 2015]

5. Perpetuities: codification of rule relating to charities

For the avoidance of doubt, the rule against perpetuities does not apply—

(a) to an estate or interest created so as to vest in a charity on the occurrence of an event, or

(b) to a right exercisable by a charity on the occurrence of an event,

if, immediately before the occurrence of the event, an estate or interest in the property concerned is vested in another charity.

6. Accumulations: repeal of restrictions

Section 15 of the Perpetuities and Accumulations Act 1989 (accumulations of income) is repealed in relation to instruments taking effect on or after the commencement day.

7. Accumulations by charitable and purpose trusts

(1) This section applies to an instrument to the extent that it provides for property to be held on trust for charitable or non-charitable purposes.

(2) The instrument may impose on the trustees a duty, or confer on them a power, to accumulate income for any duration (including an unlimited duration), whether or not the duty or power extends to income produced by the investment of income previously accumulated.

(3) This section applies in relation to an instrument taking effect before, on or after the commencement day.

8. Provision made otherwise than by instrument

If provision is made in relation to property otherwise than by an instrument, this Act applies as if the provision were contained in an instrument taking effect on the making of the provision.

9. Crown application

This Act binds the Crown.

10. Consequential amendment

In the definition of “power of appointment” in section 2 of the Perpetuities and Accumulations Act 1989, delete “transfer” and substitute “create or transfer”.

11. Repeal

Section 12A(5) of the Trusts (Special Provisions) Act 1989 (which applies the rule against perpetuities to a purpose trust) is repealed.

12. Commencement

This Act comes into operation on 1st August 2009.

[Amended by:

2015:45]

BERMUDA

CONVEYANCING ACT 1983 (SELECT PROVISIONS)

1983:16

[Date of Assent: 20 May, 1983]

[Operative Date: 3 January, 1984]

PART II - CONVEYANCES AND OTHER INSTRUMENTS

6A. Deeds and their execution[92]

(1) Notwithstanding any rule of law which -

(a) restricts the substances on which a deed may be written;

(b) requires a seal for the valid execution of an instrument as a deed by an individual; or

(c) requires authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed,

an instrument shall be a deed if it complies with the requirements of subsection (2).

(2) Those requirements are -

(a) that it makes it clear on its face that it is intended to be a deed by the person making it or, as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and

(b) it is validly executed as a deed by that person or, as the case may be, one or more of those parties.

(3) For the purposes of subsection (2)(b), an instrument is validly executed as a deed by an individual if, and only if -

(a) it is signed -

(i) by him in the presence of a witness who attests the signature; or

(ii) by some other person at his direction and in his presence and the presence of two witnesses who each attest the signature; and

(b) it is delivered as a deed by him or a person authorised to do so on his behalf.

(4) In subsections 2(a) and (3) "sign", in relation to an instrument executed as a deed by an individual, includes making one's mark on the instrument, and "signature" is to be construed accordingly.

(5) Where an attorney, or an agent or employee of an attorney, in the course of or in connection with a transaction involving the disposition or creation of an interest in land, purports to deliver an instrument as a deed on behalf of a party to the instrument, it shall be conclusively presumed in favour of a purchaser that he is authorised so to deliver the instrument.

(6) Where -

(a) an instrument under seal that constitutes a deed is required for the purposes of an Act passed before the commencement of this Act; and

(b) in the case of an individual, the requirements of subsection (2) are complied with,

this section shall have effect in place of any provision of that Act as to signing, sealing or delivery.

(7) The references in this section to the execution of a deed by an individual do not include execution by a corporation sole and the reference in subsection (6) to signing, sealing or delivery by an individual does not include signing, sealing or delivery by a corporation sole.

(8) In this section -

"disposition" includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and "dispose of" has a corresponding meaning;

"interest in land" means any estate, interest or charge in or over land or in or over the proceeds of sale of land; and

"purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property and, in reference to a legal estate, includes a chargee by way of legal mortgage.

[section 6A inserted by 1995:42 effective 21 December 1996]

PART IVA - PROVISIONS AGAINST DISPOSITIONS WITH REQUISITE INTENTION[93]

36A. Interpretation

(1) In this Part -

"appointed day" means the date on which this Part comes into operation;

"disposition" means any disposition or series of dispositions of property of any nature whatsoever and however effected, and, without limiting the generality of the foregoing, includes any exercise of a power of appointment, any trust, gift, transfer, sale, exchange, demise, assignment, assurance, grant, lease, surrender, conveyance, reconveyance, release, reservation, any purchase or other acquisition, any covenant, contract or option and any compromise or other dealing or arrangement;

"eligible creditor" means a person to whom -

(a) on, or within two years after, the material date the transferor owed an obligation and on the date of the action or proceeding to set aside the relevant disposition that obligation remains unsatisfied;

(b) on the material date the transferor owed a contingent liability and since that date the contingency giving rise to the obligation has occurred and on the date of the action or proceeding to set aside the relevant disposition that obligation remains unsatisfied; or

(c) on the date of the action or proceeding to set aside the relevant disposition, the transferor owes an obligation in consequence of a claim, made by that person against the transferor, arising from a cause of action which accrued prior to, or within two years after, the material date.

"material date" means the date on which a relevant disposition is made;

"obligation" means any obligation or liability, other than a contingent liability, to pay a sum of money or to transfer property;

"property" includes money, goods, things in action, land and every description of property wherever situated and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"relevant disposition" means a disposition to which section 36C applies;

"requisite intention" means an intention of a transferor to make a disposition the dominant purpose of which is to put the property which is the subject of that disposition beyond the reach of a person or a class of persons who is making, or may at some time make, a claim against him;

"transferor" means a person who directly or indirectly makes a relevant disposition or causes it to be made;

"transferee" means the person to whom a relevant disposition is made and includes a successor in title of such person;

"trust" includes a settlement;

"undervalue", in relation to a disposition of property, means a disposition in respect of which -

(a) no consideration is given; or

(b) the value of the consideration given is, in money or money's worth, significantly less than the value, in money or money's worth, of the property.

[Section 36A inserted by 1994:21 effective 13 July 1994]

36B. Application

(1) Subject to subsections (2) and (3), with effect from the appointed day the provisions of this Part shall apply to every disposition of property made by any person whether that disposition was made before or after the appointed day and whether or not the property, the subject of the disposition, is situated in Bermuda or elsewhere.

(2) Notwithstanding subsection (1), where -

(a) prior to, or within six months after, the appointed day; and

(b) pursuant to a conveyance of property to which section 37 of the Conveyancing Act 1983 applies,

any action or proceeding has been commenced, this Part shall have no application, and the provisions of the said section 37 shall have effect as if this Part had not been enacted.

(3) This Part shall not affect the operation of a disentailing assurance or the law of bankruptcy for the time being in force.

[Section 36B inserted by 1994:21 effective 13 July 1994]

36C. Avoidance of dispositions made with the requisite intention, etc

(1) Subject to subsection (2) and the provisions of this Part, every disposition of property made with the requisite intention and at an undervalue shall be voidable at the instance of an eligible creditor thereby prejudiced.

(2) Where a person seeking to set aside a relevant disposition was not, on the material date, a person to whom an obligation was owed by the transferor, the Court shall not set aside that disposition unless the Court is satisfied that that person was, on the material date, reasonably foreseeable by the transferor as a person to whom an obligation might become owed by him.

(3) Subject to subsection (4), no action or proceeding to set aside a disposition shall be commenced pursuant to this Part unless such action or proceeding is commenced -

(a) in the case of an eligible creditor referred to in paragraph (a) of the definition of that expression, within six years after the material date or within six years after the date when the obligation became owed, whichever is the later date;

(b) in the case of an eligible creditor referred to in paragraph (b) of that definition, within six years after the material date;

(c) in the case of an eligible creditor referred to in paragraph (c) of that definition, within six years after the material date, or within six years after the date when the cause of action accrued, whichever is the later date.

(4) Except as provided in subsection (3), nothing contained in this section shall be construed as in any way affecting the operation of the Limitation Act 1984.

(5) For the avoidance of doubt it is hereby declared -

(a) that a disposition to which this Part applies shall not, by reason only that it was made at an undervalue, be set aside by the Court; and

(b) the Court shall, for the purpose of setting aside such a disposition determine, on a balance of probability, whether it was made with the requisite intention.

[Section 36C inserted by 1994:21 effective 13 July 1994]

36D. Savings of certain rights

(1) Where, pursuant to this Part, a relevant disposition is set aside and the Court is satisfied that the transferee has acted in good faith, then, -

(a) the transferee shall have a first and paramount charge over the property, the subject of the relevant disposition, for an amount equal to all costs (and not only such costs as the Court might otherwise allow) properly incurred by the transferee in the defence of the action or proceeding to set aside that disposition;

(b) the relevant disposition shall be set aside subject to all fees and costs properly incurred and subject also to any pre-existing rights, claims and interests of the transferee and of any person through whom the transferee claims and who has acted in good faith; and

(c) in the case of a trust, the relevant disposition shall only be set aside subject to the right of a beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or a discretion vested in the trustee of such trust or any other person, and otherwise properly exercised.

(2) The burden of proving that a transferee or any person through whom the transferee claims has not acted in good faith shall be upon the person making the allegation.

[Section 36D inserted by 1994:21 effective 13 July 1994]

36E. Extent of avoidance of relevant disposition

Subject to section 36D, a relevant disposition shall be set aside pursuant to this Part only to the extent necessary to satisfy the obligation owed to the eligible creditor at whose instance the disposition has been set aside.

[Section 36E inserted by 1994:21 effective 13 July 1994]

36F Part not to validate certain dispositions

Nothing contained in this Part shall be construed as -

(a) validating any disposition of property which is neither owned by, nor is the subject of a power of disposal with respect thereto vested in, the transferor; or

(b) affecting the recognition of a foreign law in determining whether the transferor is the owner of such property or the holder of such power.

[Section 36F inserted by 1994:21 effective 13 July 1994]

36G Relationship with Trusts (Special Provisions) Act 1989[94]

Nothing in this Part shall be construed as permitting the court to give effect to any foreign order to which section 11 of the Trusts (Special Provisions) Act 1989 applies.

[Section 36G inserted by 1994:21 effective 13 July 1994; section 36G repealed and replaced by 2020:43 s. 8 effective 5 August 2020]

BERMUDA

TRUSTS (REGULATION OF TRUST BUSINESS) ACT 2001

2001:22

[Date of Assent: 8 August 2001]

[Operative Date: 25 January 2002]

WHEREAS it is expedient to make new provision for regulating trust business; for the protection of the interests of clients or potential clients of persons carrying on trust business; and for purposes connected with those matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

PRELIMINARY

1. Short title and commencement

This Act may be cited as the Trusts (Regulation of Trust Business) Act 2001, and shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

2. Interpretation

In this Act, unless the context requires otherwise—

"accountant" means a person entitled to practise as a public accountant under the [95]Chartered Professional Accountants of Bermuda Act 1973;

"Act" includes regulations and orders made thereunder;

"associate" has the meaning given in section 4(9);

"the Authority" means the Bermuda Monetary Authority established by the Bermuda Monetary Authority Act 1969;

"code of practice" means a code of practice issued by the Authority pursuant to section 7;

"client" in relation to a licensed undertaking, means a trust administered by the undertaking and includes a settlor and a beneficiary under a trust;

"company" means a body corporate wherever incorporated;

"controller" has the meaning given in section 4(3);

"court" means the Supreme Court;

"decision notice" means a notice prepared in accordance with section 33B;

"director" has the meaning given in section 4(2);

"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;

"financial statements" in relation to the business of an undertaking which is a company, means the statements specified in subsection (1)(a) and the notes mentioned in subsection (1A) of section 84 of the Companies Act 1981;

"financial year" means the period not exceeding fifty-three weeks at the end of which the balance of an undertaking's accounts is struck or, if no such balance is struck or a period of more than fifty-three weeks is employed for that purpose, then calendar year;

"holding company" has the meaning given in section 86(2) of the Companies Act 1981;

"licence" means a licence issued by the Authority under this Act and "licensee" and "licensed" shall be construed accordingly;

"Minister" means the Minister of Finance;

"minimum criteria" means the minimum criteria for licensing specified in the First Schedule;

"officer", in relation to an undertaking, includes director, secretary or senior executive of the undertaking by whatever name called;

"partnership" means a partnership formed under the Partnership Act 1902;

"related company" has the meaning given in section 3;

"senior executive" has the meaning given in section 4(7);

"share" has the meaning given in section 2 of the Companies Act 1981

"shareholder controller" has the meaning given in section 4(5);

"subsidiary" has the meaning given in section 86 of the Companies Act 1981;

"trust" has the meaning given in section 2 of the Trusts (Special Provisions) Act 1989;

"trust business" has the meaning given in section 9(3);

"undertaking" means—

(a) a company;

(b) a partnership; or

(c) an individual.

"warning notice" means a notice prepared in accordance with section 33A.

[Section 2 definitions "decision notice" and "warning notice" inserted by 2012:38 s. 2 effective 19 September 2012; amended by 2014:8 s. 16 effective 11 April 2014]

3. Meaning of "related company"

(1) In this Act, a "related company" in relation to an undertaking or the parent company of such undertaking, means a company (other than a subsidiary company) in which the undertaking or the parent company, as the case may be, holds a qualifying capital interest.

(2) A qualifying capital interest means an interest in relevant shares of the company which the undertaking or parent company holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

(3) A holding of 20 per cent or more of the nominal value of the relevant shares of a company shall be presumed to be a qualifying capital interest unless the contrary is shown.

(4) Relevant shares means shares comprised in the equity share capital of the company of a class carrying rights to vote in all circumstances at general meetings of the company.

(5) Equity share capital means the issued share capital of a company excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

4. Meaning of "director", "controller", "senior executive" and "associate"

(1) In this Act "director", "controller", "senior executive" and "associate" shall be construed in accordance with the provisions of this section.

(2) "Director" in relation to an undertaking, includes—

(a) any person who occupies the position of director, by whatever name called; and

(b) in the case of a partnership, "director" where it is used in subsections (7) and (8), includes a partner.

(3) "Controller" in relation to an undertaking, means—

(a) a managing director of the undertaking or of another company of which it is a subsidiary;

(b) in the case of an undertaking which is a partnership, a partner;

(c) in the case of an undertaking which is neither a company nor a partnership, a sole proprietor;

(d) a chief executive of the undertaking or of another company of which it is a subsidiary;

(e) a person who satisfies the requirements of this paragraph; and

(f) a person in accordance with whose directions or instructions the directors of the undertaking or of another company of which it is a subsidiary or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.

(4) A person satisfies the requirements of subsection (3)(e) in relation to an undertaking if, either alone or with any associate or associates—

(a) he holds 10 per cent or more of the shares in the undertaking or another company of which it is a subsidiary company;

(b) he is entitled to exercise or control the exercise of 10 per cent or more of the voting power at any general meeting of the undertaking or another company of which it is such a subsidiary; or

(c) he is able to exercise a significant influence over the management of the undertaking or another company of which it is such a subsidiary by virtue of—

(i) a holding of shares in; or

(ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,

the undertaking, or as the case may be, the other company concerned.

(5) A person who is a controller of an undertaking by virtue of subsection (3)(e) is in this Act referred to as a "shareholder controller" of the undertaking; and in this Act

"majority shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is 50 or more.

(6) In subsection (5), "the relevant paragraph" in relation to a shareholder controller means whichever one of paragraphs (a) and (b) of subsection (4) gives the greater percentage in his case.

(7) "Senior executive", in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking—

(a) exercises managerial functions; or

(b) is responsible for maintaining accounts or other records of the undertaking.

(8) In this section "chief executive" in relation to an undertaking, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the undertaking.

(9) In this Act "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) if that person is an individual—

(i) the spouse, child, step-child or parent of that person;

(ii) the trustees of any settlement under which that person has a life interest in possession;

(iii) any company of which that person is a director;

(iv) any person who is an employee or partner of that person;

(b) if that person is a company—

(i) any director of that company;

(ii) any subsidiary of that company;

(iii) any director or employee of any such subsidiary company;

(c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(10) For the purpose of subsection (9), "settlement" includes any disposition or arrangement under which property is held in trust.

4A Carrying on trust business in Bermuda

(1) For the purposes of this Act, a person carries on trust business in or from within Bermuda if such person—

(a) carries on trust business from a place of business maintained by such person in Bermuda;

(b) satisfies the requirements of this paragraph; or

(c) discharges in Bermuda the duties of a trustee the discharge of which constitutes the carrying on by such person of trust business in Bermuda under an order made under subsection (3).

(2) A person satisfies the requirements of paragraph (b) of subsection (1) if such person—

(a) is a company incorporated or registered in Bermuda; or

(b) is a partnership registered in Bermuda; and

(c) is carrying on trust business from a place of business outside of Bermuda.

(3) The Minister acting on the advice of the Authority, may make an order specifying the circumstances in which a person is to be regarded for the purpose of this section as—

(a) carrying on trust business in Bermuda;

(b) not carrying on trust business in Bermuda.

(4) An order under subsection (3) may be made so as to apply—

(a) generally to all duties of a trustee; or

(b) in relation to a particular duty of a trustee.

(5) An order made under this section is subject to negative resolution procedure.

[Section 4A inserted by 2002:20 s.3 effective 13 August 2002]

4B. Physical presence[96]

(1) Every licensed undertaking shall maintain a physical presence in Bermuda in accordance with the requirements of subsection (2).

(2) The trust business of a licensed undertaking must be directed and managed from Bermuda, and in determining whether a licensed undertaking complies with this requirement, the Authority shall consider, among other things, factors concerned with location that relate to—

(a) where the strategic and operational decisions of the licensed undertaking occur;

(b) where the trust business is carried on by the licensed undertaking;

(c) where meetings of the board of directors, partners or management of the licensed undertaking occur;

(d) the residences of the directors, controllers or employees of the licensed undertaking.

[Section 4B inserted by 2019:35 s. 2 effective 31 December 2019]

5. Annual reports

The Authority shall as soon as practicable after the end of each of its financial years, make to the Minister and publish in such manner as it thinks appropriate a report on its activities under this Act in that year.

6. Authority's statement of principles

(1) The Authority shall as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

(a) in interpreting the minimum criteria and the grounds for revocation specified in section 16;

(b) in exercising its power to grant, revoke or restrict a licence;

(ba) in exercising its power under section 11A(2)(a) to grant a permit to the licensee of a limited trust licence to hold trust assets in excess of thirty million dollars;

(c) in exercising its power to obtain information, reports and to require production of documents; and

(d) in exercising its powers—

(i) under section 28A to impose a civil penalty;

(ii) under section 28C to censure publicly;

(iii) under section 28E to make a prohibition order; and

(iv) under section 33D to publish information about any matter to which a decision notice relates.

(2) If the Authority makes a material change to the principles it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

[Section 6 subsection (1)(ba) inserted by 2002:20 s.4 effective 13 August 2002; subsection (1) amended by 2012:38 s. 3 effective 19 September 2012]

7. Codes of practice

(1) The Authority shall as soon as practicable after the coming into force of this Act issue codes of practice in connection with the manner by which licensed undertakings shall carry on trust business.

(2) Without prejudice to the generality of subsection (1), the Authority may issue codes of practice for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures (whether as to identification, record-keeping, internal reporting and training or otherwise) and sound principles to be observed by persons carrying on trust business.

(3) Before issuing a code of practice, the Authority shall publish a draft of that code in such manner as it thinks fit and shall consider any representations made to it about the draft.

(4) Every licensed undertaking shall in the conduct of its business have regard to any code of practice issued by the Authority.

(5) A failure on the part of a licensed undertaking to comply with the provisions of such a code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 5 of the minimum criteria.

8. Minister to issue directions to Authority

The Minister may from time to time give to the Authority general policy directions, not inconsistent with the provisions of this Act, as to the performance of its functions under this Act and the Authority shall give effect to such directions.

LICENSING

9. Restriction on carrying on trust business without a licence

(1) Subject to section 10, a person shall not carry on trust business in or from within Bermuda unless that person is for the time being a licensed undertaking.

(2) A person who contravenes this section is guilty of an offence and liable—

(a) on summary conviction, to a fine of $25,000 or to imprisonment for one year or to both;

(b) on conviction on indictment, to a fine of $100,000 or to imprisonment for five years or to both.

(3) In this section “trust business” means the provision of the services of a trustee as a business, trade, profession or vocation.

10. Exempted persons

(1) Section 9 shall not apply to any person exempted by or under an exemption order.

(2) The Minister acting on the advice of the Authority may by order (“an exemption order”) provide for—

(a) a specified person;

(b) persons falling within a specified class, to be exempt from the requirement of section 9.

(3) An exemption order may provide for an exemption to have effect—

(a) only in specified circumstances;

(b) subject to restrictions including restrictions on the value of the trust assets that may be held or the number of trusts under management;

(c) subject to conditions.

(4) "Specified" means specified by the exemption order.

(5) An order made under this section is subject to negative resolution procedure.

11. Trust licence

(1) An application for a licence may be made to the Authority—

(a) by a company for an unlimited trust licence;

(b) by a partnership or an individual for a limited trust licence.

(2) Without prejudice to section 15, an unlimited trust licence authorises the licensee to carry on trust business and to solicit business from the public generally.

(3) A limited trust licence is limited in the manner specified in section 11A.

(4) [REPEALED]

(5) [REPEALED]

(6) An application shall be made in such manner as the Authority may direct and shall be accompanied with—

(a) a business plan setting out the nature and scale of the trust business which is to be carried on by the applicant;

(b) particulars of the applicant's arrangements for the management of the business;

(c) such other information and documents as the Authority may reasonably require for the purpose of determining the application; and

(d) an application fee of such amount as may be prescribed under the Bermuda Monetary Authority Act 1969.

(7) An application may be withdrawn by notice in writing to the Authority at any time before it has determined the application.

[Section 11 subsection (3) substituted, and (4) and (5) repealed, by 2002:20 effective 13 August 2002; subsection (6)(d) amended by 2002:39 s.7 & Sch effective 30 December 2002]

11A. Limited trust licences

(1) A limited trust licence—

(a) authorises the licensee to hold trust assets to an aggregate value of thirty million dollars or such higher value as permitted by subsections (2) and (3); but

(b) does not authorise the licensee to act as sole trustee to any trust administered by him.

(2) Trust assets to an aggregate value in excess of thirty million dollars may be held under a limited trust licence in either of the following two cases—

(a) where permitted by the Authority in any particular case;

(b) where a licensee delegates to a company holding an unlimited trust licence delegable functions in respect of such assets as would cause the aggregate value to exceed thirty million dollars.

(3) In considering whether to grant a permit under subsection (2)(a), the Authority shall determine whether the licensee is a fit and proper person to hold assets in excess of thirty million dollars; and in making such a determination the Authority shall have regard to whether the licensee has, or has available to him,—

(a) sufficient knowledge and expertise; and

(b) financial and other resources of such amount;

as would safeguard the interests of its clients or potential clients.

(4) For the purpose of subsection (1)—

(a) the value of the trust assets shall be calculated by reference to the average value of the assets taken over the period of six months preceding the end of the licensee's financial year; and

(b) in calculating the value of the assets, no account shall be taken of the following assets—

(i) real property situated in Bermuda;

(ii) securities denominated in Bermuda dollars;

(iii) insurance policies providing for the payment of benefits in Bermuda dollars;

(iv) personal property other than that specified in subparagraphs (ii) and (iii) situated in Bermuda.

(5) In subsection (2) "delegable functions" has the meaning given in section 15B of the Trustee Act 1975.

[Section 11A inserted by 2002:20 s.6 effective 13 August 2002]

12. Grant and refusal of applications

(1) Subject to this section, the Authority may on an application duly made in accordance with section 11, and after being provided with all such information, documents and reports as it may reasonably require under that section, grant or refuse the application for a licence.

(2) The Authority shall not grant an application unless it is satisfied that the minimum criteria are fulfilled with respect to the applicant.

(3) A licence issued to a partnership shall be issued in the partnership name, and, without prejudice to sections 15 and 16, shall not be affected by any change in the name of the partners.

(4) The Minister acting on the advice of the Authority may by order amend the First Schedule by adding new criteria or by amending or deleting the criteria for the time being specified in the Schedule.

(5) An order made under subsection (4) shall be subject to negative resolution procedure.

13. Display and registration of licence

(1) A licensed undertaking shall at all times keep the licence on display at its principal place of business in Bermuda.

(2) The Authority shall keep in its records a copy of every licence issued under section 12, and each such licence shall be open to inspection by members of the public at all reasonable times. [97]

(3) A list of all undertakings for the time being licensed under this Act shall be provided by the Authority on its website: www.bma.bm. [98]

[Section 13 subsection (3) amended by 2002:39 s.7 & Sch effective 30 December 2002; Section 13 subsections (2) and (3) repealed and replaced by 2019:35 s. 3 effective 31 December 2019]

14. Annual licence fee

(1) An undertaking shall pay such fee as may be prescribed under the Bermuda Monetary Authority Act 1969—

(a) on the grant of a licence; and

(b) on or before 31 March in every year after the year in which the licence was granted.

(2) [DELETED]

(3) Where an undertaking fails to pay the prescribed fee as provided in subsections (1)(a) and (b), it shall pay in addition to such fee a late penalty fee of an amount equal to ten per cent of the fee due for every month or part thereof during which the fee remains unpaid.

(4) [REPEALED by 2012 : 38 s. 16]

[Section 14 subsection (1)(b) amended by 2002:2 s.3 effective 18 March 2002; subsection (1) amended, and (2) deleted, by 2002:39 s.7 & Sch effective 30 December 2002; subsection (1)(b) amended by 2010:58 s. 6 effective 1 January 2011; subsection (4) repealed by 2012:38 s. 16 effective 19 September 2012]

15. Restriction of licence

(1) Subject to section 18, the Authority may restrict a licence—

(a) if it is satisfied of the matters specified in paragraph (a), (b), (d) or (e) of section 16 but it appears to it that the circumstances are not such as to justify revocation;

(b) if it is satisfied that a person has become a controller of an undertaking in contravention of section 24 or has become or remains a controller after being given a notice of objection pursuant to section 25 or 26; or

(c) in connection with the revocation of a licence—

(i) when giving the undertaking notice that it proposes to revoke its licence; or

(ii) at any time after such notice has been given to the undertaking; or

(d) at any time after the undertaking has served a notice surrendering its licence with effect from a later date.

(2) The Authority may restrict a licence by imposing such conditions as it thinks desirable for the protection of the undertaking's clients or potential clients, and may in particular—

(a) require the undertaking to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(b) impose limitations on the acceptance of trust business;

(c) prohibit the undertaking from soliciting trust business either generally or from persons who are not already its clients;

(d) prohibit the undertaking from accepting new trust business;

(e) prohibit the undertaking from entering into any other transactions or class of transactions;

(f) require the removal of any officer or controller ;

(g) specify requirements to be fulfilled otherwise than by action taken by the undertaking.

(3) Any condition imposed under this section may be varied or withdrawn by the Authority.

(4) The Authority may on the application of an undertaking vary any condition imposed on its licence.

(5) [REPEALED by 2012:38 s. 4]

(6) The fact that a condition imposed under this section has not been complied with shall, where the restriction has been imposed pursuant to paragraphs (a) or (b) of subsection (1), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

[Section 15 subsection (5) repealed, and subsection (6) amended by 2012:38 s. 4 effective 19 September 2012]

16. Revocation of licence

Subject to section 18, the Authority may revoke the licence of an undertaking if the Authority is satisfied that—

(a) any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the undertaking;

(b) the undertaking has failed to comply with any obligation imposed on it by or under this Act or is carrying on business in a manner not authorised by its licence;

(c) a person has become a majority shareholder controller of the undertaking in contravention of section 24 or has become or remains such a controller after being given a notice of objection pursuant to section 25 or 26;

(d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the undertaking or, in connection with an application for a licence, by or on behalf of a person who is or is to be an officer or controller of the undertaking; or

(e) the interests of the clients or potential clients of the undertaking are in any way threatened.

17. Winding up on petition from the Authority

(1) On a petition presented by the Authority by virtue of this section, the court may wind up an undertaking which is a company in respect of which a licence is revoked, if the court is of the opinion that it is just and equitable that the undertaking be wound up.

(2) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of an undertaking under this section.

18. Notice of restriction or revocation of licence

(1) Where the Authority proposes to—

(a) restrict a licence under section 15(1);

(b) vary a restriction imposed on a licence otherwise than with the agreement of the undertaking concerned; or

(c) revoke a licence under section 16, the Authority shall give to the undertaking concerned a warning notice under section 33A.

(2) [REPEALED by 2012:38 s. 5]

(3) [REPEALED by 2012:38 s. 5]

(4) Where—

(a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of the First Schedule is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or

(b) a proposed restriction consists of or includes a condition requiring the removal of any person as a controller or an officer, the Authority shall give that person a copy of the warning notice but the Authority may omit from such copy any matter which does not relate to him.

(4A) After giving a notice under subsection (1) and taking into account any representations made under section 33A(2), the Authority shall decide—

(a) whether to proceed with the action proposed in the notice;

(b) whether to take no further action;

(c) if the proposed action was to revoke the undertaking's licence, to restrict its licence instead; or

(d) if the proposed action was to restrict the undertaking's licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(4B) Once the Authority has made a decision under subsection (4A) above it shall forthwith give either a decision notice under section 33B or a notice of discontinuance under section 33C, as the case may be.

(5) [REPEALED by 2012:38 s. 5]

(6) [REPEALED by 2012:38 s. 5]

(7) [REPEALED by 2012:38 s. 5]

(8) [REPEALED by 2012:38 s. 5]

(9) [REPEALED by 2012:38 s. 5]

(10) [REPEALED by 2012:38 s. 5]

(11) [REPEALED by 2012:38 s. 5]

(12) [REPEALED by 2012:38 s. 5]

(13) The Authority shall publish in the Gazette, in such form as it thinks fit, notice of every revocation of a licence under this Act.

[Section 18 subsections (1) and (4) amended, subsections (4A) and (4B) inserted, and subsections (2), (3), (5) - (12) repealed by 2012:38 s. 5 effective 19 September 2012]

19. Restriction in cases of urgency

(1) No notice need be given under section 18 in respect of the imposition or variation of a restriction on an undertaking's licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case the Authority may by written notice to the undertaking impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5) and section 29.

(4) Section 18(4) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 18(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) An undertaking to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may within the period of fourteen days beginning with the day on which the notice was given make representations to the Authority.

(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) the Authority shall decide whether—

(a) to confirm or rescind its original decision; or

(b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Authority shall within the period of twenty-eight days beginning with the day on which the notice was given under subsection (2) give the undertaking concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b), the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it is given.

20. Directions to protect interests of clients

(1) The Authority may give an undertaking directions under this section at any time after its licence is revoked or surrendered.

(2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the undertaking's clients.

(3) No direction shall be given to an undertaking under this section after it has ceased to hold or control trust assets; and any such direction which is in force with respect to an undertaking shall cease to have effect when the undertaking ceases to hold or control any such assets.

(4) An undertaking which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—

(a) on summary conviction to a fine of $25,000;

(b) on conviction on indictment to a fine of $75,000.

21. Notification and confirmation of directions

(1) A direction under section 20 shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the undertaking concerned.

(2) A direction under section 20, except one varying a previous direction with the agreement of the undertaking concerned—

(a) shall state the reasons for which it is given and give particulars of the undertaking's rights under subsection (3) and section 29; and

(b) without prejudice to section 20(3), shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Authority to the undertaking concerned.

(3) An undertaking to which a direction is given which requires confirmation under subsection (2) may, within the period of fourteen days beginning with the day on which the direction is given, make

written representations to the Authority; and the Authority shall take any such representations into account in deciding whether to confirm the direction.

22. Surrender of licence

(1) An undertaking may surrender its licence by written notice to the Authority.

(2) A surrender shall take effect on the date of the giving of approval by the Authority—[99]

(a) once it is satisfied that all matters relating to the trust business of the licensed undertaking have been prudently administered; or

(b) in the case where the trust business has been transferred to another trustee.

(3) The surrender of the licence shall be irrevocable unless the Authority by notice in writing allows it to be withdrawn. [100]

[Section 22 subsections (2) and (3) repealed and substituted by 2019:35 s. 4 effective 31 December 2019]

23. Transfer of trusts to new trustees

(1) Notwithstanding anything to the contrary in any declaration of trust, where the Authority is satisfied that in the interests of clients of a licensed undertaking it is necessary for all or any of the trusts managed by the undertaking to be transferred to a new trustee for administration by such trustee, the Authority may petition the court for that purpose.

(2) In any such case, the court, after hearing representations from the Authority or any other person appearing to the court to be affected, may order the transfer of any such trust to a new trustee, and in that connection may make such supplemental or incidental orders or give such directions, as the court thinks fit.

OBJECTIONS TO SHAREHOLDER CONTROLLERS

24. Notification of new or increased control

(1) No person shall become a 10 per cent or majority shareholder controller of a licensed undertaking which is a company unless—

(a) he has served on the Authority a written notice stating that he intends to become such a controller of the undertaking; and

(b) either the Authority has, before the end of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the undertaking, or that period has elapsed without the Authority having served him under section 25 a written notice of objection to his becoming such a controller of the undertaking.

(2) Subsection (1) applies also in relation to a person becoming a partner in a licensed undertaking which is a partnership.

(3) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(4) Where additional information or documents are required from any person by a notice under subsection (2) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b).

25. Objection to new or increased control

(1) The Authority may serve a notice of objection under this section on a person who has given notice under section 24 unless it is satisfied—

(a) that the person concerned is a fit and proper person to become a controller of the description in question of the undertaking;

(b) that the interests of clients and potential clients of the undertaking would not be in any other manner threatened by that person becoming a controller of that description of the undertaking; and

(c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the undertaking as a controller of the description in question the criteria in the First Schedule would continue to be fulfilled in the case of the undertaking or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

(a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

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

(a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) give particulars of the rights conferred by section 29.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 24 in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in section 24(1)(b) (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until fourteen days after the end of the period within which representations can be made under subsection (3).

26. Objection to existing controller

(1) Where it appears to the Authority that a person who is a controller of any description of a licensed undertaking is not or is no longer a fit and proper person to be such a controller of the undertaking it may serve him with a written notice of objection to his being such a controller of the undertaking.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall—

(a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and

(b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

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

(a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and

(b) give particulars of the rights conferred by section 29.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

27. Contraventions by controller

(1) Subject to subsection (2), any person who contravenes section 24 by—

(a) failing to give the notice required by subsection (1)(a) of that section; or

(b) becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (1)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 25(2),

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know of the acts or circumstances by virtue of which he 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 has become such a controller he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a controller within fourteen days of becoming aware of the fact.

(3) Any person who—

(a) before the end of the period mentioned in section 24 (1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 25(2);

(b) contravenes section 24 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or

(c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him;

shall be guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of $25,000.

(5) A person guilty of an offence under subsection (3) shall be liable—

(a) on summary conviction to a fine of $25,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of $500 for each day on which the offence has continued;

(b) on conviction on indictment to a fine of $50,000 or to imprisonment for two years or to both.

28. Restriction on and sale of shares

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

(a) has contravened section 25 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description;

(b) having become a controller of any description in contravention of that section continues to be one after such a notice has been served on him; or

(c) continues to be a controller of any description after being served under section 26 with notice of objection to his being a controller of that description.

(2) The Authority 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 an 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) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or

(d) except in liquidation, no payment shall be made of any sums due from the undertaking on the shares, whether in respect of capital or otherwise.

(3) The court may, on the application of the Authority, 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) No order shall be made under subsection (3) in a case where the notice of objection was served under section 25 or 26—

(a) until the end of the period within which an appeal can be brought against the notice of objection;

(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 Authority, 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 the whole or part of the proceeds to be paid to him.

(7) This section applies—

(a) to all the shares in the undertaking of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the undertaking; and

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

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

DISCIPLINARY MEASURES

28A. Power to impose civil penalties for breach of requirements

(1) Except as provided in sections 14, 34, and 35, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a penalty not exceeding $500,000, as the Authority considers appropriate, for each such failure or contravention.

(2) For the purposes of subsection (1), "appropriate" means effective, proportionate and dissuasive.

(3) The Authority shall not impose a penalty under subsection (1) where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

[Section 28A inserted by 2012:38 s. 6 effective 19 September 2012]

28B. Civil penalties procedures

(1) If the Authority proposes to impose a civil penalty, it must give the person concerned a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the person concerned a decision notice.

[Section 28B inserted by 2012:38 s. 6 effective 19 September 2012]

28C. Public censure

(1) If the Authority considers that an undertaking has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the undertaking.

[Section 28C inserted by 2012:38 s. 6 effective 19 September 2012]

28D. Public censure procedure

(1) If the Authority proposes to publish a statement in respect of an undertaking under section 28C, it must give the institution a warning notice.

(2) If the Authority decides to publish a statement under section 28C (whether or not in the terms proposed), it must give the undertaking a decision notice.

[Section 28D inserted by 2012:38 s. 6 effective 19 September 2012]

28E. Prohibition orders

(1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a person who is licensed by the Authority under this Act ("a regulated person").

(2) The Authority may make an order ("a prohibition order") prohibiting the individual from performing a specified function, any function falling within a specified description, or any other function.

(3) A prohibition order may relate to—

(a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;

(b) regulated persons generally, or any person within a specified class of regulated persons.

(4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria as the Authority may establish in a statement of principles.

(5) An undertaking must ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.

(6) The Authority may, on the application of the individual named in a prohibition order, vary or revoke the prohibition order.

(7) The Authority must publish a prohibition order that is in effect, and every variation of such order, in such manner as it considers appropriate to bring the order to the attention of the public.

(8) This section applies to the performance of functions in relation to a regulated activity carried on by a person who is an exempt person in relation to that activity as it applies to the performance of functions in relation to a regulated activity carried on by a regulated person.

(9) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable—

(a) on summary conviction to a fine of $50,000 or to imprisonment for two years or to both;

(b) on conviction on indictment to a fine of $200,000 or to imprisonment for four years or to both.

(10) In this section—

"exempt person" means a person who is exempt from the requirement to hold a licence by or under any of the provisions of this Act;

"regulated activity" means any activity that is carried on by way of business requiring licensing or other authority under any provision of this Act, regulations, rules or orders made thereunder;

"regulated person" has the meaning given in subsection (1);

"specified" means specified in the prohibition order.

[Section 28E inserted by 2012:38 s. 6 effective 19 September 2012]

28F. Prohibition orders: procedures

(1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.

[Section 28F inserted by 2012:38 s. 6 effective 19 September 2012]

28G. Applications relating to prohibition orders: procedures

(1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority decides to refuse the application, it must give the applicant a decision notice.

[Section 28G inserted by 2012:38 s. 6 effective 19 September 2012]

28H. Determination of applications for variation etc.

(1) The Authority may grant an application made under section 28G if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant—

(a) has obtained a qualification;

(b) has undergone, or is undergoing, training; or

(c) possesses a level of competence,

required in relation to persons performing functions of the kind to which the application relates.

[Section 28H inserted by 2012:38 s. 6 effective 19 September 2012]

INJUNCTIONS

28I. Injunctions

(1) If, on the application of the Authority, the Court is satisfied—

(a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or

(b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

(2) If, on the application of the Authority, the Court is satisfied—

(a) that any person has contravened a relevant requirement; and

(b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority, the Court is satisfied that any person may have—

(a) contravened a relevant requirement; or

(b) been knowingly concerned in the contravention of such a requirement,

the Court may make an order restraining such person from disposing of, or otherwise dealing with, any of his assets which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

(4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(5) "Relevant requirement" in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

[Section 28I inserted by 2012:38 s. 6 effective 19 September 2012]

29. Rights of appeal

(1) An undertaking which is aggrieved by a decision of the Authority—

(a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence;

(b) to revoke its licence;

(c) to impose a civil penalty under section 28A; or

(d) to publish a statement in respect of it pursuant to section 28C;

may appeal against the decision to a tribunal constituted in accordance with section 30.

(2) Where—

(a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 18(4)(a); or

(b) the effect of a decision within subsection (1)(a) is to require the removal of a person as a controller or officer of an undertaking,

the controller or officer to whom the ground relates or whose removal is required may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

(3) Any person on whom notice of objection is served under section 25 or 26 may appeal to a tribunal constituted as aforesaid against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 27(1), (2) or (3).

(3A) Any person in respect of whom a prohibition order has been made under section 28E may appeal to the tribunal against the decision.

(3B) Any person in respect of whom a decision notice has been issued refusing a revocation or variation of a prohibition order may appeal to the tribunal.

(4) The tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision.

(5) The revocation of an undertaking's licence pursuant to a decision against which there is a right of appeal under this section shall not have effect—

(a) until the end of the period within which the appeal can be brought; and

(b) if such an appeal is brought, until it is determined or withdrawn.

[Section 29 subsections (1) and (4) amended, and subsections (3A) and (3B) inserted by 2012:38 s. 7 effective 19 September 2012]

30. Constitution of tribunals

(1) Where an appeal is brought under section 29 a tribunal to determine the appeal shall be constituted in accordance with this section.

(2) The tribunal shall consist of a chairman, or, in his absence, a deputy chairman and two other members.

(3) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(4) The two other members of the tribunal shall be selected by the chairman, or, in his absence, the deputy chairman, from a panel of members appointed by the Minister, who shall be persons appearing to the chairman or, as the case may be, the deputy chairman, to have experience of trust business.

(5) During any period of time when the chairman or deputy chairman is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(6) The Minister shall appoint a panel of not less than nine persons with experience of trust business to serve as members of appeal tribunals.

(7) A person shall not be eligible for appointment as chairman, deputy chairman or member of the tribunal if he is or has at any time during the period of two years ending with the date of his appointment been an officer, servant or agent of the Authority or of any licensed undertaking.

(8) There shall be paid to the members of the tribunal such remuneration and such allowances as the Minister may determine.[101]

[Section 30 subsection (8) amended by 2017:38 s. 12 effective 30 October 2017]

31. Determination of appeals

(1) On an appeal under section 29[102] the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(2) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—

(a) where the decision was to impose or vary any restriction the tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or

(b) where the decision was to revoke a licence the tribunal may direct the Authority to restrict it instead.

(3) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

[Section 31 subsection (1) amended by 2016:33 s. 4 effective 1 January 2017]

32. Costs, procedure and evidence

(1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

(a) as to the period within which and the manner in which such appeals are to be brought;

(b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;

(c) as to the procedure to be adopted where appeals are brought both by an undertaking and by a person who is to be a controller or officer of an undertaking, including provision for the hearing of the appeals together and for the mutual disclosure of information;

(d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;

(e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;

(f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;

(g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;

(h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and

(i) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of $10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable—

(a) on summary conviction to a fine of $25,000 or to imprisonment for six months or to both;

(b) on conviction on indictment to a fine of $50,000 or to imprisonment for two years or to both.

33. Further appeals on a point of law

(1) An undertaking or other person who has appealed to a tribunal may appeal to the court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for re-hearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with leave of that court.

NOTICES

33A. Warning notices

(1) A warning notice must—

(a) state the action which the Authority proposes to take;

(b) be in writing; and

(c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice given under section 18 proposing action within subsection (1)(a) or (1)(b) of that section must specify the proposed restriction or, as the case may be, the proposed variation.

(5) A warning notice about a proposal to publish a statement given under section 28C must set out the terms of the statement.

(6) A warning notice given under section 28F must set out the terms of the prohibition.

[Section 33A inserted by 2012:38 s. 8 effective 19 September 2012]

33B. Decision notices

(1) A decision notice must—

(a) be in writing;

(b) give the Authority's reasons for the decision to take the action to which the notice relates;

(c) give its decision; and

(d) give an indication of the right to appeal the decision to the appeal tribunal under section 29.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 33A was given; and if no notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 33C.

(3) A decision notice about the imposition of a condition under section 20 must set out the terms of the condition.

(4) A decision notice about the imposition of a civil penalty under section 28A must state the date of payment.

(5) A decision notice about public censure under section 28C must—

(a) set out the terms of the statement;

(b) give details of the manner in which, and the date on which, the statement will be published.

(6) A decision notice about a prohibition order made under section 28F(2) must—

(a) name the individual to whom the prohibition order applies;

(b) set out the terms of the order; and

(c) be given to the individual named in the order.

(7) A decision notice shall state the day on which it is to take effect.

(8) The Authority may, before it takes the action to which a decision notice ("the original notice") relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(9) The Authority may give a further decision notice as a result of subsection (8) only if the person to whom the original notice was given consents.

(10) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the tribunal, he has that right as respects the decision notice given under subsection (8).

[Section 33B inserted by 2012:38 s. 8 effective 19 September 2012]

CONCLUSION OF ACTION

33C. Notices of discontinuance

(1) Subject to section 33B(2), if the Authority decides not to take the action proposed in a warning notice, it must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the action which is being discontinued.

[Section 33C inserted by 2012:38 s. 8 effective 19 September 2012]

PUBLICATION

33D. Publication

(1) Subject to sections 18, 28C and 28E, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.

(2) The Authority must not publish a decision under subsection (1)—

(a) before notifying the person concerned; and

(b) pending an appeal under section 29.

[Section 33D inserted by 2012:38 s. 8 effective 19 September 2012]

INFORMATION

34. Notification of change of controller or officer

(1) A licensed undertaking shall give written notice to the Authority of the fact that any person has become or ceased to be a controller or officer of the undertaking.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the undertaking becomes aware of the relevant facts.

(3) An undertaking which fails to give a notice required by this section shall be liable to a civil penalty calculated in accordance with subsection (4).

(4) For each week or part of a week that an undertaking fails to comply with a requirement imposed on it under subsection (1) it shall be liable to a civil penalty not exceeding $5,000.

[Section 34 subsection (3) amended, and subsection (4) inserted by 2012:38 s. 9 effective 19 September 2012]

35. Certificates of Compliance

(1) Every licensed undertaking shall, within four months from the end of its financial year, deliver to the Authority a certificate of compliance, signed by an officer of the undertaking, made up to the end of its financial year, certifying that the undertaking has complied with the minimum criteria, codes of conduct and, in the case of an undertaking which is not a company, the limitations imposed by section 11A.

(2) An undertaking that fails to deliver a certificate as required by subsection (1) within the time specified therein shall be liable to a civil penalty not exceeding $5,000 for each week or part of a week that the undertaking is in default.

[Section 35 subsection (1) amended by 2002:20 s.7 effective 13 August 2002; subsection (2) repealed and substituted by 2012:38 s. 10 effective 19 September 2012]

36. Power to obtain information and reports

(1) The Authority may by notice in writing served on a licensed undertaking—

(a) require the undertaking to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for ensuring that the undertaking is complying with the provisions of this Act and any code of practice, and for safeguarding the interests of clients and potential clients of the undertaking;

(b) require the undertaking to provide the Authority with a report, in such form as may be specified in the notice, by the undertaking's auditor or by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the undertaking to provide information under paragraph (a).

(2) The person appointed by an undertaking to make any report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the undertaking, of the functions of the Authority under this Act.

(3) Without prejudice to the generality of section 57(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act.

[Section 36 subsection (2) substituted, and (3) inserted, by 2005:40 s.2 effective 10 July 2006]

37. Power to require production of documents

(1) The Authority may by notice in writing served on a licensed undertaking—

(a) require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;

(b) require it to provide to an officer, servant or agent of the Authority such information, or to produce to him such documents, as he may specify;

being such information or documents as the Authority may reasonably require for ensuring that the undertaking is complying with the provisions of this Act and any code of practice, and for safeguarding the interests of clients and potential clients of the undertaking.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from an undertaking, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require an undertaking or other person to produce any documents includes power—

(a) if the documents are produced, to take copies of them or extracts from them and to require that undertaking or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an employee of, the undertaking in question, to provide an explanation of any of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of the clients or potential clients of a licensed undertaking which is a company to do so, it may also exercise the powers conferred by section 36 and subsection (1) of this section in relation to any company which is or has at any relevant time been—

(a) a parent company, subsidiary company or related company of that undertaking;

(b) a subsidiary company of a parent company of that undertaking;

(c) a parent company of a subsidiary company of that undertaking; or

(d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50 per cent or more of the shares or is entitled to exercise, or control the exercise of more than 50 per cent of the voting power at a general meeting.

(5) The Authority may by notice in writing served on any person who is or is to be a controller or officer of a licensed undertaking require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

38. Right of entry to obtain information and documents

(1) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 36(1) and 37(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 37(3).

(2) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both.

INVESTIGATIONS

39. Investigations on behalf of the Authority

(1) If it appears to the Authority desirable to do so in the interests of the clients or potential clients of a licensed undertaking the Authority may appoint one or more competent persons to investigate and report to the Authority on—

(a) the nature, conduct or state of the undertaking's business or any particular aspect of it; or

(b) the ownership or control of the undertaking;

and the Authority shall give written notice of any such appointment to the undertaking concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out, he may also investigate the business of any company which is or has at any relevant time been—

(a) a parent company, subsidiary company or related company of the undertaking under investigation;

(b) a subsidiary company or related company of a parent company of that undertaking;

(c) a parent company of a subsidiary company of that undertaking; or

(d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50 per cent or more of the shares or is entitled to exercise, or control the exercise of more than 50 per cent of the voting power at a general meeting.

(3) Where a person appointed under subsection (1) decides to investigate the business of any company by virtue of subsection (2) he shall give it written notice to that effect.

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of an undertaking which is under investigation (whether by virtue of subsection (1) or (2)), or any person appointed to make a report in respect of that undertaking under section 36(1)(b)—

(a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation which are in his custody or power;

(b) to attend before the persons so appointed at such time and place as they may require and answer questions relevant to the investigation as such persons may require; and

(c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by an undertaking which is being investigated by him under this section; but he shall not do so without prior notice in writing.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(6A) Unless the Authority otherwise directs, the undertaking under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

(7) Any person who—

(a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4) ;

(b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;

(c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an undertaking which is under investigation or a company which is being investigated by virtue of subsection (2); or

(d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5),

shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

(9) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

[Section 39 subsections (2), (4) and (8) amended, and subsection (6A) inserted by 2012 : 38 s. 11 effective 19 September 2012]

39A. Investigation of suspected contraventions

(1) The Authority may conduct an investigation if it appears to the Authority that—

(a) a person may have contravened section 9;

(b) an exempted person may have contravened any restriction or condition of an exemption order made under section 10;

(c) an undertaking may have failed to comply with any requirements or contravened any prohibition imposed by or under this Act, Regulations, Rules or Orders made thereunder; or

(d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 28E(10).

(2) The power conferred by subsection (1)(c) may be exercised in relation to a former licensed undertaking but only in relation to—

(a) business carried on at any time when the undertaking was licensed under this Act; or

(b) the ownership or control of an undertaking at any time when it was licensed under this Act.

[Section 39A inserted by 2012:38 s. 12 effective 19 September 2012]

40. Power to require production of documents

(1) The Authority may by notice in writing require the person who is the subject of an investigation under section 39A (the "person under investigation") or any person connected with the person under investigation—

(a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of the investigation;

(b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;

(c) to attend at such place and time as may be specified in the notice and answer questions relevant to the investigation as the Authority may require.

(1A) The Authority may by notice in writing require every person who is or was a director controller, officer, employee, agent, banker, accountant, auditor or barrister and attorney of a person under investigation—

(a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation which are in his custody or power;

(b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and

(c) to take such actions as the Authority may direct in connection with the investigation.

(2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (a) of that subsection or exercising the powers conferred by subsection (2).

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(6) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

(7) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—

(i) a member of the group of the person under investigation;

(ii) a controller of the person under investigation;

(iii) a partner of a partnership of which the person under investigation is a member.

[Section 40 section heading and subsection (3) amended, subsection (1) repealed and substituted, and subsections (1A) and (7) inserted by 2012:38 s. 13 effective 19 September 2012]

41. Powers of entry

(1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 39A—

(a) that a person has failed to comply with a notice served on him under section 40;

(b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by the person in response to such a notice; or

(c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

(a) to enter any premises occupied by the person referred to in subsection (1) (a) which are specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(b) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of or extracts from any such documents;

(d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 40.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

(a) for a period of three months; or

(b) until the conclusion of proceedings, if within the period of three months referred to in paragraph (a) proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 39A.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) shall be guilty of an offence and liable—

(a) on summary conviction, to a fine of $25,000 or to imprisonment for six months or to both;

(b) on conviction on indictment, to a fine of $50,000 or to imprisonment for two years or to both.

[Section 41 subsection (1) repealed and substituted, subsections (2) and (4) amended by 2012:38 s. 14 effective 19 September 2012]

42. Obstruction of investigations

(1) A person who knows or suspects that an investigation is being or is likely to be carried out—

(a) into a suspected contravention of section 9, or a term or condition of an exemption order made under section 10; or

(b) under section 39,

shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine of $25,000 or to imprisonment for six months or to both;

(b) on conviction on indictment, to a fine of $50,000 or to imprisonment for two years or to both.

ACCOUNTS AND AUDIT

43. Duty to prepare annual accounts

(1) Notwithstanding anything to the contrary in any other Act, every licensed undertaking shall prepare annual accounts as required by this section.

(2) An undertaking which is a company shall prepare annual financial statements of its business, and shall cause copies of those statements to be laid before the undertaking in general meeting.

(3) Such an undertaking shall cause the financial statements of its business to be audited annually and shall at each of its offices in Bermuda keep a copy of its most recent audited financial statements together with the auditor's report on the financial statements.

(4) An undertaking which is not a company shall prepare annual accounts in such form and containing such particulars as the Minister may prescribe.

(5) An undertaking shall provide the Authority with a copy of the audited financial statements and report or its accounts as the case may be, not later than four months after the close of each financial year of the undertaking.

(6) [REPEALED by 2012:38 s. 16]

[Section 43 subsection (6) repealed by 2012:38 s. 16 effective 19 September 2012]

44. Appointment of auditors

(1) Every licensed undertaking which is a company shall appoint annually an approved auditor to audit the financial statements of the undertaking.

(2) If a licensed undertaking fails to appoint an approved auditor under subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by that undertaking to such auditor.

(3) A licensed undertaking shall forthwith give written notice to the Authority if it—

(a) proposes to remove an auditor before the expiration of his term of office; or

(b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.

(4) [REPEALED by 2012:38 s. 16]

(5) For the purposes of this section "approved auditor" means a person who is a member of a professional body for the time being declared by the Minister by notice published in the Gazette to be approved for the purposes of this Act.

(6) No person having an interest in any undertaking otherwise than as a client, and no officer, servant or agent of any undertaking shall be eligible for appointment as an approved auditor for that undertaking; and any person appointed as such auditor to any undertaking who subsequently acquires such interest or becomes an officer, servant or agent of that undertaking shall cease to be an approved auditor.

[Section 44 subsection (4) repealed by 2012:38 s. 16 effective 19 September 2012]

45. Auditor and accountant to communicate certain matters to Authority

(1) An auditor of a licensed undertaking shall in the circumstances specified in subsection (2) forthwith give written notice to the Authority of those matters.

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

(a) his resignation before the expiration of his term of office;

(b) his intention not to seek to be re-appointed;

(c) a decision to include a modification of his report on the undertaking's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion;

(d) [REPEALED]

(2A) An auditor of a licensed undertaking, or an accountant of a licensed undertaking which is not a company, shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the undertaking, of the functions of the Authority under this Act.

(2B) Without prejudice to the generality of section 57(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act.

(3) [REPEALED]

(4) An auditor, who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of $25,000.

[Section 45 subsection (2)(d) and (3) repealed, subsections (2A) and (2B) inserted, and (4) amended, by 2005:40 s.3 effective 10 July 2006]

46. Auditor's report

(1) An approved auditor of a licensed undertaking which is a company shall make a report to the undertaking's members on all annual financial statements of the undertaking of which copies are to be laid before the undertaking in general meeting during his tenure of office.

(2) The auditor shall conduct his audit and prepare his report pursuant to the provisions of section 90 of the Companies Act 1981.

47. Communication with Authority

(1) No duty to which—

(a) an auditor or accountant of a licensed undertaking;

(b) a person appointed to make a report under section 36(1)(b),

may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

(2) In relation to an auditor or accountant of an undertaking this section applies to any matter of which he becomes aware in his capacity as auditor or accountant, as the case may be, and which relates to the business or affairs of the undertaking or any associated company.

(3) In relation to a person appointed to make a report under section 36(1)(b) this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

(a) relates to the business or affairs of the undertaking in relation to which his report is made or any associated company of that undertaking;

(b) if by virtue of section 37(4) the report relates to an associated company of an undertaking, to the business or affairs of that company.

(4) In this section "associated company", in relation to an undertaking, means any such company as is mentioned in section 37(4).

47A Separation of client funds[103]

A licensed undertaking holding client funds shall—

(a) hold such funds separately from its own funds or funds held in respect of any other business; and

(b) maintain such books of account and other records such that client funds may be readily identified at any time.

[Section 47A inserted by 2019:35 s. 5 effective 31 December 2019]

RESTRICTION ON DISCLOSURE OF INFORMATION

48. Restricted information

(1) Except as provided by sections 49, 50 and 51—

(a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and

(b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section commits an offence and is liable—

(a) on summary conviction to a fine of $50,000 and to imprisonment for two years or to both;

(b) on conviction on indictment to a fine of $100,000 or to imprisonment for five years or to both.

49. Disclosure for facilitating the discharge of functions of the Authority

(1) Section 48 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge—

(a) its functions under this Act; and

(b) its functions under the Bermuda Monetary Authority Act 1969.

(2) Without prejudice to the generality of subsection (1), section 48 does not preclude the disclosure of information by the Authority to the auditor or accountant of a licensed undertaking, or the person appointed to make a report under section 36(1)(b) if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge the functions mentioned in that subsection or would otherwise be in the interests of the clients or potential clients.

50. Disclosure for facilitating the discharge of functions by other authorities

(1) Except as provided in subsection (4), section 48 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his regulatory functions.

(2) Except as provided in subsection (4), section 48 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosures to an authority unless the Authority is satisfied that the authority is subject to restrictions on further disclosure at least equivalent to those imposed by sections 48, 49 and this section.

(4) Subsections (1) and (2) do not apply in relation to the disclosure of information on settlors and beneficiaries of any trust administered by an undertaking.

(5) Section 48 does not preclude the disclosure of information—

(a) for the purpose of enabling or assisting a person to do anything which he is required to do in pursuance of a requirement imposed under section 36(1)(b);

(b) with a view to the undertaking of, or otherwise for the purposes of , any criminal proceedings, whether under this Act or any other Act;

(c) in connection with any other proceedings arising out of this Act.

(6) Section 48 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 39, 40 or 41 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

(6A) Section 48 does not preclude the disclosure of information to the [104]Chartered Professional Accountants of Bermuda for the purpose of instituting disciplinary proceedings for a breach of any duty imposed on its members under this Act.

(7) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purpose mentioned in this section.

[Section 50 subsection (6A) inserted by 2005:40 s.4 effective 10 July 2006; amended by 2014:8 s. 16 effective 11 April 2014]

51. Information supplied to the Authority by relevant overseas authority

(1) Section 48 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 48 or—

(a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or

(b) with a view to the undertaking of, or otherwise for the purpose of, criminal proceedings, whether under this Act or any other Act.

(3) In this section—

"relevant functions" in relation to the Authority means its functions under this Act;

"relevant supervisory authority" means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act.

[Section 51 subsection (2) amended by 2002:20 s.8 effective 13 August 2002]

MISCELLANEOUS AND SUPPLEMENTAL

52. False documents or information

(1) Any person who, for any purposes of this Act—

(a) issues a document, or supplies information, which is false or misleading in a material respect; or

(b) signs a document which is false or misleading in a material respect; or

(c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect,

commits an offence and is liable—

(i) on summary conviction to a fine of $25,000 or to imprisonment for two years or to both;

(ii) on conviction on indictment to a fine of $50,000 or to imprisonment for four years or to both.

(2) It shall be a defence for a person charged with an offence under subsection (1) to prove—

(a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and

(b) if not an individual, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

53. Offences by companies

(1) Where an offence under this Act committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the company, or any person who was purporting to act in any such capacity, he, as well as the company, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.

(2) Where the affairs of a company are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company.

54. Restriction on use of word “trust”

(1) No person carrying on business in or from Bermuda shall use any name which indicates or may reasonably be understood to indicate (whether in English or in any other language) that it is carrying on trust business unless it is a licensed undertaking or is exempted under section 10.

(2) Any person using a name in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of $5,000.

55. Notices

(1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Authority.

(2) Any such document may be given to or served on the person in question—

(a) by delivering it to him;

(b) by leaving it at his principal place of business; or

(c) by sending it to him at that address by facsimile or other similar means which produce a document containing the text of the communication.

(3) Any such document may in the case of a company be given to or served—

(a) by delivering it to the company's principal place of business or registered office in Bermuda; or

(b) by sending it by registered post addressed to the company's principal place of business.

56. Service of notice on Authority

(1) No notice required by this Act to be given or served on the Authority shall be regarded as given or served until it is received.

(2) Subject to subsection (1), such notice may be given by facsimile or other similar means which produce a document containing the text of the communication.

56A. Civil debt and civil penalties

(1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 28A in relation to the same matter.

(2) A civil penalty levied pursuant to this Act may be recovered by the Authority as a civil debt.

[Section 56A inserted by 2012:38 s. 15 effective 19 September 2012]

57. Regulations

(1) The Minister acting on the advice of the Authority, may make regulations prescribing anything which may be prescribed under this Act and generally for the implementation of this Act, and may prescribe penalties not exceeding $10,000 for any breach of the regulations.

(2) Regulations made under this section are subject to negative resolution procedure.

ANNUAL RETURNS

57A. Prudential and other returns[105]

(1) The Authority may make rules prescribing statutory returns that must be complied with by every licensed undertaking.

(2) Every licensed undertaking shall, not later than 28 days after the relevant day, file with the Authority such returns as the Authority may prescribe in rules made under this section.

(3) Every licensed undertaking that fails to file a return within the time specified in subsection (2) shall be liable to a civil penalty not exceeding $5,000 for each week or part of a week that it is in default.

(4) Sections 6, 7, and 8 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.

(5) In this section "relevant day" means such day as may be specified in the rules.

[Section 57A inserted by 2019:35 s. 6 effective 31 December 2019]

57B. Authority may exempt or modify prudential standards or requirements[106]

(1) The Authority may where it has made a determination (or on application from a licensed undertaking) exempt it from the requirement to comply with any prudential standard or requirement applicable to it under this Act or modify any such prudential standard or requirement.

(2) The Authority may grant the exemption or modification under this section subject to such conditions as it may consider appropriate.

(3) The Authority shall not grant an exemption or modification unless it is satisfied that it is appropriate to do so having regard to the nature, scale and complexity of the licensed undertaking's business.

(4) The Authority may revoke an exemption or vary any modification granted under this section and shall serve notice on the licensed undertaking of its proposal to revoke its approval and the reason for the proposal.

(5) A licensed undertaking served with a notice under subsection (4) may within a period of 28 days from the date of the notice, make written representations to the Authority and where such representations have been made, the Authority shall take them into account in deciding whether to revoke its approval.

[Section 57B inserted by 2019:35 s. 6 effective 31 December 2019]

58. Repeal

The Trust Companies Act 1991 is repealed ("the repealed enactment").

59. Consequential amendments

The Second Schedule, which makes consequential amendments, has effect.

60. Transitional

(1) This section applies to a company which on the commencement of this Act is a company carrying on trust business under a licence issued by the Minister under the repealed enactment.

(2) On the commencement of this Act the Authority shall issue to a company to which this section applies an unlimited licence, and thereupon the provisions of this Act shall apply to the company as if such licence were issued pursuant to an application made under section 11.

(2A) A company shall not be liable to pay the fee prescribed by virtue of section 14(1) on the issue of its licence under subsection (2), but shall be liable to pay the fee prescribed thereby on or before 30 April 2002 and annually thereafter, and the provisions of sections 14(3) and (4) shall apply in relation to failure to pay such fee.

(3) An individual who, or a partnership which, on the commencement of this Act is carrying on trust business may continue to carry on trust business without a licence under this Act—

(a) during the period of twelve months beginning with that date; and

(b) if within that period application is made for a licence, until that application is finally disposed of or withdrawn, and if the application is refused and an appeal is brought against the refusal, until it has been determined or withdrawn.

[Section 60 subsection (2A) inserted by 2002:2 s.4 effective 18 March 2002; subsection (3)(a) amended by 2002:20 s.9 effective 13 August 2002]

FIRST SCHEDULE - MINIMUM CRITERIA FOR LICENSING

(section 12(2))

CONTROLLERS AND OFFICERS TO BE FIT AND PROPER PERSONS

1 (1) Every person who is, or is to be, a controller or officer of the undertaking is a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of clients or potential clients of the undertaking are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

(a) committed an offence involving fraud or other dishonesty or violence;

(b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;

(c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;

(d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

CORPORATE GOVERNANCE.[107]

1A (1) The undertaking shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the undertaking.

(2) Without prejudice to subparagraph (1) the business of the undertaking shall—

(a) be effectively directed—

(i) in the case of an undertaking which is a company or a partnership, by at least two individuals; or

(ii) in any other case, by one person if so approved by the Authority having regard to the circumstances of the undertaking and the nature and scale of its operations; and

(b) be under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, size, complexity and risk profile of the undertaking.

BUSINESS TO BE DIRECTED BY AT LEAST TWO INDIVIDUALS[108]

2 [DELETED][109]

3 [DELETED][110]

COMPOSITION OF BOARD OF DIRECTORS[111]

4 [DELETED][112]

BUSINESS TO BE CONDUCTED IN PRUDENT MANNER

5 (1) The undertaking conducts, or, in the case of an undertaking which is not yet carrying on trust business, will conduct its business in a prudent manner.

(2) In determining whether a registered person is conducting its business in a prudent manner, the Authority shall take into account any failure by the registered person to comply with the provisions of—

(a) this Act;

(b) any other law, including the provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

(c) codes of practice issued by the Authority pursuant to section 7 of this Act; and

(d) international sanctions in force in Bermuda.

(3) An undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain minimum net assets—

(a) amounting to $250,000 in the case of an undertaking which is a company; and

(b) $25,000 in any other case;

or such larger amount as the Authority may require for any particular undertaking.

(4) An undertaking shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

(5) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the undertaking to be prudently managed and the undertaking to comply with the duties imposed on it by or under this Act or other provision of law; and in determining whether those systems are adequate the Authority shall have regard to the functions and responsibilities in respect of them of any such directors of the undertaking as are mentioned in paragraph 4.

(6) An undertaking shall not be regarded as conducting its business in a prudent manner unless it has effected a policy of insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of the undertaking's operations.

(6A) An undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or will maintain as the case may be, adequate liquidity; having regard to the relationship between its assets and its actual and contingent liabilities, to the time at which those liabilities will or may fall due and its assets mature, and to any other factors appearing to the Authority to be relevant. [113]

(7) Subparagraphs (2) to (6) are without prejudice to the generality of subparagraph (1).

CONSOLIDATED SUPERVISION

6 The position of the undertaking within the structure of any group to which it may belong or its links with any related companies shall be such that it will not obstruct the conduct of effective consolidated supervision.

INTEGRITY AND SKILL

7 The business of the undertaking is or, in the case of an undertaking which is not yet carrying on trust business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

[First Schedule by 2012:38 s. 16 effective 19 September 2012; amended by BR 6/2014 para. 2 effective 24 January 2014; amended by 2019:35 s. 7 effective 31 December 2019]

SECOND SCHEDULE - CONSEQUENTIAL AMENDMENTS - [OMITTED]

(section 59)

[Amended by:

2002:2

2002:20

2002:39

2005:40

BR 64/2006

2010:58

2012:38

BR 6/2014

2014:8

2016:33

2017:38

2019:35]

BERMUDA

TRUSTS (REGULATION OF TRUST BUSINESS) EXEMPTION ORDER 2002

BR 38/2002

In exercise of the powers conferred upon the Minister by section 10(2) of the Trusts (Regulation of Trust Business) Act 2001, the following order is hereby made:-

1. Citation

1. This Order may be cited as the Trusts (Regulation of Trust Business) Exemption Order 2002.

2. Interpretation

In this Order -

"the Act" means the Trusts (Regulation of Trust Business) Act 2001;

"professional person" means a member of a professional body;

"professional body" means a body which regulates the practice of a profession;

"recognised professional body" means a professional body recognised by order of the Minister pursuant to an application made under paragraph 1 of the Schedule;

"trust records" include deeds creating a trust and any associated documents, particulars of trust assets, trust accounts, and resolutions of meetings of the trustees.

3. Exemption in connection with private trust business

(1) A trust company is exempted from the requirements of section 9 of the Act if it is authorised to provide the services of a trustee only to the trusts specified -

(a) in its memorandum of association; or

(b) in the case of an overseas company, in its permit;

and to such other trusts as the Minister may approve from time to time ("an exempted company").

(2) An exempted company shall -

(a) within three months of the date of coming into force of this Order; or

(b) in the case of a company which has been registered or granted a permit under the Companies Act 1981 after the date of coming into force of this order, within three months of its registration or the grant to it of a permit,

notify the Authority in writing[114] that it qualifies for an exemption by virtue of the restriction specified in subparagraph (1) and give to the Authority particulars of the nature and scope of its trust business.

(3) An exempted company shall notify in writing[115] the Authority of any change in the nature and scope of the trust business that has been approved by the Minister as soon as practicable after approval.

(3A) An exempted company shall, on or before 31 March in every year, where it continues to qualify for exemption in accordance with subparagraph (1), file a declaration with the Authority that it continues to qualify for exemption. [116]

(3B) A declaration filed with the Authority in accordance with subparagraph (3A), shall be in such form and contain such information and documents as the Authority may determine. [117]

(4) In subparagraph (1) "permit" means a permit granted under section 134 of the Companies Act 1981 to an overseas company.

[Regulation 3 amended by BR 137 / 2019 para. 2 effective 31 December 2019]

4. Exemption in connection with members of recognised professional bodies

(1) A trustee who is a member of a recognised professional body is exempted from the requirements of section 9 of the Act if he holds a certificate issued for the purposes of this Order by a recognised professional body.

(2) The Schedule has effect with regard to recognising professional bodies.

5. Exemption where licensed co-trustee administers the trust

A trustee is exempted from the requirements of section 9 of the Act if he is a co-trustee of a trust and at least one other co-trustee is a licensed trustee.

6. Exemption where trust records are held by licensed trustee

(1) A trustee is exempted from the requirements of section 9 of the Act if -

(a) he is a professional person; and

(b) he appoints a specified licensed trust company to maintain trust records of the trust of which he is a trustee.

(2) The following licensed trust companies are specified for the purposes of subparagraph (1)(b) -

(a) a company owned (whether directly or indirectly) by an undertaking of which the professional person is a director, partner or employee;

(b) a company in respect of which the professional person is a director or controller; or

(c) a company forming part of a settlement of which the professional person is a beneficiary.

(3) In subparagraph (2) "settlement" includes every disposition or arrangement under which property is held in trust.

7. Other exemptions

(1) A bare trustee is exempted from the requirements of section 9 of the Act.

(2) A trustee of the following trusts is exempted from the requirements of section 9 of the Act -

(a) a pension plan registered under the National Pension Scheme (Occupational Pensions) Act 1998;

(b) a pension trust fund registered under the Pension Trust Fund Act 1966;

(c) an investment fund authorised under the Investment Funds Act 2006[118] ; and

(d) an investment fund exempted under section 7 of the Investment Funds Act 2006[119].

[Article 7 para (d) inserted by BR2/2006 effective 6 January 2006; paras (c) and (d) amended by 2006:37 s. 77(3) effective 7 March 2007]

8. Retention of Records

[REVOKED by 2012:27 s. 6] [120] [121]

[Paragraph 8 revoked by 2012:27 s. 6 effective 13 July 2012]

SCHEDULE

(Regulation 4 (2))

PART I: RECOGNITION OF A PROFESSIONAL BODY

APPLICATION FOR RECOGNITION

1 (1) A professional body may apply to the Minister for an order declaring it to be a recognised professional body for the purposes of this Order.

(2) Any such application—

(a) shall be made in such manner as the Minister may direct; and

(b) shall be accompanied with such information as he may reasonably require for the purpose of determining the application; and

(c) shall be in such form or verified in such manner as he may specify.

(3) Every application shall be accompanied with a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect.

(4) The Minister may, on application duly made in accordance with this paragraph and after being furnished with all such information as he may require, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised professional body.

(5) The Minister after consulting with the Authority may make a recognition order if it appears to him from the information furnished by the body making the application and having regard to any other information in his possession that the requirements of Part II of the Schedule are satisfied as respects that body.

(6) Where the Minister refuses an application for a recognition order, he shall give the applicant a written notice to that effect, stating the reasons for the refusal.

REVOCATION OF RECOGNITION

(2) (1) A recognition order may be revoked by a further order made by the Minister if at any time it appears to him that any requirement of Part II of the Schedule is not satisfied in the case of the body to which the recognition order relates.

(2) An order revoking a recognition shall state the date on which it takes effect and that date shall not be earlier than two months after the day on which the revocation order is made, and may contain such transitional provisions as the Minister thinks necessary or expedient.

(3) Before revoking a recognition order, the Minister shall give written notice of his intention to do so to the recognised body and shall state the reasons for which the Minister proposes to act and give particulars of the rights conferred by subparagraph (4).

(4) A body on which notice is served under subparagraph (3) may within one month from the date of service of the notice make written representations to the Minister and the Minister shall have regard to such representations in determining whether to revoke the recognition order.

(5) A recognition order may be revoked at the request or with the consent of the professional body and any such order shall not be subject to the requirements of subparagraphs (3) and (4).

PART II : REQUIREMENTS FOR RECOGNITION OF A PROFESSIONAL BODY

STATUTORY STATUS

3 The body must regulate the practice of a profession in the exercise of statutory powers.

CERTIFICATION

4 The body must have rules, practices and arrangements for securing that no person can be certified by the body for the purposes of this Order unless the following conditions are satisfied—

(a) the certified person must be an individual who is a member of the body; and

(b) his main business must be the practice of the profession regulated by the certifying body.

SAFEGUARDS FOR CLIENTS

5 (1) The body must have rules regulating the carrying on of trust business by persons certified by it which , in the Minister's opinion, afford an adequate level of protection for clients.

(2) In determining in any case whether an adequate level of protection is afforded for clients, regard shall be had to the nature of the trust 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.

MONITORING AND ENFORCEMENT

6 (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 paragraph 4 of this Schedule and rules, practices, arrangements for the withdrawal or suspension of certification in the event of any one 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 out of trust business.

(3) The arrangements for enforcement must include provision for the withdrawal or suspension of certification.

INVESTIGATION OF COMPLAINTS

7 The body must have effective arrangements for the investigation of complaints relating to the carrying on by persons certified by it of trust business in respect of which they are subject to its rules.

PROMOTION AND MAINTENANCE OF STANDARDS

8 The body must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of trust business and to co-operate by the sharing of information and otherwise, with the Minister, the Authority and any other person having responsibility for the supervision and regulation of trust business or other financial services.

Made this 9th day of August, 2002

Minister of Finance

[Amended by:

BR 2/2006

2006:37

2011:20

2012:27

BR 137/2019]

BERMUDA

TRUSTS (REGULATION OF TRUST BUSINESS) ORDER 2003

BR 7/2003

In exercise of the powers conferred upon the Minister of Finance by section 4A of the Trusts (Regulation of Trust Business) Act 2001, the following order is hereby made: -

1. Citation

This Order may be cited as the Trusts (Regulation of Trust Business) Order 2003.

2. Carrying on trust business in Bermuda

(1) For the purpose of the Trusts (Regulation of Trust Business) Act 2001, a person is not to be regarded as carrying on trust business in Bermuda if such person is a trustee of a trust -

(a) which is administered from a place outside Bermuda; and

(b) whose trustees satisfy the conditions of residence specified in subparagraph (2).

(2) For the purpose of subparagraph (1)(b) the conditions of residence are satisfied -

(a) in a case where the trustees are corporate trustees, if -

(i) the place of incorporation is outside Bermuda; and

(ii) the majority of the directors are ordinarily resident in a place outside Bermuda; and

(b) in a case where the trustees are individuals, if the majority of the trustees are ordinarily resident in a place outside Bermuda.

Made this 6th day of February, 2003

Minister of Finance

BERMUDA MONETARY AUTHORITY ACT 1969 (SELECT PROVISIONS – FEES)[122]

FOURTH SCHEDULE (SECTION 20B)[123] [124]

Trusts (Regulation of Trust Business) Act 2001				
1	Application for a licence under section 11(6)(d) where the application is in respect of:			
	(a)	a limited trust licence		$2,990
	(b)	an unlimited trust licence		$6,870
2	Annual fee under section 14(1):			
	(a)	for a limited trust licence		$2,980
	(b)	for an unlimited trust licence:		
		(i)	where the gross income of the undertaking, as reflected in the latest audited statements, does not exceed $2 million	$16,990
		(ii)	where the gross income of the undertaking, as reflected in the latest audited statements, exceeds $2 million but does not exceed $4 million	$27,910
		(iii)	where the gross income of the undertaking, as reflected in the latest audited statements, exceeds $4 million	$46,110
Annual fees in respect of (2) are due on or before 31st March.				

BERMUDA

TRUSTS (REGULATION OF TRUST BUSINESS) (REPORTING ACCOUNTANTS) (FACTS AND MATTERS OF MATERIAL SIGNIFICANCE) REGULATIONS 2006

BR 61/2006

[Operative Date: 15 July 2006]

The Minister of Finance, in exercise of the powers conferred by section 57(1) of the Trusts (Regulation of Trust Business) Act 2001 and acting on the advice of the Authority, makes the following Regulations:

1. Citation and commencement

These Regulations may be cited as the Trusts (Regulation of Trust Business) (Reporting Accountants) (Facts and Matters of Material Significance) Regulations 2006 and shall come into operation on the 15th day of July, 2006.

2. Interpretation

In these Regulations -

"Act" means the Trusts (Regulation of Trust Business) Act 2001;

"reporting accountant" means an auditor or an accountant who, under section 36(2) or 45(2A) of the Act as the case may be, is under a duty to give notice to the Authority of specified facts or matters.

3. Facts and matters of material significance

(1) For the purposes of sections 36(2) and 45(2A) of the Act, where a reporting accountant -

(a) identifies a material misstatement in the financial statements resulting from fraud, error or illegal acts or the consequences of them;

(b) concludes that there is substantial doubt as to the ability of the undertaking to continue as a going concern for a period of one year from the balance sheet date;

(c) identifies adjustments to the financial statements which individually or in aggregate indicate to him that the previous year's audited annual financial statements or the current year's unaudited interim financial statements, prepared according to generally accepted accounting principles issued to the shareholders were materially misstated;

(d) identifies a material weakness in internal control;

(e) has unresolved disagreements with management pertaining to the application of generally accepted accounting principles that could reasonably be expected to lead in the future to material misstatements of the annual or interim financial statements, prepared according to generally accepted accounting principles to be issued to the shareholders in the ensuing financial year;

(f) identifies any evidence of deliberate attempts by a chief executive or other senior executive to mislead the Authority through the provision of materially false or misleading information; or

(g) identifies evidence of fraud or attempted fraud by a chief executive or other senior executive, or has concerns of such a serious nature as to damage materially his confidence in the integrity of the senior management of the institution,

then those facts and matters are of material significance for the discharge, in relation to the undertaking, of the Authority's functions under the Act.

(2) For the purposes of paragraph (1)(d), "material weakness in internal control" means a deficiency in which the design or operation of one or more of the internal control components of the institution does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and fail to be detected within a timely period by employees in the normal course of performing their assigned functions.

Made this 21st day of June, 2006

Minister of Finance

Endnotes

1 Trustee Amendment Act 2026
2 Proceeds of Crime Amendment (No. 3) Act 2017
3 Proceeds of Crime Amendment (No. 3) Act 2017
4 Proceeds of Crime (Miscellaneous) Act 2018
5 Trustee Amendment Act 2026
6 Trusts (Regulation of Trust Business) Act 2001
7 Proceeds of Crime (Miscellaneous) Act 2018
8 Proceeds of Crime (Miscellaneous) Act 2018
9 Trustee Amendment Act 2026
10 Proceeds of Crime (Miscellaneous) Act 2018
11 Specified Business Legislation Amendment Act 2012
12 Proceeds of Crime (Miscellaneous) Act 2018
13 Trustee Amendment Act 2026
14 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
15 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
16 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
17 Proceeds of Crime Amendment (No. 3) Act 2017
18 Proceeds of Crime (Miscellaneous) Act 2018
19 Trustee Amendment Act 2026
20 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
21 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
22 Proceeds of Crime Amendment (No. 3) Act 2017
23 Trustee Amendment Act 2026
24 Specified Business Legislation Amendment Act 2012
25 Proceeds of Crime (Miscellaneous) Act 2018
26 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
27 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
28 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
29 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
30 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
31 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
32 Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
33 Trustee Amendment Act 2026
34 Trustee Amendment Act 1999
35 Trustee Amendment Act 1999
36 Trustee Amendment Act 1999
37 Trustee Amendment Act 1999
38 Age of Majority Act 2001
39 Age of Majority Act 2001
40 Age of Majority Act 2001
41 Trustee Amendment Act 2004
42 Trustee Amendment Act 1999
43 Trustee Amendment Act 2026
44 Trustee Amendment Act 2026
45 Trustee Amendment Act 2026
46 Trustee Amendment Act 2026
47 Trustee Amendment Act 2026
48 Trustee Amendment Act 2026
49 Trustee Amendment Act 2026
50 Trustee Amendment Act 2026
51 Trustee Amendment Act 2026
52 Trustee Amendment Act 1999
53 Trustee Amendment Act 1999
54 Trustee Amendment Act 1999
55 Trustee Amendment Act 1999
56 Trustee Amendment Act 1999

[57] Trustee Amendment Act 2014
[58] Proceeds of Crime Amendment (No. 3) Act 2017
[59] Proceeds of Crime (Miscellaneous) (No. 4) Act 2018
[60] Trustee Amendment Act 2026
[61] Trustee Amendment Act 2026
[62] Trustee Amendment Act 2026
[63] Proceeds of Crime Amendment (No. 3) Act 2017
[64] Proceeds of Crime Amendment (No. 3) Act 2017
[65] Trustee Amendment Act 1999
[66] Trustee Amendment Act 1999
[67] Trustee Amendment Act 2025
[68] Trustee Amendment Act 2025
[69] Trustee Amendment Act 2026
[70] Trustee Amendment Act 2026
[71] Trusts (Special Provisions) Amendment (No. 2) Act 2020
[72] Trusts (Special Provisions) Amendment Act 2020
[73] Trusts (Special Provisions) Amendment (No. 2) Act 2020
[74] Trusts (Special Provisions) Amendment (No. 2) Act 2020
[75] Trusts (Special Provisions) Amendment Act 2014
[76] Trusts (Special Provisions) Amendment Act 2020
[77] Trusts (Special Provisions) Amendment Act 2014
[78] Trusts (Special Provisions) Amendment Act 2020
[79] Trusts (Special Provisions) Amendment Act 2020
[80] Trusts (Special Provisions) Amendment Act 2020
[81] Trusts (Special Provisions) Amendment Act 2020
[82] Trusts (Special Provisions) Amendment Act 2020
[83] Trusts (Special Provisions) Amendment Act 2020
[84] Trustee Amendment Act 2004
[85] Trusts (Special Provisions) Amendment Act 2020
[86] Perpetuities and Accumulations Act 2009, section 11
[87] Perpetuities and Accumulations Act 2009, section 10
[88] Perpetuities and Accumulations Act 2009
[89] Trusts (Special Provisions) Amendment Act 1998
[90] Perpetuities and Accumulations Amendment Act 2015
[91] Perpetuities and Accumulations Amendment Act 2015
[92] Conveyancing Amendment Act 1995
[93] Conveyancing Amendment Act 1994
[94] Trusts (Special Provisions) Amendment Act 2020
[95] Institute of Chartered Accountants of Bermuda Amendment Act 2014
[96] Trusts (Regulation of Trust Business) Amendment Act 2019
[97] Trusts (Regulation of Trust Business) Amendment Act 2019
[98] Trusts (Regulation of Trust Business) Amendment Act 2019
[99] Trusts (Regulation of Trust Business) Amendment Act 2019
[100] Trusts (Regulation of Trust Business) Amendment Act 2019
[101] Appeal Tribunals (Miscellaneous) Act 2017
[102] Bermuda Monetary Authority (Determination of Appeals) Act 2016
[103] Trusts (Regulation of Trust Business) Amendment Act 2019
[104] Institute of Chartered Accountants of Bermuda Amendment Act 2014
[105] Trusts (Regulation of Trust Business) Amendment Act 2019
[106] Trusts (Regulation of Trust Business) Amendment Act 2019
[107] Trusts (Regulation of Trust Business) Amendment Order 2014
[108] Trusts (Regulation of Trust Business) Amendment Order 2014
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[111] Trusts (Regulation of Trust Business) Amendment Order 2014
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[113] Trusts (Regulation of Trust Business) Amendment Act 2019
[114] Trusts (Regulation of Trust Business) Exemption Amendment Order 2019
[115] Trusts (Regulation of Trust Business) Exemption Amendment Order 2019

[116] Trusts (Regulation of Trust Business) Exemption Amendment Order 2019
[117] Trusts (Regulation of Trust Business) Exemption Amendment Order 2019
[118] Investment Funds Act 2006
[119] Investment Funds Act 2006
[120] Specified Business Legislation Amendment Act 2012
[121] Specified Business Legislation Act 2011
[122] Bermuda Monetary Authority Amendment (No. 3) Act 2018
[123] Trusts (Regulation of Trust Business) Amendment Act 2019
[124] Bermuda Monetary Authority Amendment (No. 2) Act 2021