

ANTIGUA AND BARBUDA



THE INTERNATIONAL TRUST ACT, 2007

No. of 2007

THE INTERNATIONAL TRUST ACT, 2007

ARRANGEMENT

Sections

PART I - PRELIMINARY

1. Short title
2. Definitions

PART II - INTERNATIONAL TRUSTS

3. Application
4. Domicile of settlor and beneficiary
5. Domicile of trustee
6. Definition of international trust
7. Governing law of international trust
8. Maximum duration of international trusts
9. Name of international trust
10. Registered office of international trust
11. Charitable trust
12. Qualification of charitable trust

PART III - VALIDITY OF INTERNATIONAL TRUSTS

13. Validity
14. Declaration of invalid and unenforceable international trust
15. Determination of validity of international trust
16. Powers of the Commission

PART IV - REGISTRATION OF INTERNATIONAL TRUSTS

17. Registration
18. Renewal of registration
19. Inspection of the register of international trusts

PART V - TRUST DEED OF SETTLEMENT

20. Trust deed of settlement
21. Execution of trust deed of settlement
22. Interpretation rules

PART VI - REVOCATION OR TERMINATION OF AN INTERNATIONAL TRUST

23. Revocation by trustee
24. Termination due to impossibility
25. Attainment of maximum duration of the trust
26. Trust property on revocation or termination

PART VII - TRUSTEE, SETTLOR, BENEFICIARY AND PROTECTOR

27. Trustee
28. Number of trustees
29. Domicile requirement of trustee
30. Limitation on trust company serving as trustee
31. Trustee not to be beneficiary
32. Fiduciary duty of trustee
33. Power to delegate acts of trust administration
34. Non-recognition of foreign judgments and orders
35. General power of trustee
36. Power to distribute
37. Power to relocate trust property or change governing law
38. Power to hold and manage trust property
39. Segregation of trust property
40. Power of investment
41. Trustee's power to apply to Court
42. Accounting
43. Duress
44. Trustee remuneration
45. Constructive trust upon receipt of property for the benefit of another
46. Settlor
47. Settlor as beneficiary

48. Relinquishment of control over trust property by settlor
49. Settlor's power to revoke or amend trust
50. Settlor as trustee or protector of an international trust
51. Power to appoint or remove beneficiaries
52. Distributions to beneficiary
53. Beneficiary's right to apply to the Court
54. Power to renounce interest
55. Appointment of protector
56. Fiduciary duty of protector
57. Breach of trust – liability
58. Constructive trust as a result of breach of trust
59. Tracing trust property
60. Exculpation
61. Breach of trust by co-trustee or co-protector
62. Resignation, retirement or removal of trustee or protector
63. Release from liability
64. Liability of former trustee or protector
65. Liability to third party

PART VIII - PROPERTY OF INTERNATIONAL TRUSTS

66. Trust property
67. Acceptance of property by trustee
68. No validation of property not vested in settlor
69. Community property
70. Exempt property
71. Anti-alienation
72. Claims against property based upon relationship
73. Foreign offences
74. Bankruptcy
75. Fraudulent dispositions within the jurisdiction of Antigua and Barbuda

PART IX - JUDICIAL PROCEEDINGS

76. Jurisdiction
77. General powers
78. Enforcement of judgments
79. Priorities
80. Non-recognition of foreign judgments
81. International trust as separate legal entity
82. Commencement of proceedings
83. Affidavits
84. Government immunity from suit
85. Payment to Court Registry
86. Contingent fee arrangements

PART X - CONFIDENTIALITY

87. Confidentiality
88. Permissible disclosure of confidential information
89. Maintenance of confidential nature of information
90. Reports and publications of judicial proceedings

PART XI - EXEMPTION FROM TAXES AND DUTIES

91. Exemption from taxes and duties

PART XII - MISCELLANEOUS

92. Translations
93. Regulations
94. Repeal

Schedules

SCHEDULE 1

Application for Entry on Register of International Trusts

SCHEDULE 2

Certificate of Antigua and Barbuda Trustee

SCHEDULE 3

Application for Extension of Entry on Register of International Trusts

SCHEDULE 4

Application for Renewal of Registration on Register of International Trusts

SCHEDULE 5

Application for Extension of Renewal of Registration on Register of International Trusts

SCHEDULE 6

Application for Reinstatement of Entry on Register of International Trusts

Explanatory Memorandum

ANTIGUA AND BARBUDA
THE INTERNATIONAL TRUST ACT, 2007

No. of 2007

A BILL FOR

AN ACT to provide for the regulation of international trusts and related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I
PRELIMINARY

1. Short title

This Act may be cited as the International Trust Act, 2007.

2. Definitions

In this Act, unless the context otherwise requires

“beneficiary” of a trust means a person or another trust

(a) who is identifiable by name or is ascertainable by reference to

(i) a class, or

(ii) a relationship to a person, whether or not living or in existence at the time of the registration of the trust or at the time which, under the terms of the trust deed of settlement, is the time by reference to which members of a class are to be determined; and

(b) who is entitled to benefit under the trust or in whose favour a power to distribute trust property may be executed;

“Board” means the Board of Directors established to manage the Financial Services Regulatory Commission under Section 316 of the Antigua and Barbuda International Business Corporation Act, Cap. 222;

“Commission” means the Financial Services Regulatory Commission, the body corporate established under Section 316 of the International Business Corporations Act, cap. 222;

“Court” means the High Court of Antigua and Barbuda;

“creditor” means a person or entity who has obtained a judgment for specified monetary damages issued by the Court, or an assignee of that person or entity;

“date of creation” of a trust means the date on which the trust is registered under this Act;

“disposition” of property includes every form of conveyance, transfer, assignment, sale, gift, encumbrance or other transaction by which any legal or equitable interest or right in the property is voluntarily created, transferred or extinguished;

“domiciliary” means a person who resides in Antigua and Barbuda with the intention of making Antigua and Barbuda his or her permanent place of residence or a company or other entity that is incorporated or registered in Antigua and Barbuda and has its principal place of business in Antigua and Barbuda;

“familial relationship” means a relationship by blood, marriage, and in particular, a relationship in which

(a) one person is the adopted, legitimate or illegitimate child, direct lineal descendant or direct ancestor of the other person;

or

(b) one person is married to the other person.

“fiscal offence” means a crime or violation of existing tax, finance, securities, money laundering, accounting, currency, foreign exchange control or corporate laws, rules or regulations of Antigua or Barbuda or elsewhere;

“foreign” means a location or jurisdiction other than Antigua and Barbuda;

“foreign law” means the laws and judicial precedents recognized in a location or jurisdiction other than Antigua and Barbuda;

“foreign trust” means a trust which is governed by the laws of a jurisdiction other than Antigua and Barbuda

“funding” means any disposition of property to a trust;

“functions” includes rights, obligations and duties set forth in this Act or in the terms of a trust deed of settlement;

“governing law” means the law specified in a trust deed of settlement or, if not so specified, the law of the jurisdiction in which the rights of all parties and the terms of the trust deed of settlement are construed and regulated;

“heirship rights” means any interest or right in, against or to, trust property as a result of a person’s death, other than an interest or right created by testamentary disposition or other specific voluntary disposition by the person;

“insolvency” means the filing of a petition in bankruptcy in a court having subject matter jurisdiction over the petition and personal jurisdiction over the debtor;

“interest”, in relation to a beneficiary, means the beneficiary’s interest under an international trust;

“judgment” means a judgment issued by the Court in any proceeding;

“Minister” means the Minister of Finance of Antigua and Barbuda;

“minor” means a person who has not attained the age of eighteen years;

“non-resident” means a person who is not a domiciliary;

“person” means a natural person or a body corporate or incorporate;

“personal representative” means the executor or administrator of the estate of a deceased natural person or any person appointed in writing by another person, by a court or by a government to act on behalf of the other person;

“principal place of business” means the location where a substantial portion of a company’s or entity’s administrative and managerial activities are conducted;

“profit” includes gain or advantage;

“property” means real, personal, movable, immovable, tangible, intangible or intellectual assets of any description, wheresoever situated, including future interests and partial interests;

“protector”, with respect to a trust, means a person or entity who

(a) holds a power to appoint or remove a trustee or to approve or disapprove of a trustee’s actions, decisions or transactions;
and

(b) to the extent set forth in the terms of the trust deed of settlement, may direct the trustee in matters relating to the trust;

“relatives” means current spouse, direct lineal descendants and ancestors, whether adopted, legitimate or illegitimate, and siblings;

“serious criminal offence” means a criminal offence punishable upon conviction by imprisonment for a period of not less than two years;

“terms of trust” means the terms of a trust deed of settlement, properly executed and registered under this Act;

“trust company” means any entity licensed or regulated under the Corporate Management and Trust Service Providers Act, 2007;

“trust property” means property contributed by a settlor to a trust, and all profit, appreciation, accumulation, income or accretion to that property held in trust for the beneficiaries.

PART II – INTERNATIONAL TRUSTS**3. Application**

This Act applies to an international trust registered pursuant to section 17. Unless otherwise specified, all references in this Act to a trust mean an international trust.

4. Domicile of settlor and beneficiary

Neither the settlor nor the beneficiaries of an international trust shall be domiciliaries of Antigua and Barbuda.

5. Domicile of trustee

At least one of the trustees of an international trust shall at all times be a domiciliary of Antigua and Barbuda.

6. Definition of international trust

(1) Upon proper execution of a trust deed of settlement or equivalent document by a settlor and a trustee, registration in Antigua and Barbuda, and conveyance or transfer by a settlor of rights, title or interest in any property to the trust, an international trust shall be a separate legal entity under the laws of Antigua and Barbuda. On acceptance by a trustee of the trust, the property shall cease to be a part of the estate of the settlor irrevocably and shall be the exclusive property of the trust.

(2) An international trust has the right to hold title, rights or other interests in and to property in its own name or through a nominee in the same manner and with the same rights and obligations as any person under the laws of Antigua and Barbuda.

(3) An international trust may, subject to the approval of the Government, hold title to real property in Antigua and Barbuda and hold equity interests in companies or other entities incorporated or registered in Antigua and Barbuda.

(4) An international trust may not manufacture a product or provide goods or services for sale anywhere within the Caribbean region, or otherwise actively conduct business for profit in Antigua and Barbuda.

(5) An international trust shall be administered by a trustee who shall be vested with the powers and obligations set forth in the trust deed of settlement and this Act.

(6) The trustee shall

- (a) represent and act on behalf of the trust in all matters;
- (b) administer the trust solely for the benefit of the beneficiaries of the trust, or if no beneficiaries exist, solely for the purpose, charitable or otherwise, set forth in the trust deed of settlement; and
- (c) have no personal ownership or title to trust property.

(7) No creditor of a trustee other than a settlor or beneficiary of the trust shall have any right to trust property or right to cause the trustee to act in violation of the trustee's duties or obligations under the terms of the trust deed of settlement or this Act.

(8) Trust property shall be exempt from attachment, lien, levy or other restraint by a creditor of a trustee other than a settlor or beneficiary of the trust.

(9) Subject to section 11, an international trust may be established for charitable or non-charitable purposes or for both, or for no purpose, other than the benefit of a settlor or a beneficiary or both.

(10) A trust may be established and exist with no beneficiaries, provided that it is established for a clear and specific purpose which is specified in the trust deed of settlement.

7. Governing law of international trust

(1) The governing law of the trust shall be the law of Antigua and Barbuda unless the trust deed of settlement specifies the law of a different jurisdiction.

(2) Where the law of Antigua and Barbuda is the governing law of the trust, the trust shall be subject to the exclusive and continuing jurisdiction of the Court, which is the exclusive forum for the adjudication of all disputes relating to the administration of the trust.

8. Maximum duration of international trusts

(1) The rule of law known as the Rule Against Perpetuities does not apply to a trust registered under this Act.

(2) The trust period is the period commencing on the date of the registration of the trust and terminating on the earlier of the following dates:

- (a) two hundred years from the date of the registration of the trust; and
- (b) the date specified in the trust deed of settlement.

(3) A trust established for a charitable purpose may have an unlimited duration.

(4) The terms of a trust deed of settlement may direct or authorise the accumulation of any part of the income of the trust for a period not exceeding the maximum duration of the trust.

9. Name of international trust

(1) The name of an international trust shall end with the word "Trust" or its equivalent in any language using Latin characters, and must not be so similar to a trust previously existing in Antigua and Barbuda as to be misleading with respect to its identity or activities.

(2) The name of a trust may not be geographical in nature unless it is established that the name as a secondary meaning.

(3) The name of a trust shall not imply a connection with any Antigua and Barbuda government department, agency, authority or branch, any political party or any university or professional association recognised by the laws of Antigua and Barbuda.

(4) A trust may not include any of the following words, phrases, abbreviations, variations or synonyms of them in its name: Bank, Credit, Depository, Financial Services, Insurance Services, Investment Services, Surety, Bond, Securities or Brokerage Services unless specifically licensed to engage in activity suggested by them under the Antigua and Barbuda International Business Corporations Act, Cap. 222.

(5) The Commission may refuse to register a trust or an amendment changing the name of a trust where the name to be registered is, in the opinion of the Commission, in any way misleading or is otherwise undesirable.

10. Registered office of international trust

- (1) The registered office of an international trust shall be at the address of Antigua and Barbuda trustee.
- (2) The address for service of any documents upon an international trust shall be the registered office of that trust.

11. Charitable trust

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

- (a) the relief of poverty;
- (b) the advancement of health, education, art, culture, sports or religion;
- (c) the protection of the environment, flora and fauna;
- (d) the advancement of human rights or fundamental freedoms; and
- (e) any other purpose which is beneficial to the community.

(2) Participation in, or support of, any political campaign, the support of any political party or political cause, or the support or advocacy of any legislation shall not be regarded as a charitable purpose.

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

12. Qualification of charitable trust

(1) A trust may qualify as a charitable trust under this Act regardless of the timing or form of any distribution in furtherance of any of the purposes specified in section 11.

(2) A trust may qualify as a charitable trust notwithstanding that it also contains non-charitable purposes or that it also provides for distributions to non-charitable beneficiaries, even if the non-charitable distributions comprise a majority of trust property and even if the non-charitable purposes are the primary purposes of the trust.

PART III – VALIDITY OF INTERNATIONAL TRUSTS

13. Validity

(1) No trust governed by this Act, and no disposition of property to be held by the trust, shall be declared invalid, void, voidable, liable to be set aside, restrained or defective in any manner, nor shall the capacity of any settlor, trustee or protector, or the right of any beneficiary, be questioned by reason that

- (a) the laws of a foreign jurisdiction prohibit or do not recognize the trust or disposition either in part or in whole;
- (b) a trust or disposition of property to be held by the trust avoids or defeats rights, claims or interests conferred by the law of a foreign jurisdiction upon a person or contravenes any foreign rule, law, judicial or administrative decision, order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests; or
- (c) a law of Antigua and Barbuda is inconsistent with a foreign law, rule or order.

(2) A trust shall not be declared invalid or be affected in any way if a settlor

- (a) retains, possesses or acquires any benefit or interest from the trust; or
- (b) is, or becomes a beneficiary of the trust, even if the settlor is, or becomes the sole beneficiary of the trust.

(3) A trust shall not cease to be valid by reason that there is no trustee or that there are fewer than the number of trustees required by the terms of the trust deed of settlement. If this occurs, a trustee shall be appointed in accordance with the deed of settlement, or if the deed of settlement does not contain a relevant provision, or the person authorised in the deed to appoint a trustee is unable or willing to do so, a former trustee, a protector, a settlor or a beneficiary may apply to the Court for an order appointing a trustee.

14. Declaration of invalid and unenforceable international trust

(1) The Court may declare an international trust to be invalid and unenforceable if it determines that

- (a) the trust was created or established under duress, mistake, undue influence or misrepresentation;
- (b) the trust was created for a purpose that violates the laws of Antigua and Barbuda or the trust purports to confer any right or power or impose any obligation, the exercise of which is contrary to the laws of Antigua and Barbuda;
- (c) the trust is contrary to the public policy of Antigua and Barbuda;
- (d) the trust property, or part of it, has been determined by the Court to be the proceeds of a serious criminal offence for which the settlor has been convicted in any jurisdiction, if the offence is also a serious criminal offence under the laws of Antigua and Barbuda; but if the Court determines that a portion of the trust property is the proceeds of a serious criminal offence, the Court may declare the trust invalid only with respect to that property and the Court may declare what property is to be held subject to the trust;
- (e) the terms of the trust deed of settlement are so uncertain that its performance is rendered impossible; or
- (f) the settlor was, at the time of its creation, incapable under the laws of Antigua and Barbuda of creating such a trust.

15. Determination of validity of international trust

In determining the validity of an international trust, the Court shall apply

- (a) the provisions of this Act;
- (b) any other law of Antigua and Barbuda; and
- (c) any other applicable law that would validate the trust.

16. Powers of the Commission

- (1) The Commission may
 - (a) prohibit the registration of an international trust;
 - (b) apply to the Court to order a trust to cease carrying on an activity immediately, or within the time ordered by the Court; or
 - (c) remove a trust from any register, effective thirty days after notice of removal is served upon the trust.
- (2) The Commission may take actions to modify its actions under this section.

PART IV – REGISTRATION OF INTERNATIONAL TRUSTS

17. Registration

- (1) The Commission shall maintain a Register of International Trusts containing only the following information for each trust:
 - (a) the name of the trust;
 - (b) the name and address of the Antigua and Barbuda trustee; and
 - (c) the date of the registration of the trust.
- (2) All international trusts shall be registered on the Register of International Trusts.
- (3) An international trust that specifies the laws of Antigua and Barbuda for any part of its administration shall be registered on the Register of International Trusts.
- (4) An application for entry on the Register as an international trust shall be made to the Commission within forty-five days of the date on which the trust deed of settlement is executed by the Antigua and Barbuda trustee.
- (5) Where the governing law of a foreign trust is changed to the law of Antigua and Barbuda, the trustee shall make an application for entry on the Register as an international trust to the Commission within forty-five days of the date on which the amendment was made to provide for the law of Antigua and Barbuda to be the governing law of the trust.
- (6) If the trustee fails to submit an application for entry on the Register of International Trusts within the forty-five day period, the trustee may, on application made in accordance with Schedule 3, and payment of the prescribed extension fee, request an extension of time to register. The Commission may extend the period to register for an additional forty-five days, if satisfied that there are sufficient grounds for the delay in registration.
- (7) An application for entry on the Register shall be made to the Commission in accordance in Schedule 1, and shall be accompanied by the following
 - (a) the prescribed fee;
 - (b) the name and address of the Antigua and Barbuda trustee, which shall be the address for service of any documents upon the international trust; and
 - (c) a certificate from the Antigua and Barbuda trustee in accordance with Schedule 2.
- (8) Upon receipt of the prescribed fee and the certificate, the Commission shall
 - (a) enter the information required in subsection (1) in the appropriate register; and
 - (b) issue a Certificate of Registration to the trustee.
- (9) A trustee shall deposit any amendment to the trust deed of settlement with the Commission within ten days of the execution of the amendment.
- (10) All fees payable under this Part are non-refundable and shall not be contingent on the approval of any application.
- (11) A Certificate of Registration issued in accordance with this section shall be valid and effective for a period of one year from the date of registration as specified on the Certificate and shall be renewable in accordance with section 18.
- (12) A certificate of Registration under the hand and seal of the Commission shall be conclusive evidence of the existence and validity of the trust and that the trust is in full compliance with all registration requirements under this Act.

18. Renewal of registration

- (1) An application for renewal of registration shall be made by filing an application for renewal with the Commission in accordance with Schedule 4 together with the prescribed fee.
- (2) An application for renewal of registration shall be made within ninety days after the date of expiration of the last Certificate.
- (3) On application of the trustee, in accordance with Schedule 5, and payment of the prescribed fee, the Commission may extend the period to renew the trust registration for an additional ninety days, if satisfied that there are sufficient grounds for the delay in renewal of registration.
- (4) Every renewal of registration shall take effect from the date of expiration of the last certificate and shall be valid for a period of one year.
- (5) Where the application for renewal of registration is not made within ninety days after the date of expiration and the Commission has not extended the period of renewal, the trustee may make an application accompanied by the prescribed fee, for the reinstatement of the trust, in accordance with Schedule 6, within one hundred and eighty days after the date of expiration of the last Certificate.
- (6) This Act ceases to apply to any trust ninety days after the expiration of its Certificate of Registration unless the Commission extends the renewal period, in which case, this Act ceases to apply to the trust one hundred and eighty days after the expiration of its

Certificate of Registration, and the Commission shall then mark the Register entry of the trust as cancelled, unless the Certificate is renewed or reinstated.

(7) All fees payable under this section are non-refundable and are not contingent on the approval of any application.

(8) Upon receipt of the prescribed fee and the application within the time period specified in this section, the Commission shall issue a Certificate of Renewal or Reinstatement, as the case may be, to the international trust.

19. Inspection of the register of international trusts

Neither the Register nor the files or records of the Commission are open for inspection by anyone other than the settlor, protector, trustee or beneficiary of a trust, and then only with respect to the entry of that trust on the Register, except that the trustee may, in writing, authorise a person to inspect the entry of that trust on the Register. The Register, files and records of the Commission shall, however, be open for inspection by any officer of the Government of Antigua and Barbuda or any of its agencies, authorities or courts in the course of carrying out his or her mandate.

PART V – TRUST DEED OF SETTLEMENT

20. Trust deed of settlement

(1) Subject to this Act, a deed of settlement or similar document shall be the governing document of an international trust.

(2) The deed of settlement shall specify the purpose of the trust, appoint a trustee, specify the beneficiary or class of beneficiaries of the trust, and set forth the respective rights, duties, responsibilities and beneficial interests of the trustee and beneficiary.

(3) The deed of settlement may also appoint a protector and set forth the protector's rights, duties and responsibilities.

(4) The deed of settlement shall be executed by a settlor and by a trustee, and if applicable, by a protector, either before two witnesses or before a notary public or officer of a court.

(5) The deed of settlement may convey property to the trust, and upon execution of the deed of settlement by the settler and the trustee, property so conveyed shall vest in the trust.

21. Execution of trust deed of settlement

Except where there is an express provision to the contrary set forth in the trust deed of settlement, the deed of settlement may be executed by a settlor, trustee, protector and any other parties at different times and in different places whether within Antigua and Barbuda or elsewhere, provided all signatures are either witnessed or notarised.

22. Interpretation rules

(1) Where the terms of a trust deed of settlement conflict with the laws of Antigua and Barbuda, the Court shall interpret the terms so that they may conform with the laws of Antigua and Barbuda.

(2) The terms of a trust deed of settlement shall be interpreted as follows:

- (a) first, for the benefit of a beneficiary of the trust;
- (b) second, for the benefit of a settlor;
- (c) third, to effectuate the purpose of the trust;
- (d) fourth, for the benefit of a trustee; and
- (e) lastly, for the benefit of other interested parties.

PART VI – REVOCATION OR TERMINATION OF INTERNATIONAL TRUST

23. Revocation by trustee

An international trust shall be irrevocable upon the registration of the trust. However, the trustee shall have the power to revoke the trust under the following circumstances:

- (a) the trust contains de minimis assets, with an aggregate value of less than forty thousand United States dollars; or
- (b) on the written request of the settlor, or if there is more than one settlor, on the written request of all living settlors.

24. Termination due to impossibility

The trustee may apply to the Court for an Order to terminate the trust if

- (a) the trust can no longer reasonably achieve its purpose; or
- (b) the trust is impossible to reasonably administer or maintain.

25. Attainment of maximum duration of the trust

A trust that has reached the end of its trust period, as set forth in the trust deed of settlement, or the maximum allowable duration of the trust set out in section 8, shall be terminated.

26. Trust property on revocation or termination

(1) Upon the revocation or termination of the trust, the trust property shall, subject to subsection (3), be distributed by the trustee, within a reasonable time, in accordance with the terms of the trust deed of settlement, to the persons entitled to it.

(2) If the trust deed of settlement is silent as to the distribution upon revocation or termination of the trust, the trust property shall be distributed to the beneficiaries in equal shares.

(3) If the trust is charitable, the trust property shall be distributed for the charitable purposes that the Court, on the application of the trustee, declares are consistent with the original intention of the settlor.

(4) Upon revocation or termination, the trustee may retain sufficient assets to make reasonable provision for liabilities, either existing or anticipatory, including outstanding or anticipated trustee fees and disbursements.

(5) Upon revocation or termination of the trust, the trustee shall notify the Commission and return the Certificate of Registration. The Commission shall cancel the entry on the Register and cancel the Certificate of Registration.

(6) A trust's revocation or termination is effective as of the date of the cancellation of its Certificate of Registration.

PART VII – TRUSTEE, SETTLOR, BENEFICIARY AND PROTECTOR

27. Trustee

A person acting as the administrator of a trust and the trust property pursuant to the powers, rights, obligations and duties set forth in the trust deed of settlement and this Act, for the benefit of the beneficiaries, is a trustee.

28. Number of trustees

Subject to the terms of the trust deed of settlement

- (a) the minimum number of trustees is one and the maximum number of trustees is four;
- (b) if at any time more than four trustees are appointed, only the first four trustees appointed shall serve; and
- (c) co-trustees shall act jointly, unless, in the reasonable discretion of a trustee, an emergency requires immediate action.

29. Domicile requirement of trustee

Provided that at least one trustee is a domiciliary of Antigua and Barbuda, additional trustees may reside anywhere.

30. Limitation on trust company serving as trustee

A company which is not licensed or regulated as a Trust Company under the Antigua and Barbuda Corporate Management and Trust Service Providers Act, 2007, may act as trustee for no more than three international trusts.

31. Trustee not to be beneficiary

A trustee may not be a beneficiary of the trust for which he or she is the trustee.

32. Fiduciary duty of trustee

A trustee shall owe a fiduciary duty to the trust, its settlor and its beneficiaries and shall preserve and administer the trust property in the manner of a reasonably prudent business person.

33. Power to delegate acts of trust administration

Subject to the terms of the trust deed of settlement, a trustee may delegate any act of trust administration to a third party, but the trustee continues to be responsible for any breach of trust arising from or relating to all acts delegated or omissions relating to them.

34. Non-recognition of foreign judgments and orders

No trustee shall recognize, act upon or comply with any foreign judgments, injunctions, orders, decrees, levies, attachments, garnishments, executions or other legal or equitable process.

35. General power of trustee

Subject to this Act and the trust deed of settlement, a trustee may take all actions that are necessary for the benefit of the settlor, trust, trust property and beneficiaries.

36. Power to distribute

Unless the trust deed of settlement provides otherwise, a trustee shall make distributions as the trustee deems appropriate, for the benefit of a beneficiary.

37. Power to relocate trust property or change governing law

Unless the trust deed of settlement provides otherwise, a trustee may relocate trust property, change the place of trust administration or change the governing law of the trust as he or she deems necessary or desirable to protect trust property or a beneficiary from harm, prejudice, risk of loss or diminution.

38. Power to hold and manage trust property

Unless the trust deed of settlement provides otherwise, a trustee may hold and manage the trust property.

39. Segregation of trust property

A trustee shall not dispose of trust property, or any part of it, in such a manner as to frustrate or adversely affect the purpose of the trust and the interests of its beneficiaries. A trustee shall maintain the trust property as property separate from the trustee's own assets or the assets of any other trust.

40. Power of investment

Unless otherwise directed by the trust deed of settlement, the trustee may invest trust assets as and for so long as the trustee sees fit and at any time, the trustee may sell, call in or convert into money any investment and re-invest the moneys produced.

41. Trustee's power to apply to Court

If a trustee is concerned or in doubt as to the appropriateness of any act of administration, disposition or distribution of trust property and a co-trustee is unable or unwilling to act, the trustee or any interested party may request the Court to issue an order with respect to the act.

42. Accounting

(1) Subject to the terms of the trust deed of settlement, a trustee shall keep accounts and inventory of the assets, income and liabilities of the trust.

(2) A trustee shall render accounts annually to the beneficiary in accordance with international financial reporting and auditing standards, audited by an independent auditor.

(3) On request of the settlor, beneficiary, the Court or the Board, the trustee shall provide an accounting as to the assets, income and liabilities of the trust.

(4) If the request is made by the settlor, the Court or the Board, the trustee shall provide an accounting as to the trust property as a whole.

(5) If the request is made by a beneficiary, the trustee shall provide an accounting only to the extent of the beneficiary's interest.

43. Duress

Notwithstanding any other provision of this Act or of a trust deed of settlement, no trustee, protector or other person having control over trust property shall honour or carry out any instruction, order or request, including a revocation, termination, modification or amendment of a trust deed of settlement, of any person, that is made, or appears to be made by the person under pressure, force, duress or compulsion, including any instrument, order, injunction, decree, or request made by, or pursuant to any judgment, order or instruction of a court, tribunal, government office or agency outside Antigua and Barbuda. A trustee who contravenes this section commits a breach of trust within the meaning of section 57.

44. Trustee remuneration

(1) Subject to the terms of the trust deed of settlement, a trustee shall be entitled to charge and be paid all usual professional fees for services rendered in the execution, administration and maintenance of the trust and to be reimbursed for the trustee's proper expenses incurred in carrying out duties.

(2) A trustee may apply to the Court for an order which provides the trustee with a first and paramount charge over the trust property in an amount equal to all outstanding trustee fees and expenses.

45. Constructive trust on receipt of property for the benefit of another

Where a person not specifically appointed as trustee receives property for the benefit of another party, the relationship between the person and the other party shall be treated as a constructive trust, unless specifically stated otherwise in a document signed by the person and the other party. The relationship between the person and the other party shall be analogous to the relationship of trustee and beneficiary in which the person and the other party shall have the respective rights and responsibilities of a trustee and beneficiary under this Act.

46. Settlor

A person who makes a disposition of property to a trust is a settlor. An international trust may have more than one settlor.

47. Settlor as beneficiary

A settlor may also be a beneficiary, including the sole beneficiary, of the trust which he or she settled.

48. Relinquishment of control over trust property by settlor

A settlor shall not retain, possess or acquire the power to direct a trustee in respect to the administration of a trust, nor shall the settlor retain, possess or acquire any control, power or dominion over trust property.

49. Settlor's power to revoke or amend trust

A settlor shall not retain, possess or acquire the power to revoke or amend a trust.

50. Settlor as trustee or protector of an international trust

A settlor shall not serve as trustee or protector of the trust which he or she settled.

51. Power to appoint or remove beneficiaries

Unless the trust deed of settlement provides otherwise, a trustee may appoint additional beneficiaries or may exclude a beneficiary from benefit, or may impose upon a beneficiary a specific condition precedent to the distribution of trust property to the beneficiary.

52. Distributions to beneficiary

Except as otherwise provided in a trust deed of settlement, all distributions of income or principal to be paid to a beneficiary shall be

- (a) paid by the trustee directly to
 - (i) the beneficiary,
 - (ii) the personal representative of the beneficiary, or
 - (iii) the guardian of a minor beneficiary or the guardian or conservator of an incapacitated beneficiary; or
- (b) where authorised, and not under duress, applied for the benefit of the

beneficiary.

53. Beneficiary's right to apply to the Court

A beneficiary who reasonably believes that his or her interest or right under the trust is prejudiced may apply to the Court for an order with respect to the proper administration of the trust or the disposition of trust property.

54. Power to renounce interest

(1) A beneficiary may renounce his or her interest under a trust or to trust property, whether or not he or she has already received any benefit from the trust or property.

(2) The renunciation must be in writing, may be temporary and may be revoked in the manner and circumstances set out in it.

(3) A renunciation is not effective until it is received by the trustee.

(4) A renunciation does not constitute a transfer of rights or benefits.

55. Appointment of protector

A trust deed of settlement may provide for the appointment of a protector of the trust who shall have the powers, duties and responsibilities specified in the trust deed of settlement.

56. Fiduciary duty of protector

In the exercise of powers, a protector is not a trustee but does owe a fiduciary duty to the trust, the settlor and the beneficiaries of the trust.

57. Breach of trust - liability

(1) Subject to subsection (7), an intentionally and wilfully fraudulent act or omission by, at the behest of, under the direction of, or with the participation or concurrence of, a trustee or protector that results in actual prejudice to a trust, its settlor or a beneficiary is a breach of trust.

(2) An action for breach of trust may be brought before the Court by a settlor, trustee, protector or beneficiary of the trust.

(3) Where trustees or protectors are found liable for a breach of trust, they shall be jointly and severally liable.

(4) A trustee or protector who commits or is party or privy to a breach of trust shall be liable for

(a) the failure, depreciation or loss of any investments or any other property held by the trust and resulting from the breach; and

(b) to the extent reasonably ascertainable, any profit or benefit which would have accrued to the trust had there been no breach.

(5) A trustee shall segregate the trust assets and shall not set off a profit accruing to one trust asset against a loss or depreciation in value of another trust asset resulting from a breach of trust.

(6) Where a trustee or protector commits a breach of trust at the instigation, request, direction, or with the participation or concurrence of a beneficiary, the Court may impound all or part of the beneficiary's interest by way of indemnity to any other trustee, the trust, protector, settlor or any other beneficiary, or any person claiming through any of them.

(7) A settlor and trustee may agree to a standard of liability, as set forth in a trust deed of settlement, that differs from the standard of liability described in subsection (1), provided that the standard of liability is not more stringent than the standard described in subsection (1).

58. Constructive trust as a result of breach of trust

(1) A person who derives profit or property as a direct or indirect result of a breach of trust shall be deemed to be a constructive trustee of the profit or property, unless he or she derives or obtains it in good faith for fair and adequate consideration and without actual, constructive or implied notice of the breach of trust.

(2) A person who becomes a constructive trustee by virtue of subsection (1) shall deliver up the profit or property to the Court immediately upon receiving notice of the breach of trust.

(3) The Court may declare a constructive trust over property in any other circumstances in which it deems such a declaration proper at law or equity.

59. Tracing trust property

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

(a) it is no longer identifiable as trust property or as the proceeds of trust property; or

(b) it is the hands of a bona fide purchaser for value who has no actual, constructive or implied notice of the breach of trust.

(2) In a case referred to in paragraph (1)(b), the proceeds of the bona fide sale may be recovered and held as trust property.

60. Exculpation

(1) Unless the trust deed of settlement provides otherwise, no trustee or protector is liable for any breach of trust, unless the breach of trust is the trustee's or protector's own intentionally and wilfully fraudulent act or omission or the trustee or protector is intentionally and wilfully privy to a co-trustee's or co-protector's intentionally and wilfully fraudulent act or omission.

(2) For greater certainty, examples of acts or omissions that would not in and of themselves constitute fraudulent acts and omissions include:

(a) the failure, depreciation or loss of any investments or of any other trust property;

- (b) the exercise or failure to exercise a discretion or power or the refusal or failure to concur in the exercise of a discretion or power;
- (c) the failure to attend to, to interfere with or to inquire into the management of any entity the shares or other ownership interests of which form part of the trust property including
 - (i) the reliance on information given by the management or representative of any such entity,
 - (ii) the failure to act upon any information received from inquiring into the management or operation of any such entity, and
 - (iii) the failure to require the management of any such entity to consult and inform the trustee or protector;
- (d) the reliance in good faith on the opinion or advice of a co-trustee or co-protector or counsel or the Court as to the interpretation of the terms of the trust deed of settlement in any respect or as to any other issue that may arise;
- (e) the reliance on the opinion or advice of any of any other professional person in a matter apparently falling within the professional expertise of such person; and
- (f) giving advice to the settlor regarding
 - (i) the establishment, administration, maintenance, business undertaking, affairs, investment or property of the trust,
 - (ii) the legal, accounting and taxation aspects of the trust, or
 - (iii) any arrangement undertaken by the trustee or protector and any representations that the arrangement suggested for the trust will attain the objectives or advantages intended.

61. Breach of trust by co-trustee or co-protector

Neither a trustee nor a protector shall be liable for a breach committed by a co-trustee or co-protector, or by a preceding or succeeding trustee or protector unless

- (a) he or she becomes or ought to have become aware of the breach; and
- (b) he or she fails to take all reasonable steps within a reasonable time to remedy the breach, to mitigate the effect of the breach, to protect or restore the affected trust property or to prevent the continuation of the breach.

62. Resignation, retirement or removal of trustee or protector

If a trustee or protector resigns, retires, is removed or is unable to continue as trustee or protector, the trustee or protector shall be released from and indemnified against all claims, demands, actions, proceedings and accounts other than for breach of trust.

63. Release from liability

A settlor or a beneficiary may relieve a trustee or protector of liability for a breach of trust, but only with respect to that settlor's or beneficiary's interest, unless the Court finds that the settlor or beneficiary

- (a) is a minor or a person under legal disability;
- (b) does not have full knowledge of all material facts pertaining to the breach of trust; or
- (c) is improperly induced by any person to act.

64. Liability of former trustee or protector

All indemnities, protections and exculpations set out in this Act extend to each current and former trustee and protector and each director, officer or employee of a trustee or protector.

65. Liability to third party

Notwithstanding any other provision of this Act, neither a trust nor its trustee, settlor, protector or beneficiary shall be liable, personally or otherwise, to any party other than that trust, its settlor or its beneficiary for the actions of any other trustee, settlor, protector or beneficiary of the trust and then only for breach of trust.

PART VIII – PROPERTY OF INTERNATIONAL TRUSTS

66. Trust property

- (1) All property designated by a settlor, and conveyed or transferred to a trust by deed of settlement or by other deed, bill of sale, assignment, foreclosure, bequest, distribution, operation of law or other disposition, is trust property.
- (2) Assets acquired by the administration of the trust and its property are trust property.
- (3) Property included in a schedule or inventory attached to a document mentioned in subsection (1) is trust property.
- (4) Trust property includes property acquired by right accruing to the trust as a substitute or replacement for property that has been destroyed, damaged, removed or acquired in any other way by the administration of the trust property.
- (5) Trust property includes all profit, gain, appreciation or other accretion to the property.

67. Acceptance of property by trustee

The trustee shall have the authority, for the duration of the trust period, to accept any property from any person or entity and to place it in the trust for the beneficiaries either as an initial or additional disposition to the trust.

68. No validation of property not vested in settlor

- (1) Nothing in this Act shall validate any disposition of property to a trust by a settlor which, according to the laws of Antigua and Barbuda, is neither owned by the settlor nor over which the settlor has power at the time of disposition.

(2) Subsection (1) does not require the recognition of any foreign law or rule in determining whether the settlor is the owner of property or the holder of a power.

69. Community property

Unless the trust deed of settlement provides otherwise, property that is determined to be community property prior to its transfer to an international trust is no longer community property upon the transfer.

70. Exempt property

The following property is, for all purposes, exempt property which is not available to satisfy any legal process:

- (a) a life insurance policy or annuity contract held, directly or indirectly, by or for the benefit of a trust, a settlor or a beneficiary, including its assets and the proceeds from it;
- (b) trust property used for the support, health, welfare, benefit or education of a minor or a partially or fully disabled individual until
 - (i) the minor reaches the age of eighteen, or the disabled individual is no longer disabled, or
 - (ii) the Court has authorised the continuation of the payments after the minor has reached the age of eighteen or after the individual is no longer disabled; and
- (c) the trust property used or to be used exclusively for a charitable purpose within the meaning of section 11.

71. Anti-alienation

(1) A conveyance, transfer, sale, mortgage, pledge, hypothecation, encumbrance, order, assignment or other restraint of any interest in a trust by a settlor or beneficiary by way of anticipation of income or principal is void.

(2) Trust property shall not be subject to alienation, transfer or restraint of any kind by operation of any foreign law and shall be exempt from the claims of creditors of, claimants of, or parties adverse to, a settlor or a beneficiary.

(3) Trust property shall be free from the control or interference of a spouse of a settlor or a beneficiary, or a parent of any minor beneficiary, and from all foreign legal proceedings.

72. Claims against property based upon relationship

(1) Unless the trust deed of settlement provides otherwise, the court shall not recognize a cause of action that seeks to establish a right to trust property, or the transfer, encumbrance or restraint of trust property based upon principles of community property, equitable distribution, or spousal, familial, heirship or other rights that depend on the establishment or existence of any familial or personal relationship.

(2) For the purpose of this section, “personal relationship” means a relationship based on friendship, companionship, cohabitation or other arrangement that is not based on familial relationship.

73. Foreign offences

Subject to any valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction, no proceeding may be commenced and no claim or cause of action shall be recognised by the Court

- (a) which seeks to establish a right to trust property, or the transfer, encumbrance or restraint of trust property, based upon a foreign law, rule or regulation, relating to any fiscal offence;
- (b) which seeks to establish a right to trust property, or the transfer, encumbrance or restraint of trust property, based upon a foreign law, rule or regulation requiring the forfeiture of trust property as the instrumentality or the proceeds of a serious criminal offence, prior to the conviction of a person or entity for the commission of the serious criminal offence; or
- (c) which is brought exclusively against trust property, whether in rem or otherwise.

74. Bankruptcy

Notwithstanding any foreign law, rule or regulation and notwithstanding further that an international trust is voluntary and without valuable consideration being given for a disposition to it or is made for the benefit of the settlor or the settlor’s spouse or children, a trust shall not be void or voidable, and the property of the trust shall not be subject to transfer, attachment, encumbrance or other restraint, solely because of the settlor’s bankruptcy, insolvency or liquidation in any action or proceeding at the suit of a bankruptcy trustee, receiver or creditor of the settlor’s bankruptcy estate.

75. Fraudulent dispositions within the jurisdiction of Antigua and Barbuda

(1) The Court, after considering the factors specified in subsection (2) proven beyond a reasonable doubt, may

- (a) decide that a disposition of property that was conducted fraudulently is void; and
- (b) may order the trustee to satisfy a creditor’s judgment rendered by the Court from non-exempt trust property to the extent of the interest that a creditor had in that property prior to the disposition of the property to the trust.

(2) The factors to be considered by the Court are:

- (a) whether the disposition of property to the trust by or on behalf of the settlor was made with the sole and specific intent to avoid payment of an existing judgment rendered by the Court against the settlor;
- (b) whether the settlor presented no supervening legitimate purpose for the disposition; and
- (c) whether, at the time of the disposition, the settlor was insolvent.

(3) A settlor shall not have imputed to him an intent to defraud a creditor solely by reason that

- (a) the settlor has disposed of property to the trust after the accrual of the creditor’s cause of action;
- (b) the outstanding debt or loan that is the subject of the creditor’s underlying cause of action has been held to be in default by the creditor; or

(c) the settlor is a beneficiary of the trust.

(4) A settlor's showing of a supervening legitimate purpose for a disposition of property to a trust is a complete and absolute defense to a creditor's claim that the disposition was fraudulent.

(5) This section applies to all actions and proceedings brought in any court in any jurisdiction against any person with regard to the creation of an international trust, the disposition of property to or from such a trust or the receipt of property by or for the trust. The remedy conferred by subsection (1) is the sole remedy available to a creditor in such an action or proceeding to the exclusion of any other relief or remedy against any party.

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

(7) The enactment titled 13 Elizabeth 1 Ch 5 (1571) does not apply to any international trust, or any property or disposition of property of an international trust.

PART IX – JUDICIAL PROCEEDINGS

76. Jurisdiction

The Court has exclusive and continuing jurisdiction over all matters, actions and proceedings arising under, or relating to, this Act, or any international trust established or registered under this Act.

77. General powers

(1) On the application of a settlor, trustee, protector, beneficiary, or, with leave of the Court, any other person, the Court may

(a) make an order with respect to

- (i) the execution, administration, amendment, revocation, termination or enforcement of a trust;
- (ii) a trustee or protector, including an order regarding the exercise of any function or duty by a trustee or protector, the appointment, remuneration, resignation, removal, surcharge, sanction, succession, substitution or conduct of a trustee or protector, or the maintenance, submission, objection to or approval of an accounting;;
- (iii) a beneficiary, settlor or any person claiming a right or interest in a trust or to trust property; or
- (iv) trust property, whether or not located in Antigua and Barbuda, including an order as to the investment, administration, maintenance, disposition, sale, conveyance, restraint, encumbrance, surrender, recovery or distribution of trust property;

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

(c) rescind, modify or clarify an order or declaration made under this Act.

(2) A trustee appointed by the Court has the power and duties specified by the Court, or if none are so specified, the same powers and duties as if originally appointed a trustee in the trust deed of settlement.

78. Enforcement of judgments

All property of a trust, other than exempt property, shall be available to satisfy an order or judgment of the Court and any legal process issued by the Court to enforce its order or judgment.

79. Priorities

If a trust is declared invalid pursuant to this Act and the Court is satisfied that a trustee, protector, settlor or beneficiary has not acted in bad faith

- (a) the trustee shall have a first and paramount charge over the trust property in an amount equal to all outstanding trustee fees, charges, commissions, costs and disbursements;
- (b) the protector shall have a second charge over the trust property in an amount equal to all outstanding fees, charges, commissions, costs and disbursements;
- (c) each trustee, protector, settlor or beneficiary shall have a third charge, *pari passu*, over the trust property in an amount equal to the entire cost properly incurred by them in the prosecution or defense of the action or proceeding;
- (d) each beneficiary shall have a fourth charge, *pari passu*, over trust property in an amount equal to each of their pre-existing rights, claims and interests; and
- (e) the settlor shall have a fifth charge over trust property in an amount equal to all other outstanding fees and costs, and all other pre-existing rights, claims and interests.

80. Non-recognition of foreign judgments

No action or proceeding for or in relation to the enforcement or recognition of any foreign law, rule, regulation, judgment, injunction, decree or order, including a foreign injunction or order, requiring the restraint of trust property shall be entertained by any court in Antigua and Barbuda against

- (a) international trust, its settlor, trustee, protector, beneficiary, or any person directed in accordance with the terms of the trust deed of settlement or disposition to exercise a function or undertake a matter in connection with the trust; or
- (b) any property of an international trust.

81. International trust as separate legal entity

No action or proceeding shall be entertained by the Court which is based upon, seeks or purports to disregard a trust as a separate, valid and distinct legal entity.

82. Commencement of proceedings

(1) No action or proceeding seeking to void a trust, seeking attachment or any other restraint of any portion of trust property, other than an action brought by a trustee, protector, settlor, beneficiary or the Government of Antigua and Barbuda shall be entertained by the Court unless it is commenced within one year of the date of the settlor's execution of the trust deed of settlement or within two years after the plaintiff's underlying cause of action arises, whichever is earlier, irrespective of the date on which the settlor made a disposition of property to the trust.

(2) No action or proceeding, other than an action brought by a trustee, protector, settlor, beneficiary, Antigua and Barbuda domiciliary or the Government of Antigua and Barbuda, shall be entertained by the Court that is based on a cause of action which arose after the date of the settlor's execution of the trust deed of settlement.

(3) For purposes of this Act

- (a) the date on which a cause of action arises is the date of the act or omission which is relied upon to establish the cause of action, and if the act or omission is continuous in nature, or if multiple acts or omissions are alleged, then the date of the first act or omission is the date that the cause of action arises;
- (b) the term "cause of action" means the earliest cause of action capable of assertion by a plaintiff against a settlor, beneficiary, or trust or against the trust property, by which that plaintiff may establish a claim against that settlor, beneficiary, trust or property; and
- (c) the entry of judgment in any proceeding in any jurisdiction or court shall not constitute a separate cause of action.

(4) In the event of re-domiciliation of a foreign trust to Antigua and Barbuda, this section applies as if the trust had always been an Antigua and Barbuda international trust, without regard to the law of the trust's prior domicile.

83. Affidavits

(1) No action or proceeding to which section 82 applies, whether substantive or interlocutory in nature, shall be entertained by the Court and no judgment, declaration or order shall be made or granted by the Court, unless accompanied by an affidavit attesting to the following:

- (a) the action or proceeding has been commenced in accordance with section 82;
- (b) the determination or order sought would not be contrary to Part IX; and
- (c) the undertaking required by section 85 has been deposited with the Registrar of the Court.

(2) Every affidavit required to be filed under this section shall be made by the person on whose behalf the action or proceeding is brought, or in the case of an entity, one of its directors or officers, attesting to

- (a) the circumstances with respect to which the cause of action is brought;
- (b) the date upon which the cause of action arose; and
- (c) the date upon which the trust deed of settlement was executed by the settlor.

84. Government immunity from suit

No action or proceeding shall be entertained by the Court against the Government of Antigua and Barbuda, any statutory body, agency or authority or any public or judicial officer in respect of any act or failure to act in accordance with this Act.

85. Payment to Court Registry

Every plaintiff or applicant seeking to commence an action or proceeding against a trust, settlor, protector, trustee or beneficiary for the avoidance of the trust or the transfer, encumbrance, attachment or other restraint of trust property shall first deposit with the Registrar of the Court an undertaking in the sum of two hundred thousand United States dollars or any other amount determined by the Court, to secure the payment of all legal fees and costs that may become payable by the plaintiff or applicant in the event the action or proceeding is not successful. This section does not apply to any action or proceeding brought by a trustee, protector, settlor or beneficiary of the trust or by the Government of Antigua and Barbuda.

86. Contingent fee arrangements

No barrister, solicitor or attorney-at-law shall enter into any arrangement for, charge or collect any fee, commission, compensation or award that is contingent upon the success of an action or proceeding, or the amount of an award or judgment in an action or proceeding, for the avoidance of a trust or the transfer, encumbrance, attachment or other restraint of trust property. This section does not apply to an action or proceeding brought by a trustee, protector, settlor or beneficiary of a trust or by the Government of Antigua and Barbuda.

PART X – CONFIDENTIALITY**87. Confidentiality**

(1) Except where this Act otherwise provides or pursuant to an order of the Court, no person shall disclose any of the documents referred to in subsection (2), their contents or the information contained in them, relating to the establishment, administration, maintenance, business undertaking, affairs or property of the trust to any other person.

(2) The documents referred to in subsection (1) are:

- (a) a trust deed of settlement and any document related to a trust deed of settlement;
- (b) a document relating to the exercise or proposed exercise of any function or duty conferred upon a trustee or protector, or disclosing any deliberations of a trustee or protector, or any of a trustee's or protector's directors, officers or employees, as to the manner in which a trustee or protector may exercise any function or duty, or disclosing the reasons for any particular exercise of function or duty or the material upon which the reasons were or might have been based;
- (c) a document relating in any way, directly or indirectly, to the finances, investments, assets, income, expenses, profits, losses, appreciation, depreciation, value, net worth or business activity of a trust, its settlor or any beneficiary of a trust; and

- (d) a document relating in any way, directly or indirectly, to the rights, benefits or interests of the settlor or any beneficiary of a trust.

(3) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one hundred thousand United States dollars or imprisonment for a term of two years or both.

(4) For the purposes of this section, “document” and “information” include any papers, deeds, declarations, appointments, minutes, notes, memoranda, records, correspondence, telexes, telegrams, tape recordings, facsimile transmissions, computer data, e-mail, files, discs, and videotapes, of all kinds, whether in printed, electronic or holographic form, or any other form.

88. Permissible disclosure of confidential information

Notwithstanding section 87, nothing in this Act and no trust deed of settlement shall prohibit a trustee, protector or any of the trustee’s or protector’s directors, officers or employees from disclosing confidential information under the following circumstances:

- (a) upon an order of the Court, in connection with the presentation of evidence for the purpose of, or in the course of, the trial of any person in respect of a serious criminal offence recognised within Antigua and Barbuda, to the extent that the confidential information is required to prove the alleged offence;
- (b) upon an order of the Court, based upon the written request of the Government of Antigua and Barbuda, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction, pertaining to the exchange of information or legal assistance in connection with the investigation, prosecution or prevention of a serious criminal offence if
 - (i) the request for the information or legal assistance identifies with specificity the offence, as well as the person or entity charged with, or under investigation for, the offence,
 - (ii) the offence is also a serious criminal offence under the laws of Antigua and Barbuda,
 - (iii) the request for exchange of information or legal assistance does not conflict with any existing laws, rules or regulations of Antigua and Barbuda, and
 - (iv) the Court has determined that the confidential information is required to prove the offence;
- (c) upon an order of the Court, based upon the written request of the Government of Antigua and Barbuda, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction pertaining to the exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters, if
 - (i) the request for information or legal assistance identifies with specificity the offence as well as the person or entity charged with, or under investigation for, the offence, and
 - (ii) the offence is also a serious criminal offence under the laws of Antigua and Barbuda;
- (d) upon an order of the Court, based upon written request of the Government of Antigua and Barbuda, for information regarding the identification of the trustee, protector, settlor, beneficiary, property or transactions of a trust for the purpose of complying with the Antigua and Barbuda Money Laundering (Prevention) Act or the Antigua and Barbuda Prevention of Terrorism Act;
- (e) upon written request, by the Government of Antigua and Barbuda or by a financial institution, for information regarding the identification of the trustee, protector, settlor or beneficiary of a trust, the purpose of the trust or the identification of trust property or transactions if
 - (i) the request is for the purpose of complying with customer due diligence guidelines as set by the Financial Services Regulatory Commission of Antigua and Barbuda, and
 - (ii) the requesting institution provides assurance satisfactory to the trustee or protector that the information shall be maintained as confidential by the requesting institution and shall not be disclosed to any third party;
- (f) to any person that the trustee reasonably believes requires the information to carry out the management and administration of the trust and its property in the ordinary course of business; or
- (g) to a legal practitioner in connection with a request for, or the receipt of, legal advice relating to the establishment, administration, maintenance, business undertaking, affairs, taxation or property of the trust or for the prosecution or defense of any litigation relating to the establishment, administration, maintenance, business undertaking, affairs or property of the trust.

89. Maintenance of confidential nature of information

Disclosure of confidential documents or information specified in section 88 does not constitute a violation of section 87 and does not defeat the confidential nature of the document or information with regard to any other person.

90. Report and publications of judicial proceedings

(1) All judicial proceedings, other than criminal proceedings relating to an international trust shall, unless ordered otherwise by the Court, be heard in camera and no details of the proceedings shall be published by any person except in accordance with this section.

(2) Every decision or order of the Court in respect of any proceedings concerning the application or interpretation of this Act or any international trust may be published or reported for the purposes of affording a record of the proceedings, if

- (a) the written decision or order of the Court shall be edited as necessary to preserve confidentiality in respect of the identity of the trust, the trust property and every interested party and all identifying references shall be redacted; and
- (b) no decision or order shall be reported or published until the Court has ascertained the views of the parties to the proceedings as to the adequacy of any editing or redaction undertaken and certified in writing to the Registrar of the Court that the edited decision or order may be released for publication or reporting.

PART XI – EXEMPTION FROM TAXES AND DUTIES

91. Exemption from taxes and duties

- (1) A trust registered under this Act shall be exempt from
 - (a) all income tax, including all tax based upon appreciation of trust property;
 - (b) all estate, inheritance, bequest or gift tax payable with respect to trust property by reason of any death, or any transfer of property to or from the trust, provided the transfer is without consideration, including a transfer of property to an entity as capital contribution in return for an equity interest in the entity, which shall be deemed without consideration;
 - (c) all stamp duty with respect to all instruments relating to trust property or to transactions carried out by a trustee on behalf of the trust, or by any entity owned by the trust; and
 - (d) all exchange controls, including controls on the maintenance, investment, transfer or exchange of currencies in Antigua and Barbuda or in any other location.

(2) Notwithstanding subsection (1), and subject to the Antigua and Barbuda Income Tax Act, Cap. 212, a trust registered under this Act shall not be exempt from

- (a) tax or stamp duty on income derived from the sale or rental of property in Antigua and Barbuda unless the tax has been, or is being, paid by another person;
- (b) tax or stamp duty on income derived from the sale of equity or other interests in any entity incorporated or otherwise registered in Antigua and Barbuda and doing business in Antigua and Barbuda unless the tax has been, or is being paid by another person; or
- (c) any tax arising from or relating to the conduct of business or ownership of property in Antigua and Barbuda unless the tax has been, or is being paid by another person.

PART XII - MISCELLANEOUS

92. Translations

Every document filed with the Commission that is not in English shall be accompanied by an English translation certified as true and correct by a translator, to the satisfaction of the Commission.

93. Regulations

The Minister may, upon the recommendation of the Commission

- (a) make and publish rules and regulations to implement this Act; and
- (b) prescribe fees under this Act

94. Repeal

The International Trust Act, 2004, No. 22 of 2004, is repealed.

THE INTERNATIONAL TRUST ACT, 2007

SCHEDULE 1

(Section 17)

Application for Entry on Register of International Trusts

1. Name of Trust _____.
2. Name and Address of Antigua and Barbuda Trustee:

_____.
3. Name and Address of All Non-Resident Trustees:

_____.
4. Name and Address of All Protectors:

_____.
5. Date of Execution of Trust by Settlor: _____.
6. Date of Execution of Trust by each Trustee: _____.
7. Date of Execution of Trust by each Protector: _____.
8. Please attach the following:
 - (1) Prescribed Fee: \$ _____.

(2) Certificate from the Antigua and Barbuda Trustee which certifies:

- (a) the trust, upon registration, will be an international trust;
- (b) the name of the trust;
- (c) the name and address of the Antigua and Barbuda trustee;
- (d) the name and address of all non-resident trustees;
- (e) the name and address of all protectors;
- (f) the date of submission of the Certificate to the Commission, and
- (g) if a re-domiciled foreign trust:
 - (i) The law under which the trust was created;
 - (ii) Original date of registration of the trust in its original jurisdiction (or original date of execution if original date of registration is not available); and
 - (iii) Date of amendment to provide for the law of Antigua and Barbuda to be the governing law of the trust.

The applicant hereby declares that all the information provided in this application and any other document provided in support of this application are true and correct. Applicant further undertakes to inform the Commission without delay of any changes to the information supplied with this application.

Authorized Signature

Date

By: _____

THE INTERNATIONAL TRUST ACT, 2007

SCHEDULE 2

(Section 17)

Certificate of Antigua and Barbuda Trustee

I, _____, the Trustee of the _____ Trust, domiciled in Antigua and Barbuda, certify the following:

1. The name of the trust is _____.
2. The _____ trust, upon registration on the Register of International Trusts, shall be an international trust in accordance with the Antigua and Barbuda International Trust Act, 2007.
3. Name and Address of Antigua and Barbuda Trustees:

_____.
4. Name and Address of All Non-Resident Trustees:

_____.
5. Name and Address of All Protectors:

_____.
6. Date of Submission of this Certificate to the Commission:_____.
7. In the event that the above-named trust is a re-domiciled foreign trust, the original date of registration of the trust in its original jurisdiction (or original date of execution if such date of registration is unavailable):

(a) Original jurisdiction of the trust: _____.
8. Date of Amendment of the Trust Deed of Settlement which provides for the law of Antigua and Barbuda to be the governing law of the trust: _____.

The undersigned hereby certifies that all the information provided in this certificate is true and correct.

Authorized Signature

Date

By: _____

THE INTERNATIONAL TRUST ACT, 2007

SCHEDULE 3

(Section 17)

Application for Extension of Entry on Register of International Trusts

- 1. Name of Trust _____.
- 2. Name and Address of Antigua and Barbuda Trustee:

_____.
- 3. Name and Address of All Non-Resident Trustees:

_____.
- 4. Name and Address of All Protectors:

_____.
- 5. Date of Execution of Trust by Settlor: _____.
- 6. Date of Execution of Trust by each Trustee: _____.
- 7. Date of Execution of Trust by each Protector: _____.
- 8. Please state the reasons for the extension of time to register the trust:

_____.
- 9. Please attach the prescribed extension fee: \$ _____.

The applicant hereby declares that all the information provided in this application and any other document provided in support of this application are true and correct. Applicant further undertakes to inform the Commission without delay of any changes to the information supplied with this application.

Authorized Signature

Date

By: _____

THE INTERNATIONAL TRUST ACT, 2007

SCHEDULE 4

(Section 18)

Application for Renewal of Registration on Register of International Trusts

- 1. Name of Trust _____.
- 2. Name and Address of Antigua and Barbuda Trustee:
_____.

THE INTERNATIONAL TRUST ACT, 2007

SCHEDULE 6

(Section 18)

Application for Reinstatement of Entry on Register of International Trusts

- 1. Name of Trust _____.
- 2. Name and Address of Antigua and Barbuda Trustee:

_____.
- 3. Name and Address of All Non-Resident Trustees:

_____.
- 4. Name and Address of All Protectors:

_____.
- 5. Original Date of Registration: _____.
- 6. Date of Expiration of Certificate of Registration: _____.
- 7. Please attach prescribed reinstatement fee: \$ _____.

The applicant hereby declares that all the information provided in this application and any other document provided in support of this application are true and correct. Applicant further undertakes to inform the Commission without delay of any changes to the information supplied with this application.

Authorized Signature
By: _____

Date

Passed the House of Representatives on the _____, 2007. Passed the Senate on the _____, 2007.

Speaker.

President.

Clerk to the House of Representatives.

Clerk to the Senate.

EXPLANATORY MEMORANDUM

This Bill seeks to provide enhanced protection and confidentiality for assets held in international trusts.

It is divided into twelve parts.

Part I provides for interpretation of the terms used in the Act for which this is the Bill.

Part II provides general information about international trusts, including provisions relating to domicile of beneficiaries, trustees and settlors, the naming of international trusts, the purposes of international trusts and their maximum duration.

Part III contains provisions respecting the validity of international trusts and provides the Financial Services Regulatory Commission with powers to prohibit the registration or remove from the register international trusts, and to apply to court to have the powers of international trusts.

Part IV provides for the registration of international trusts and creates a limited right of inspection of the register of international trusts.

Part V would regulate the trust deed of settlement.

Part VI contains provisions respecting the revocation and termination of international trusts.

Part VII contains provisions respecting the powers, rights and obligations of settlors, trustees, beneficiaries and protectors of international trusts and includes rules about who can be involved in international trusts, where their domicile must be, the power of beneficiaries to renounce their interests, fiduciary duties, constructive trusts and duress.

Part VIII contains rules about property that can and cannot form part of international trust property.

Part IX deals with domestic and international court proceedings, including an affirmation that an international trust is to be treated as a separate legal entity, the prohibition of contingency fee arrangements and the requirement for deposit in court of money to be held as security for costs in certain situations.

Part X confirms the confidentiality of information provided under the Act for which this is the Bill.

Part XI provides that international trusts are exempt from certain taxes and duties.

Part XII has a provision dealing with certification of translations and provides a regulation-making authority for the Minister of Finance. It also provides for the repeal of the former International Trust Act of 2004.

Hon. Justin L. Simon QC
Attorney General and
Minister of Legal Affairs