



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 7.03 (N)

# NEVIS INTERNATIONAL EXEMPT TRUST ORDINANCE and Subsidiary Legislation

#### Revised Edition

showing the law as at 31 December 2017

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This edition contains a consolidation of the following laws—

#### NEVIS INTERNATIONAL EXEMPT TRUST ORDINANCE

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Amended by: Ordinance 2 of 1995  
Ordinance 2 of 2000  
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#### NEVIS INTERNATIONAL EXEMPT TRUST (FEES)

**REGULATIONS – Sections 43 and 64**

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**CHAPTER 7.03 (N)**  
**NEVIS INTERNATIONAL EXEMPT TRUST ORDINANCE**

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**CHAPTER 7.03 (N)****NEVIS INTERNATIONAL EXEMPT TRUST ORDINANCE**

AN ORDINANCE TO MAKE PROVISIONS FOR THE LAW RELATING TO INTERNATIONAL TRUSTS, AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

## PART I

## PRELIMINARY MATTERS

**Short title.**

1. This Ordinance may be cited as the Nevis International Exempt Trust Ordinance.

**Interpretation.**

2. In this Ordinance, unless the context otherwise requires—

“attorney-at-law” means a person whose name has been entered on the Roll of attorneys-at-law pursuant to the Legal Profession Act, Cap. 3.28, as amended;

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

“authenticated translation” means a translation into the English language of an instrument which was drafted in a language other than English and was prepared by a professional translator who is accredited by a court of law, a government agency or an international organisation;

“bankrupt” means a situation where a person is insolvent and is otherwise unable to pay his debts and obligations, and the term ‘bankruptcy’ shall be construed accordingly;

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

“breach of trust” means the violation, omission, neglect or failure of any duty imposed on a trustee by this Ordinance or by the terms of the international trust;

“business entity” means a corporation, business trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, or any other legal or commercial entity, whether foreign or domestic;

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

“charitable remainder annuity trust” means a trust—

- (a) from which a sum certain is to be paid, not less often than annually;
- (b) to one (1) or more persons (at least one (1) of which is not a charity and, in the case of natural persons, only to a natural person who is living at the time of the creation of the trust);

- (c) for a term of years or for the life or lives of such natural persons or natural persons (here the ‘lead term’);
- (d) from which no amount other than the payments described herein and other than qualified gratuitous transfers described herein may be paid to or for the use of any person other than a charity, following the termination of the lead term;
- (e) the remainder interest in the trust is to be transferred to, or for the use of, a charity or is to be retained by the trust for such a use; and
- (f) the value of such remainder interest (determined by applying generally accepted actuarial principles) is at least two percent (2%) of the initial net fair market value of all property placed in the trust;

“charitable remainder unitrust” means a trust—

- (a) from which a fixed percentage of the net fair market value of its assets, valued annually, is to be paid, not less often than annually (the lead payment);
- (b) to one (1) or more persons (at least one (1) of which is not a charity and in the case of natural persons, only to a natural person who is living at the time of the creation of the trust);
- (c) for a term of years or for the life or lives of such natural person or natural persons (here called the ‘lead term’);
- (d) from which no amount other than the payments described herein and other than qualified gratuitous transfers described herein may be paid to or for the use of any person other than a charity, following the termination of the lead term;
- (e) the remainder interest in the trust is to be transferred to, or for the use of, a charity or is to be retained by the trust for such a use; and
- (f) the value of such remainder interest (determined by applying generally accepted actuarial principles) is at least two percent (2%) of the initial net fair market value of all property placed in the trust,

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

“Court” means the High Court of St. Christopher and Nevis;

“creditor” means a person to whom an obligation or debt is owed;

“deputy registrar” means the person or persons appointed by the Minister to assist the registrar in performing his duties under this Ordinance;

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

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

“foreign court” means any court which is located outside of St. Christopher and Nevis, any court other than the Court, or any court which assumes jurisdiction

over any person or property which is governed by this Ordinance without the permission of the Court;

“formalities” in relation to a disposition of property means documentary evidence and proof of any other actions required generally by the laws of a relevant jurisdiction for all dispositions of like form concerning property of like nature without regard to—

- (a) the fact that the particular disposition is made in trust;
- (b) the terms of the trust;
- (c) the circumstances of the parties to the disposition; or
- (d) any other particular circumstances but includes any special formalities required by reason that the party effecting the disposition is not of full legal age, is subject to mental or bodily infirmity or is a business entity;

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

the “*Gazette*” means the *Official Gazette* of St. Christopher and Nevis;

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

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

“grantor retained annuity trust” means a trust—

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

“grantor retained unitrust” means a trust—

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

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

“insolvency” includes the making of an administrative order, the appointment of a receiver and the bankruptcy of any person;

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

“interest” means the legal or financial stake held by a beneficiary in the property of an international trust;

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

- (a) at least one (1) of the trustees is either—
  - (i) a corporation incorporated under the Nevis Business Corporation Ordinance, Cap. 7.01 (N);
  - (ii) a limited liability company formed under the Nevis Limited Liability Company Ordinance, Cap. 7.04 (N);
  - (iii) a trust company licensed in Nevis;
  - (iv) an attorney-at-law or firm of attorneys-at-law duly licensed by the Nevis Island Administration to carry on the business of a registered agent; or
  - (v) a multiform foundation established and registered under the Multiform Foundations Ordinance, Cap. 7.08 (N);
- (b) the settlor and beneficiaries are at all times non-resident; and
- (c) the trust property does not include any real property situated in St. Christopher and Nevis;

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

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

“non-resident” means—

- (a) a natural person not domiciled in St. Christopher and Nevis;
- (b) a natural person not ordinarily resident in St. Christopher and Nevis;
- (c) a natural person who obtained citizenship of St. Christopher and Nevis by way of the citizenship by investment programme;
- (d) a corporation incorporated under the Nevis Business Corporation Ordinance, Cap. 7.01 (N);
- (e) a limited liability company formed under the Nevis Limited Liability Company Ordinance, Cap. 7.04 (N); or
- (f) a business entity incorporated, formed or established under the laws of any jurisdiction other than St. Christopher and Nevis and which does not ordinarily engage in any trade or business within St. Christopher and Nevis;

“person” means a natural person or business entity;

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

“power of withdrawal” means a presently exercisable general power of appointment other than a power exercisable by—

- (a) a trustee and limited by an ascertainable standard; or
- (b) another person only upon consent of the trustee or a person holding an adverse interest;

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

“property”—

(a) means property of any description, wherever situated, including any shares or interest therein, but excluding any real property situated in St. Christopher and Nevis;

(b) includes any rights, whether vested, contingent, defeasible or future;

“protector” means a person who is the holder of a power which when invoked is capable of directing, providing consent to or disapproving a trustee’s actual or proposed investment decisions, distribution decisions or other decisions of the trustee in matters relating to the trust and in respect of which matters the trustee has discretion and includes a person who is the holder of a power to appoint or dismiss trustees;

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

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

“qualified foreign trust” means a trust described in section 43(3) of this Ordinance;

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

“relatives” in relation to a natural person means his parents, his spouse, the parents of his spouse, his siblings, his spouse’s siblings, his children and remoter issue and the spouses of such children and issue;

“revocable” means the power of the settlor of an international trust to cancel or withdraw assets from the trust, without the consent of the trustee or a person holding an adverse interest;

“settlor” means a person, including a testator, who gratuitously contributes trust property to a trust or makes a testamentary disposition of trust property on trust. If more than one (1) person gratuitously contributes trust property to a trust or makes a testamentary disposition on trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution or testamentary transfer only;

“spouses” mean two natural persons (one of whom is male and the other female) who are lawfully wedded together in a union recognised under the laws of the jurisdiction where the marriage took place or the marriage licence was issued;

“terms” means the provisions, words or phrases in respect of a trust having exact meaning and limited in use governing a trust, and any other provisions, words or phrases applicable to a trust under the proper law of such trust;

“trustee” has the meaning given by section 59 and includes an original, additional and successor trustee, and a co-trustee;

“trust property” means real or personal property which is held on trust.

*(Substituted by Ordinance 2 of 2015)*

### **Validity of international trusts.**

3. (1) An international trust registered under this Ordinance shall be valid and enforceable notwithstanding that it may be invalid according to the law of the

settlor's domicile or residence or place of current incorporation, formation or establishment.

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

- (a) it purports to do anything contrary to the laws of St. Christopher and Nevis;
- (b) it purports to confer any right or power or impose any obligation the exercise of which or the carrying out of which is contrary to the laws of St. Christopher and Nevis; or
- (c) the property of the trust, or any part thereof, are the proceeds of a crime for which the settlor has been convicted.

*(Substituted by Ordinance 2 of 2015)*

#### **Proper law of international trusts.**

4. (1) Subject to the provisions of subsection (4), the proper law of an international trust shall be—

- (a) the law expressed by the terms of the trust or intended by the settlor to be the proper law;
- (b) if no such law is expressed or intended, the law with which the international trust has its closest connection at the time of its creation; or
- (c) if the law expressed by the terms of the trust intended by the settlor to be the proper law, or the law with which the international trust has its closest connection at the time of its creation does not provide for international trusts or the category of international trust involved then the proper law of the international trust shall be the law of Nevis.

(2) In ascertaining the law with which international trust has its closest connection, reference shall be made, in particular, to—

- (a) the place of administration of the trust designated by the settlor;
  - (b) the status of the assets of the trust;
  - (c) the place of residence, registration or business of the trustee;
- (Substituted by Ordinance 2 of 2015)*
- (d) the objects of the trust and the places where the objects are to be fulfilled.

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

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

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

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

#### **Unlimited duration of international trusts and accumulation of income.**

5. (1) No rule of law against perpetuities or suspension of the power of alienation of the title to property, any other existing law against perpetuities or any law restricting or limiting the duration of an international trust shall apply with respect to any interest in real or personal property held in trust if the terms of an international trust specifically state that the trustee of the trust has the unlimited power to sell all trust assets or if one or more persons, one (1) of whom may be the trustee, has the unlimited power to terminate the entire trust.

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

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

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

*(Substituted by Ordinance 2 of 2015)*

## PART II

### SPENDTHRIFT, CHARITABLE AND NON-CHARITABLE INTERNATIONAL TRUSTS

#### **Spendthrift Trusts.**

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

- (a) subject to termination;
- (b) subject to diminution or termination in the event of the beneficiary becoming insolvent or any of his or her property becoming liable to seizure or sequestration for the benefit of his or her creditors; or
- (c) subject to a restriction on alienation of or dealing in the interest or any part of that interest and such a trust shall be known as a protective or spendthrift trust.

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

- (a) in trust to pay the income to the beneficiary until the income terminates in accordance with the terms of the trust or a determining event occurs; and
- (b) if a determining event occurs while the interest of the beneficiary continues, in trust to pay the interest to such of the following (and including more than one in such shares) as the trustee in his or her absolute discretion shall appoint—
  - (i) the beneficiary or any spouse or child of the beneficiary; or
  - (ii) if there is no such spouse or child the beneficiary and persons who would be entitled to the estate of the beneficiary if he or her had then died intestate and domiciled in Nevis.

(3) In subsection (2) above, a “determining event” shall mean the occurrence of any event or any act or omission on the part of the beneficiary (other than the giving of consent to an advancement of trust property, which would result in the trust becoming payable to a person other than the beneficiary).

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

#### **Charitable Trusts.**

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

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

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

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

#### **Trusts for non-charitable purposes.**

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

- (a) the purpose is specific, reasonable and capable of fulfillment;
- (b) the purpose is not immoral, unlawful or contrary to the public policy of Saint Christopher and Nevis; and

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

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

#### **Discretionary interests in international trusts.**

\*9. (1) This section applies to a creditor's claim with respect to a discretionary interest of any beneficiary (including a settlor) in an international trust unless the trust deed provides explicitly otherwise.

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

(3) A creditor of a beneficiary (including the settlor) may not compel or force a distribution with regard to a discretionary interest in an international trust, nor compel or force a trustee to exercise the trustee's discretion to make a distribution with regard to a discretionary interest in an international trust.

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

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

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

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

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

(9) Regardless of whether a beneficiary of an international trust has any outstanding creditor, a trustee of a discretionary interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary. No trustee is liable to any creditor for paying the expenses of a beneficiary (including the settlor) who holds a discretionary interest.

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\* Inserted as section 8A by Ordinance 2 of 2015 and renumbered along with the following sections.

- (10) (a) In this section, “discretionary interest” means a beneficiary’s interest in an international trust if the beneficiary’s entitlement to a distribution is within the discretion of the trustee.
- (b) This section shall not prevent a creditor from obtaining relief from under section 26 of this Ordinance that is not inconsistent with this section.

*(Inserted by Ordinance 2 of 2015)*

### **Protector of a trust.**

**10.** (1) The terms of an international trust may provide for the office of protector of the trust. Where a person is given authority by the terms of an international trust to direct, consent to or disapprove a trustee’s actual or proposed investment decisions, distribution decisions or other decision of the trustee, such person shall be considered to be a protector when exercising such authority (unless the terms of the trust shall otherwise provide).

- (2) The protector of an international trust shall have the power to—
- (a) (unless the terms of the trust shall otherwise provide) remove a trustee and appoint a new or additional trustee; and
  - (b) exercise such further powers as are conferred on the protector by the terms of the international trust or by the provisions of this Ordinance.
- (3) The terms of an international trust may grant the protector the power to—
- (a) direct the trustee to make distributions from the trust;
  - (b) consent to or approve any distributions made by the trustee from the trust; and
  - (c) direct the trustee regarding any or all investment decisions of the trust, which includes the power to direct a trustee to retain, purchase, sell or exchange property held in the trust or to engage in any other transaction affecting the ownership or rights over such property.

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

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

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

- (a) monitor the conduct of the protector;
- (b) provide advice to the protector or consult with the protector; or
- (c) communicate with or warn or apprise any beneficiary or third party concerning instances in which the trustee would or might have

exercised the trustee's own discretion in a manner different from the manner directed by the protector,

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

(7) Unless the terms of the trust shall otherwise provide the protector of an international trust may also be a settlor or a beneficiary of the trust.

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

(9) Where there is more than one (1) protector of a trust then, subject to the terms of the trust, any functions conferred on the protectors may be exercised if a majority of the protectors for the time being agree on its exercise.

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

(11) (a) A protector may delegate duties and powers with regard to investment decisions. The protector shall exercise reasonable care, skills and caution in—

- (i) selecting an agent such as an investment advisor;
  - (ii) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - (iii) reviewing the agent's actions periodically to monitor the agent's performance and compliance with the terms of the delegation.
- (b) In performing a delegated function, an agent owes a duty to the protector/trustee/beneficiary or purpose for which the trust was created to exercise reasonable care to comply with the terms of the delegation.
- (c) A protector who complies with paragraph (a) and, when investment functions are delegated, is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

*(Substituted by Ordinance 2 of 2015)*

#### **General power of appointment granted to a beneficiary.**

\*11. A creditor shall have no right against the interest of a beneficiary of an international trust or against the beneficiary or trustee of the trust with respect to such interest unless—

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

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\* Inserted as section 9A by Ordinance 2 of 2015 and renumbered.

exercises such power in favor of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate but then only to the extent of such exercise;

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

*(Inserted by Ordinance 2 of 2015)*

#### **Right of revocation retained by settlor.**

\*12. A creditor shall have no right against the interest of a beneficiary of an international trust who is the settlor or against the settlor or trustee of the trust with respect to such interest unless the settlor has a power to revoke the trust and appoint all or part of the trust property to the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate during the settlor's lifetime and the settlor actually exercises such power in favor of the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate but then only to the extent of such exercise.

*(Inserted by Ordinance 2 of 2015)*

### PART III

#### TERMINATION OR FAILURE OF INTERNATIONAL TRUSTS

#### **Failure or lapse of interest.**

13. (1) Subject to the terms of the international trust and to any order of the court, where—

- (a) an interest lapses;
- (b) a trust terminates; or
- (c) there is no beneficiary and no person (whether or not then living) who has become a beneficiary in accordance with the terms of the trust,

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

(2) Subsection (1) shall not apply to an international trust established for a charitable purpose to which section 14 applies.

#### **Failure of charitable trusts.**

14. (1) Where international trust property is for a charitable purpose and—

- (a) the purpose has been, as far as may be fulfilled;

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\* Inserted as section 9B by Ordinance 2 of 2015 and renumbered along with the following sections.

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

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

*(Amended by Ordinance 2 of 1995)*

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

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

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

*(Substituted by Ordinance 2 of 2015)*

#### **Termination of International Trusts.**

**15.** (1) On the termination of an international trust the trust property shall, subject to subsection (2), be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons or purposes entitled thereto.

*(Amended by Ordinance 2 of 2015)*

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

#### **Duress; Termination by beneficiaries.**

**16.** To the extent any person is granted the power under the terms of a trust to demand or request any act on the part of a settlor, beneficiary, trustee, protector, or other person, or has the authority to approve, veto, or compel any action or exercise any power which affects or will affect an international trust or any interest therein,

each such person is directed, to the extent such person would not be subject to personal liability or personal exposure—

- (a) to accept or recognise only demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, which are given by or are the result of persons acting of their own free will and not under compulsion or pursuant to any legal process, directive, order, or like decree of any court, administrative body, or other tribunal or like authority; and
- (b) to ignore any demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, where the person attempting to demand, request, approve, veto, compel the act, or exercise the power is not a person either appointed or so authorised pursuant to the terms of such trust.

*(Substituted by Ordinance 2 of 2015)*

#### PART IV BREACH OF TRUST

##### **Liability for breach of trust.**

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

- (a) any loss or depreciation in value of the trust property resulting from the breach; and
- (b) any profit which would have accrued to the trust had there been a breach.

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

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

- (a) he becomes or ought to have become aware of the breach; and
- (b) he actively conceals the breach or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent the breach.

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

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

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

##### **Constructive trusts.**

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

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

*(Amended by Ordinance 2 of 2015)*

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

#### **Tracing trust property.**

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

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

#### **Beneficiary may relieve or indemnify trustee.**

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

*(Substituted by Ordinance 2 of 2015)*

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

#### **Power to relieve trustee from personal liability.**

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

#### **Power to make beneficiaries indemnify.**

**22.** Where a trustee commits a breach of trust at the instigation, at the request or with the concurrence of a beneficiary, the Court (whether or not the beneficiary is a minor or a person under a legal disability) may impound all or part of his interest by way of indemnity to the trustee or a person claiming through him.

*(Section 20 was repealed by Ordinance 2 of 1995)*

PART V  
POWERS OF THE COURT

**\*Jurisdiction of the Court.**

**23.** The Court has jurisdiction in respect of any matters concerning an international trust where—

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

*(Amended by Ordinance 2 of 2015)*

**†General powers of the Court.**

**24.** (1) On the application of a trustee, a beneficiary, a settlor or his personal representatives, a protector, or with the leave of the Court, any other person, the Court may—

- (a) make an order in respect of—
    - (i) the execution, administration or enforcement of a trust;
    - (ii) a trustee, including an order as to the exercise of any power by a trustee, the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments, whether in Court or otherwise;
    - (iii) a protector, including an order appointing a protector;
    - (iv) a beneficiary, or a person connected to the trust;
    - (v) any trust property including an order for the vesting, preserving, application, surrender and recovery thereof;
  - (b) make a declaration as to the variation or enforceability of a trust;
  - (c) direct the trustee to distribute or not to distribute the trust property;
  - (d) make such order in respect of the termination of the trust and distribution of the property as it thinks fit;
  - (e) rescind or vary an order or declaration under this Ordinance or make a new or further order or declaration.
- (2) Where the Court appoints or re-appoints a trustee under this section—
- (a) it may impose such requirements and conditions as it thinks fit, including provisions as to remuneration and requirements and conditions as to the vesting of the property;
  - (b) subject to the Court's order, a trustee appointed by the Court shall perform the same functions, and may act in all respects, as if he had been originally appointed a trustee.

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\*Originally section 21.

† Originally section 22

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

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

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

*(Inserted by Ordinance 2 of 2015)*

**\*Court's determination of validity.**

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

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

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

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

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

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

(5) In determining the existence of the validity of an international trust registered under this Ordinance the Court shall apply—

- (a) the provisions of this Ordinance;

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\* Originally section 23

- (b) any other law of Saint Christopher and Nevis; and
- (c) any other law which may be applied,

if to do so would validate the trust.

**\* Avoidance of fraud.**

**26.** (1) Where it is proven beyond reasonable doubt by a creditor that a trust settled or established, or property disposed or transferred to a trust—

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

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

*(Amended by Ordinance 2 of 2015)*

(2) In determining whether a trust settled or established or a disposition rendered the settlor insolvent or with property by which a creditor's claim is successful may be satisfied, regard shall be had to the fair market value of the settlement or property, (not being property of or relating to the trust) at the time immediately after the settlement, establishment or the disposition referred to in subsection (1)(b), and if the fair market value of the property exceeded the value of the creditor's claim, at that time, after the settlement, establishment or disposition, then the trust which is settled or established or the disposition shall for the purposes of this Ordinance, be deemed not to have been so settled or established or the property disposed of with intent to defraud the creditor.

*(Amended by Ordinance 2 of 2015)*

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

*(Substituted by Ordinance 2 of 2015)*

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

*(Substituted by Ordinance 2 of 2015)*

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

- (a) has settled or established a trust or has disposed of property to such trust within a period of two years from the date of the creditor's cause of action accruing;
- (b) has retained, possesses or acquires any of the powers or benefits referred to in paragraphs (a) to (f) of subsection (1) of section 53;

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\* Originally section 24

*(Substituted by Ordinance 2 of 2015)*

(c) is a beneficiary.

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

*(Substituted by Ordinance 2 of 2000)*

(7) For the purpose of this section, the burden of proof regarding the settlor's intent to defraud the creditor is on by the creditor.

*(Substituted by Ordinance 2 of 2015)*

(8) For the purpose of this section—

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

(b) the term “cause of action” means the earliest cause of action capable of assertion by a creditor against the settlor of a trust or, as the case may be, against the settlor of property upon a trust by which that creditor has established (or may establish) an enforceable claim against that settlor;

*(Substituted by Ordinance 2 of 2000)*

(c) the entry of judgment in any action or proceeding shall not constitute a separate cause of action.

*(Inserted by Ordinance 2 of 2000 and amended by Ordinance 2 of 2015)*

(9) The provisions of this section shall apply to all actions and proceedings brought into Court, however described, against the person (whether a party to the action or proceedings or not) with regard to the settlement of an international trust or the disposition of property to such a trust, or receipt of property by or for such a trust and the remedy conferred by subsection (1) shall be the sole remedy available in such an action or proceedings to the exclusion of any other relief or remedy against any party to the action or proceeding.

*(Substituted by Ordinance 2 of 2015)*

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

*(Substituted by Ordinance 2 of 2000)*

(11) For the purposes of this section the term “creditor” means a creditor of the settlor, including a judgment creditor and an assignee from such creditor of any claim, and includes any person who alleges a cause of action against a settlor.

*(Inserted by Ordinance 2 of 2000)*

**\*Saving of certain rights.**

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

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\*Originally section 25

- (a) the beneficiary shall have a first and paramount charge over the trust property of an amount equal to the entire costs properly incurred by him in the defense of the action or proceedings (and not merely such costs as might otherwise be allowed by the Court); and
- (b) the trust shall be declared invalid subject to the proper fees, costs, pre-existing rights, claims and interests of the beneficiary.

*(Amended by Ordinance 2 of 2015)*

**\*Extent of invalidity.**

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

**†No validation of property not vested in settlor.**

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

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

**‡Foreign judgments not enforceable.**

**30.** Notwithstanding the provisions of any treaty or convention; the provisions of any statute; any rule of law or equity, to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgement obtained in a jurisdiction other than St. Christopher and Nevis against—

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

shall be entertained by the Court if—

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

*(Amended by Ordinance 2 of 2015)*

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\*Originally section 26

†Originally section 27

‡Originally section 28

**\*Exclusion of foreign laws.**

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

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

**†Application for directions.**

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

**‡Payment of costs.**

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

## PART VI

## TRUSTEES, PROTECTORS AND BENEFICIARIES

**§Beneficiaries of trusts.**

**34.** (1) A beneficiary shall be—

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

(2) The terms of a trust may provide for one or both of the following—

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

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\*Originally section 29

†Originally section 30

‡Originally section 31

§Originally section 32

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

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

*(Substituted by Ordinance 2 of 2015)*

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

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

*(Inserted by Ordinance 2 of 2015)*

**\*Disclaimer of beneficial interest.**

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

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

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

**†Number of trustees.**

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

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

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

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

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

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

**‡Appointment of new or additional trustees.**

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

(a) the protector (if any);

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

(c) the last remaining trustee;

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\*Originally section 33

†Originally section 34

‡Originally section 35

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

(e) if there is no such person (or no such person willing to act),

or the Court may appoint a new or additional trustee.

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

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

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

#### **Removal of trustee and protector.**

**\*38.** (1) If, in any action is brought against a trustee of an international trust in a foreign court, such foreign court fails to dismiss such action, or orders such trustee to take any action in regards to such trust, such trustee shall immediately upon such court's action and without the further order of any court, cease in all respects to be trustee of such trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, the Court, upon the application of any beneficiary of such trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of such trust and this statute. Upon such trustee ceasing to be trustee, such trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the Court in accordance with this section. The trustee shall, within fourteen (14) days of its removal, give notice in writing to the registrar of such removal.

(2) If, in any action brought against a protector of an international trust in a foreign court, such foreign court fails to dismiss such action, or orders such protector to take any action in regards to such trust, such protector shall immediately upon such court's action and without the further order of any court, cease in all respects to be a protector of such trust. Upon such protector ceasing to be a protector, such protector shall have no power or authority in regards to the trust. The protector shall, immediately following its removal hereunder, give notice in writing to the trustee of the international trust of such removal.

#### **Combination and division of trusts.**

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

(2) Subject to the terms of the trust instrument, the trustee may take into consideration the difference in tax attributes and other pertinent factors in administering the trust property of any separate trust, in making applicable tax elections, and in making applications or distributions.

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\* Sections 38, 39 and 40 inserted by Ordinance 2 of 2015 as 35A, 35B and 35C and renumbered and the following sections renumbered.

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

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

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

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

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

#### **Effect of provision of instrument.**

**40.** (1) Notwithstanding any other provision of this Ordinance or other law, the terms of a governing instrument may expand, restrict, eliminate, or otherwise vary the rights and interests of beneficiaries, including, but not limited to, the right to be informed of the beneficiary's interest for any period, the grounds for removal of a trustee, the circumstances, if any, in which the trustee must diversify investments, and a trustee's powers, duties, standard of care, rights of indemnification and liability to persons whose interests arise from that instrument.

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

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

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

*(Inserted by Ordinance 2 of 2015)*

#### **Trustee resolutions.**

**41.** A trustee which is either a Nevis Company, a corporation, a limited liability company or a multiform foundation may—

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

*(Substituted by Ordinance 2 of 2015)*

**Accounts.**

**42.** (1) The trustees of every trust shall cause to be kept proper books of account in respect of the trust including, where applicable, material underlying documentation including contracts and invoices and should reflect details of—

- (a) all sums of money received and expended by the trustee on behalf of the trust and the matters in respect of which the receipt and expenditure takes place; and
- (b) all sales and purchases and other transactions by the trustees and the assets and liabilities of the trust property.

(2) (a) The books of account should—

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

(b) The books of account which a trustee is required to keep shall be preserved by him or it, as the case may be, for a minimum period of five years from the date on which they are prepared.

(3) The books of account shall be kept at the registered office of the trustee or at such other place or places as the trustee thinks fit.

(4) A trustee who knowingly and willfully contravenes subsection (1), (2) or (3) shall be subject to a penalty of five thousand dollars.

*(Inserted by Ordinance 1 of 2011)*

**PART VII****REGISTRATION OF INTERNATIONAL TRUSTS****Registration of trusts.**

**43.** (1) The registrar shall maintain a register of international trusts and a register of qualified foreign trusts.

(2) Where a trust provides for the law of Nevis to be the governing law of all or any aspects of that trust an application for entry on the register as an international trust shall be made to the registrar.

*(Amended by Ordinance 4 of 2009)*

(3) Where a trust provides for the law of a jurisdiction other than the Island of Nevis to be the governing law of all aspects of that trust an application for entry on the register as a qualified foreign trust shall be made to the registrar.

*(Amended by Ordinance 4 of 2009)*

(4) Where a trust provides for the law of a jurisdiction other than the Island of Nevis to be the governing law of all aspects of that trust and the governing law of all or any aspects of the trust is changed to the law of Nevis an application for entry on the register as an international trust shall be made to the registrar provided that the registrar shall not accept such an application if the trust is not registered as a qualified foreign trust.

*(Amended by Ordinance 4 of 2009)*

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

(6) An application under subsection (5) shall be accompanied by the following—

- (a) the prescribed fee;
- (b) notice of the name of the trustee, and the name and registered office of the trust;  
*(Amended by Ordinance 2 of 2015)*
- (c) a certificate from a trustee or an attorney-at-law certifying—
  - (i) that the trust upon registration will be an international trust or a qualified foreign trust;
  - (ii) the date on which the trust was created, settled or established;
  - (iii) in the case of a qualified foreign trust, the law under which the trust was settled;
  - (iv) where the governing law is changed to the law of Nevis, that the trust is registered as a qualified foreign trust and the date of its registration;
  - (v)
    - (a) that there have been no changes made to the international trust;
    - (b) that there is no illegal activity perpetrated by the trust; and/or
    - (c) pending litigation against the trust.

*(Amended by Ordinance 4 of 2009)*

<sup>\*</sup>(7) The registrar shall, on receipt of the prescribed fee, the notice and certificate required under subsection (6)—

- (a) enter on the appropriate register the name of the trust, the date of creation, settlement or establishment of the trust and the address of the registered office of the trust;
- (b) issue a certificate of registration in the prescribed form.

(8) A certificate of registration under the endorsement of the registrar shall be conclusive evidence that all the requirements of this Ordinance in respect of registration have been complied with.

#### **Annual certificate of registration.**

**44.** (1) A certificate of registration issued in accordance with subsection (4) of the preceding section shall be valid and effective for a period of one year from the date of registration specified in that certificate.

(2) An application for renewal of registration shall be made by—

- (a) filing with the registrar an application for renewal in the prescribed form; and
- (b) payment of the prescribed fee.

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<sup>\*</sup> Original subsection (7) repealed by Ordinance 4 of 2009 and following subsections renumbered.

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

*(Amended by Ordinance 2 of 2000)*

(4) Every renewal of registration shall take effect from the date of expiry of the last certificate of registration.

(5) Every renewal of registration shall be for a period of one year from the date of expiry of the last certificate of registration.

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

*(Inserted by Ordinance 2 of 2000)*

#### **Notification of Termination.**

45. Where an international trust which has been registered terminates, the trustee shall notify the registrar and return the certificate of registration and the registrar shall then cancel the entry on the register and cancel the certificate of registration.

#### **Inspection of Register.**

46. The register shall not be open for inspection except that a trustee of a trust may, in writing, authorise a person to inspect the entry of that trust on the register.

#### **Minister may increase fees.**

47. The Minister may increase the fees payable by Order published in the *Official Gazette*.

#### **Registered office.**

48. (1) The registered office of an international trust shall be the office of the Nevis Company, attorney-at-law, corporation, limited liability company or multiform foundation which is the trustee.

*(Substituted by Ordinance 2 of 2015)*

(2) The address for service of any documents upon an international trust shall be the registered office of that trust.

## PART VIII

### EXEMPTION FROM TAXES

#### **Exemption from taxes and duties.**

49. Notwithstanding any provision to the contrary in any enactment, a trust registered under this ordinance shall be exempt from—

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

*(Substituted by Ordinance 2 of 2015)*

- (d) all exchange controls.

## PART IX

### MISCELLANEOUS PROVISIONS

#### **Commencement of proceedings.**

**50.** (1) No action or proceeding whether pursuant to this Ordinance or at common law or in equity—

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

shall be commenced, unless such action or proceeding is commenced in the Court before the expiration of 2 years from—

- (i) the date of the settlement of the international trust that is sought to be set aside;
- (ii) the disposition to the international trust that is sought to be set aside; or
- (iii) the breach of trust by the trustee or trustees,

as the case may be.

*(Amended by Ordinance 2 of 2015)*

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

- (a) claiming to have had an interest in property before that property was settled upon or disposed to an international trust; and
- (b) seeking to derive a legal or equitable interest in that property,

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

*(Amended by Ordinance 2 of 2015)*

(3) No action or proceeding to which subsection (1) or (2) of this section or to which section 26 shall apply, whether substantive or interlocutory in nature, shall be determined and no order shall be made, or granted by the Court (including any injunction that shall have the effect of preventing the exercise of, or restoring to a person any rights, duties, obligations or powers or preserving, granting custody of, detaining or inspecting any property) unless the applicant shall first satisfy the Court, by affidavit, that—

- (a) the action or proceeding has been commenced in accordance with subsection (1) or (2) of this section;
- (b) where the action or proceeding shall allege fraud or be founded upon some other action or proceeding alleging fraud, the determination or order sought would not be contrary to the provisions of section 26;
- (c) that the requirements of section 61 have been fulfilled.

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

- (a) the circumstances of the cause of action in respect of which the action or proceedings are brought;
- (b) the date upon which the cause of action shall have accrued;
- (c) the date upon which the property, in respect of which the action or proceeding is brought, was settled on or disposed to the international trust;
- (d) whether an action or proceeding has been commenced in respect of the cause of action and if so, the date upon which that action or those proceedings were commenced.

*(Amended by Ordinance 2 of 2015)*

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

- (a) by a person claiming to be interested in or to be prejudiced by the settlement of property upon such a trust; or
- (b) concerning any disposition of property to such a trust,

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

*(Section substituted by Ordinance 2 of 1995 and amended by Ordinances 2 of 2000 and 2 of 2015)*

### **Investments.**

**51.** (1) A trustee shall not invest any of the trust funds other than in securities, assets, or property authorised expressly or by necessary implication for the investment of the trust funds by and under the instrument by which the trust is established or created or in such securities, assets, or property authorised and approved by the protector pursuant to section 10(2) and (6) of this Ordinance.

*(Substituted by Ordinance 2 of 2015)*

(2) Where the instrument by which the trust is created or established authorises expressly or by necessary implication the investment of the trust funds in any investments authorised by the laws of St. Christopher and Nevis for the investment of trust funds the instrument shall be deemed to authorise investment as expressed in the First Schedule to this Ordinance.

### **Bankruptcy.**

**52.** Notwithstanding any provision of the law of the settlor's domicile or place of ordinary residence or the settlor's current place of incorporation, formation or establishment and notwithstanding further that an international trust is voluntary and without valuable consideration being given for the same or is made for the benefit of the settlor's spouse or children, an international trust shall not be void or voidable in the event of the settlor's bankruptcy, insolvency, or liquidation or in any action or proceeding at the suit of creditors of the settlor, but shall remain valid and subsisting and take effect according to its tenor subject to sections 26 and 27 of this Ordinance.

*(Substituted by Ordinance 2 of 2015)*

**Retention of control by settlor.**

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

- (a) the power to revoke the trust;
- (b) the power to veto a distribution of income or principal by the trustee;
- (c) the power to amend the trust;
- (d) any benefit, interest or property from the trust, including, but not limited to the following—
  - (i) the settlor's potential or actual receipt of income or principal from the trust, including rights to such income or principal retained in the trust deed;
  - (ii) the settlor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust and the settlor's right, at any time and from time to time by written instrument delivered to the trustee, to release such settlor's retained interest in such a trust, in whole or in part, in favor of a charity that has or charities that have a succeeding beneficial interest in such trust;
  - (iii) the settlor's potential or actual receipt of income or principal from a grantor retained annuity trust or grantor retained unitrust;
  - (iv) the settlor's receipt each year of a percentage (as specified in the trust deed) of the initial value of the trust assets (which may be described either as a percentage or a fixed amount) or the value determined from time to time pursuant to the trust deed;
  - (v) the settlor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a trustee acting—
    - (A) in such trustee's discretion;
    - (B) pursuant to a standard that governs the distribution of principal and does not confer upon the settlor a substantially unfettered right to the receipt or use of the principal; or
    - (C) at the direction of a protector who is acting—
      - 1. in such protector's discretion; or
      - 2. pursuant to a standard that governs the distribution of principal and does not confer upon the settlor a substantially unfettered right to the receipt of or use of principal;
  - (vi) a settlor's potential or actual use of real property, chattels or tangible assets held either directly or indirectly in the trust;
  - (vii) the settlor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes or other levies due on income or principal of the trust to any taxing authority located in any jurisdiction if such potential or actual receipt of income or principal is pursuant to a provision in the trust deed that expressly

provides for the payment of such taxes and if such potential or actual receipt of income or principal would be the result of a trustee acting in such trustee's discretion or pursuant to a mandatory direction in the trust deed; or at the direction of a protector who is acting in such protector's discretion. Distributions to pay income taxes made under a discretionary or mandatory provision included in a settlement establishing an international trust may be made by direct payment to taxing authorities;

- (e) the power to remove or appoint a trustee or protector;
- (f) the power to direct a trustee or protector on any matter;
- (g) except as provided in subsection (1)(h) an *inter vivos* or testamentary power of appointment (other than a power to appoint to the settlor, the settlor's creditors, the settlor's estate or the creditors of the settlor's estate) exercisable by will or other written instrument of the settlor;
- (h) the ability, whether pursuant to discretion granted to the trustee, a direction in the trust deed or the settlor's exercise of a testamentary power of appointment, of a trustee to pay, after the death of the settlor, all or any part of the debts of the settlor outstanding at the settlor's death, the expenses of administering the settlor's estate, or any estate or inheritance tax or other levies imposed on or with respect to the settlor's estate; and
- (i) the ability to serve as investment adviser to the trust.

(2) An international trust is not invalid even though the settlor may be the only beneficiary of the trust or the settlor is one of multiple beneficiaries. Except as provided in this section, a settlor shall have no other rights or authority with respect to property held in an international trust or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void and of no effect.

*(Substituted by Ordinance 2 of 2015)*

#### **Heirship rights.**

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

#### **Statute of Elizabeth.**

**55.** The enactment titled 13 Elizabeth I Ch 5 (1571) shall have no application to any international trust that is governed by this Ordinance nor any provision thereof nor to any transfer into such trust.

#### **Translations.**

**56.** (1) Every instrument which is filed with the registrar, which was not drafted in the English language, shall be accompanied by an authenticated translation.

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

*(Substituted by Ordinance 2 of 2015)*

### **Immunity from suit.**

57. No action shall be against the Nevis Island Administration, any statutory body or authority or a public or judicial officer in respect of any act or failure to act in accordance with the provisions of this Ordinance.

### **Prohibition by Minister.**

58. (1) The Minister may, by Order—

- (a) prohibit the registration of an international trust;
- (b) direct a trustee to cease carrying on its business or any part of its business immediately or within such time as may be specified in the Order;

*(Amended by Ordinance 2 of 2015)*

- (c) direct the registrar to remove a trust from any register.

*(Inserted by Ordinance 2 of 2000)*

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

### **Definition of trust.**

59. A trust exists where a person (known as “a trustee”) holds or has vested in him, property which does not form, or which has ceased to form, part of his own estate—

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

### **Power to establish the Nevis International Exempt Trust Ordinance Advisory Committee.**

60. (1) The Minister may establish an advisory body for matters affecting this Ordinance; and such body so established, shall consist of such members as the Minister may from time to time appoint.

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

(3) It shall be the duty of the Nevis International Exempt Trust Ordinance Advisory Committee established under this section to—

- (a) advise the Minister on any matter that the Nevis International Exempt Trust Ordinance Advisory Committee believes that the Minister should be aware of, on an annual basis by September 30th or on such more frequent occasions as may be necessary;

- (b) provide recommendation regarding possible amendments to this Ordinance; and
- (c) advise the Minister on any matter which is referred to it by the Minister.

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

*(Substituted by Ordinance 2 of 2015)*

#### **Bond.**

**61.** Every creditor before bringing any action or proceeding against any trust property governed by this Ordinance shall first deposit with the Permanent Secretary in the Ministry of Finance a bond in the sum of \$270,000.00 from a financial institution in Nevis, for securing the payment of all costs as may become payable by the creditor in the event of his not succeeding in such action or proceeding against the trust property.

*(Amended by Ordinances 4 of 2009 and 2 of 2015)*

#### **Community property and tenancy by the entireties property.**

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

(2) Where spouses transfer property to one or more trusts established under an international trust or a trust that subsequently becomes an international trust and, immediately before such transfer, such property or any part thereof or any accumulation thereto was, pursuant to applicable law, owned by them as tenants by the entireties, then notwithstanding such transfer and except where the provisions of the trust deed may expressly provide to the contrary, that property and any accumulation thereto shall be tenancy by the entireties property while held in trust during the lifetime of both spouses and shall be dealt with in a manner consistent with that applicable law however in every other respect shall be dealt with in accordance with the terms of the trust deed. Furthermore, in any action concerning whether a creditor of either or both spouses may recover the debt from the trust, upon avoidance of the transfer, if at all, the sole remedy available to the creditor with respect to trust property that is tenancy by the entireties property shall be an order directing the trustee to transfer the property to both spouses as tenants by the entireties.

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

*(Substituted by Ordinance 2 of 2015)*

#### **Confidentiality.**

**63.** (1) The Confidential Relationships Act, Cap. 21.02 shall apply to every trust registered under this Ordinance.

(2) All judicial proceedings, other than criminal proceedings relating to international trusts, shall be heard *in camera* and no details of the proceedings shall be published by any person without leave of the Court.

**Regulations.**

64. (1) The Minister may make regulations for the better carrying out of the provisions of this Ordinance and for prescribing anything that needs to be prescribed.

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

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**FIRST SCHEDULE***(Section 51)***AUTHORISED TRUSTEE INVESTMENTS**

1. The following shall be regarded as authorised investments—
  - (a) securities issued by, or the payment of interest on which is guaranteed by, the Nevis Island Administration;
  - (b) securities issued by, or the payment of interest on which is guaranteed by, any of the following—
    - (i) the government of the United Kingdom;
    - (ii) the government of the United States of America;
    - (iii) the government of any territory within the Commonwealth;
    - (iv) the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Economic Community, the European Investment Bank, the International Finance Corporation, the International Monetary Fund, or the International Bank for Reconstruction and Development;
  - (c) deposits with a company registered under the Companies Act, Cap. 21.03 or the Companies Ordinance, Cap. 7.06(N) that is a licensed financial institution within the meaning of the Banking Act, Cap. 21.01;  
*(Amended by Ordinance 4 of 2009)*
  - (d) debentures issued by a quoted company;
  - (e) quoted shares.

2. In this Schedule, unless the context otherwise requires, the following expressions have the following meanings—

“approved stock exchange” means the International Stock Exchange of the United Kingdom and Republic of Ireland Limited (including the Unlisted Security Market of the International Stock Exchange), the New York Stock Exchange, the American Stock Exchange and the National Association of Security Dealers’ Automated Quotation System of the United States of America, the Hang Seng Index, the Nikkei Average or any other stock exchange approved by the Minister;

“debentures” includes debenture stock and bonds, whether constituting a charge on assets or not, and loan stock or notes;

“quoted company” means a company the ordinary shares in which are quoted on an approved stock exchange;

“quoted shares” means shares quoted on an approved stock exchange;

“securities” include shares, debentures, treasury bills and tax reserve certificates;

“shares” include stock.

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**SECOND SCHEDULE**

*(Sections 44 and 64)*

**NEVIS INTERNATIONAL EXEMPT TRUST (FEES) REGULATIONS**

**Short title.**

1. These Regulations may be cited as the Nevis International Exempt Trust (Fees) Regulations.

**Fees payable.**

2. The fees to be paid under the Nevis International Exempt Trust Ordinance shall be as set forth in the Schedule to these Regulations.

SCHEDULE TO THE REGULATIONS

*(Regulation 2)*

1. The following fees shall be paid

Type of Document	EC\$	US\$
A. Registration Fee –		
International Exempt Trust	594.00	220.00
Certificate of Registration	14.00	5.00
B. Registration Fee –		
Qualified Foreign Trust	594.00	220.00
Certificate of Registration	14.00	5.00
C. Annual Fee –	594.00	220.00
Certificate of Renewal	14.00	5.00
D. Late Renewal	594.00	220.00
E. Voluntary filing	80.00	30.00
F. Termination of Trust	55.00	20.00
G. Apostille	55.00	20.00
H. Notice of change of Registered Agent	14.00	5.00
I. Name Reservation	68.00	25.00
J. Renewal of Name Reservation	68.00	25.00
K. Certified True Copies of Filed Documents (including first three pages)	14.00	5.00
each additional page	1.00	.50
L. Certificate certifying true copy	68.00	25.00