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## **Grenada**

### **International Trusts Act 1996**

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## **PART I - Preliminary**

### **Short Title**

1. This Act may be cited as the International Trusts Act, 1996

### **Interpretation**

2. In this Act,

(a) “beneficiary” includes

(i) an international insurance company within the meaning of the International Insurance Act, 1996;

(ii) an off-shore bank within the meaning of the Offshore Banking Act, 1996;

(iii) an international business company within the meaning of the International Company Act, 1996 and

(b) “Court” means the High Court;

(c) “international trust” or “trust” means a trust in respect of which

(i) the settlor is resident outside Grenada,

- (ii) at least one of the trustees is a trust corporation,
- (iii) no beneficiary, other than a person set out in paragraph (a), is a resident of Grenada, and
- (iv) the trust property does not include any immovable property situate in Grenada or an interest in any property so situate;

(d) “trust corporation” means a company incorporated or registered under the International Companies Act, for the purpose of managing international trusts.

“Registrar” means the Registrar of the Supreme Court.

### **Trust described**

**3.(1)** In this Act the expression “trust” means the legal relationship created when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

**(2)** A trust has the following characteristics:

- (a) the assets of the trust constitute a separate fund and are not a part of the trustees own estate;
- (b) title to the assets of the trust are held in the name of the trustee or in the name of another person on behalf of the trustee;
- (c) the trustee has the power and the duty to manage, employ or dispose of the assets of the trust in accordance with the terms thereof and the special duties imposed upon him by law; and
- (d) the trustee is accountable for the management and administration of the assets of the trust.

## **PART II - Jurisdiction And Powers of Court**

### **Jurisdiction of Court**

4. The Court has jurisdiction in respect of any matter concerning an international trust

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

- (c) where any property of the trust is situate in Grenada; but only in respect of the property so situate;
- (d) where any part of the administration of the trust is carried on in Grenada; and
- (e) where the Court considers it appropriate.

### **Administration**

- 5. The Registrar shall be responsible for the administration of this Act.

## **PART III - Creation Of International Trusts**

### **Creation of international trusts**

- 6. A international trust may only be created by instrument in writing.

### **Validity of trust**

7.(1) Subject to this Act, a trust is valid and enforceable in accordance with its terms.

(2) A trust is invalid and unenforceable

(a) to the extent that



- (i) it purports to do anything the doing of which is contrary to the laws of Grenada,
  - (ii) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the laws of Grenada,
  - (iii) its purports to apply directly to immoveable property situate in Grenada; or
- (b) to the extent that the Court declares that
- (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation,
  - (ii) the trust is immoral or contrary to public policy, or
  - (iii) the terms of the trust are so uncertain that its performance is rendered impossible.

### **Presumption against revocation**

8. An international trust that does not contain a power of avoidance of trust is irrevocable by the settlor or his legal personal representative notwithstanding that

the trust is voluntary.

### **Duration of trust and accumulation income**

**9.(1)** Subject to subsection (2), a trust terminates on the one hundredth anniversary after the date of its creation, if not sooner terminated in accordance with the terms of the trust instrument.

**(2)** Subsection (1) does not apply to a purpose trust or a trust established exclusively for charitable purposes, such a trust may continue in force without any limit as to time.

**(3)** The rule of law known as the “rule against perpetuities” does not apply to an international trust.

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

### **Proper law of trust**

**10.(1)** Subject to subsection (2) and (3), the proper law of an international trust is the law of-

*(a)* the jurisdiction expressed by the terms of the trust as the proper

law, or if not so expressed;

- (b) the jurisdiction intended by the settlor to be the proper law, or if not so expressed or intended;
- (c) the jurisdiction with which the trust at the time it was created had the closest connection.

(2) The terms of an international trust may provide for the proper law of the trust to be changed from the law of another jurisdiction and *vice versa*.

(3) Where the terms of an international trust provide for the proper law of the trust to be changed from the laws of Grenada to the law of another jurisdiction the change is valid and effective only if the new governing law recognizes the validity of the trust and the respective interests of the beneficiaries.

(4) In ascertaining the law with which a trust has its closest connection, reference shall be had in particular to

- (a) the place of residence of business of the trustee;
- (b) the place of administration of the trust designated by the settlor;

(c) the situs of the assets of the trust; and

(d) the objects of the trust and the places where they are to be fulfilled.

(5) The terms of a trust may provide-

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

(b) for the law governing a severable aspect of the trust to be changed from the law of Grenada to the law of another jurisdiction and *vice versa*.

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

(7) The proper law of the trust shall govern the validity of the trust, its construction, its effects and its administration.

(8) When the proper law of a trust or the law governing a severable aspect of a trust is changed from the law of Grenada to the law of another jurisdiction (herein

called the “new law”) no provision of the law of Grenada operates to render the trust void, invalid or unlawful or to render void, invalid or unlawful any function conferred on the trustee under the new law.

(9) Where the proper law of a trust or the law governing a surveyable aspect of a trust is changed from the law of another jurisdiction (herein called the “old law”) to the laws of Grenada no provision of the old law operates to render the trust void, invalid or unlawful or to render void or unlawful any functions conferred on the trustee under the laws of Grenada.

#### **PART IV - Charitable Trusts**

##### **Charitable trust**

**11.(1)** For the purposes of this Act, but subject to subsections (2) and (3), an international trust created for any of the following purposes is charitable:

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of human rights and fundamental freedoms;

(e) any other purposes that are beneficial to the public.

(2) An international trust created for one or more of the purposes set out in subsection (1) shall be deemed to be charitable notwithstanding

(a) that the purpose may not be of a public nature or for the benefit of the public, but may benefit a section of the public or one or more persons within a class;

(b) that the international trust is liable to be modified or terminated whether by the exercise of a power of appointment or the disposition of assets;

(c) that the trustee has the power to defer the distribution of the benefits to any charity of the trust for any period not exceeding the duration of the trust; or

(d) that the international trust is or is considered to be in the nature of a discretionary trust.

## **PART V - Purpose Trusts**

## **Interpretation**

**12.** In this Part

“accountant” means a person holding internationally recognized qualifications in accounting;

“attorney-at-law” means a person duly registered or licensed to practice law in Grenada;

“purpose trust” means a trust, other than a trust

(a) that is for the benefit of particular persons, whether or not immediately ascertainable; or

(b) that is for the benefit of some aggregate of persons ascertained by reference to some personal relationship.

## **Designated person**

**13.(1)** The Minister of Finance may by order designate a person for purpose of this Part.

**(2)** Only a designated person may be a trustee for the purposes of this Part.

## **Creation of purpose trusts**

**14.(1)** Notwithstanding any law to the contrary but subject to this section, a valid international trust may be created for a purpose, whether charitable or not if-

- (a) the purpose is specific, reasonable and capable of fulfillment;
- (b) the purpose is not immoral, unlawful or contrary to public policy;
- (c) the sole trustee, or if there are two or more trustees, one of them is a designated person;
- (d) the terms of the trust provide for the appointment of a protector to enforce the trust and for the appointment of a successor to such a protector; and
- (e) the terms of the trust specify the event upon the happening of which the trust terminates and provides for the disposition of surplus assets of the trust upon its termination.

**(2)** An international purpose trust, other than an international trust for a charitable purpose, that does not comply with subsection (1) is invalid.

#### **Powers of protector**



**15.(1)** The protector of an international purpose trust has the following powers:

- (a)* the power to remove a trustee and to appoint a new or additional trustee, unless the terms of the trust otherwise provide; and
- (b)* such other powers as are conferred on the protector by the trust or this Act.

**(2)** The protector of an international purpose trust may be a settler or beneficiary of the trust but may not be a trustee thereof.

**(3)** In the exercise of his functions the protector of an international purpose trust shall not be regarded as a trustee.

**(4)** Where there is more than one protector of an international trust then, subject to the terms of the trust, any functions conferred on the protectors may be exercised if a majority of the protectors agree on its exercise.

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

### **Appointment of protector by Court**

**16.(1)** Where a trustee of an international trust who is a designated person has reason to believe that the protector of that trust is dead, is unwilling, refuses or is unfit to act or incapable of acting the trustee shall, as soon as practicable, in writing, inform the Attorney-General of the fact and send to the Attorney-General a copy of the instrument creating the trust.

**(2)** Where the Attorney General has been informed under subsection (1) he may apply to the Court for the appointment of a person to be protector of the international trust and such person shall from the date of appointment exercise the functions of protector of the trust.

**(3)** The order of the Court under subsection (2) is conclusive of the appointment of the protector to enforce the trust and the appointment takes effect from the date of the order.

**(4)** The Court may make such order as it thinks fit respecting the payment out of the assets of the international trust of any costs incurred by the Attorney-General with respect to an application under subsection (2).

**(5)** A trustee who is a designated person who fails to comply with subsection

(1) is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars or imprisonment for two years or both.

### **Custody of Copy document**

**17.(1)** A designated person who is trustee of an international trust created under section 13 shall keep in Grenada.

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

(b) a register of the trust specifying

(i) the name of the settlor,

(ii) a summary of the purposes of the trust,

(iii) the name of the protector of the trust, and

(iv) such documents as are necessary to show the true financial position of the trust at the end of the trust's financial year together with details of the application of principal and income during the financial year.

**(2)** The instrument, register and documents referred to in subsection (1) are

confidential and not available to the public, but the trustee who is a designated person shall allow the Attorney-General or the protector to inspect the instrument, register and documents.

**(3)** Where a designated person who is a trustee of an international trust created under section 13

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

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

(c) makes or authorizes the making in any deed, register or document referred to in subsection (2) any statement that he knows to be false or does not believe to be true,

commits an offence and shall be liable on summary conviction to a fine of ten thousand dollars or two years imprisonment or both.

#### **Application of *cy-pres***

**18.** Where a trust is created for non-charitable purposes, the terms of the trust

may provide that the doctrine of cy-pres is *mutatis mutandis*, applicable thereto.

## **PART VI - Foreign Elements Law**

### **Interpretation**

**19.(1)** In this Part-

- (a) “heirship right” means any right, claim or interest in, against or accruing in consequence of that person's death, other than any such right, claim or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property to such person;
- (b) “personal relationship” means a relationship between persons
  - (i) one of whom is the child of the other, whether natural, adopted or fostered,
  - (ii) one of whom is married to the other,
  - (iii) one of whom cohabits with the other or so conducts himself or herself as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to

those of parent and child, or husband and wife, or

- (iv) where a relationship exists between two persons referred to in sub-paragraph (i) to (iii) and a third person.

(2) For the purposes of this Act a personal relationship once established does not terminate.

#### **Exclusion of foreign law**

20. For the avoidance of doubt it is hereby declared that no international trust governed by the laws of Grenada and no disposition of property to be held upon the trusts thereof is void, voidable, liable to be set aside or otherwise defective, and that the capacity of the settlor of such a trust shall not be questioned by reason of the fact only that

- (a) the law of any foreign jurisdiction prohibits or does not recognize the concept of a trust; or
- (b) the trust or disposition
  - (i) avoids or defeats any right, claim or interest conferred by any foreign law upon any person by reason of personal

relationship to the settlor or by way of heirship rights, or

- (ii) contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any right, claim or interest referred in subparagraph (i).

### **Capacity of settlor**

**21.(1)** Subject to this section, any person who, under the law of Grenada, has the capacity to own or transfer property may be a settlor of an international trust.

**(2)** A settlor who transfers property or disposes of assets to an international trust shall be deemed to have the capacity to do so if at the time of the transfer of disposition the settlor is of full age and sound mind under the law of the country in which he is resident.

**(3)** The settlor of an international trust may also be a trustee, beneficiary or protector thereof.

## **PART VII - Fraudulent Disposition**

### **Interpretation**

**22.(1)** In this part

- (a) “creditor” means a person to whom an obligation is owed;
- (b) “intent to defraud” means an intention of a transferor wilfully to defeat an obligation owed to a creditor;
- (c) “obligation”
  - (i) means an obligation or liability that existed on or before the date of a relevant disposition and of which the transferee had notice, and
  - (ii) includes a liability contingent upon an obligation or liability referred to in sub-paragraph (i);
- (d) “fraudulent disposition” means a disposition to which section 22 applies;
- (e) “transferor” means the person who as owner or as the holder of a power in that behalf directly or indirectly makes a relevant disposition or causes it to be made;
- (f) “transferee” means the person to whom a relevant disposition



is made and includes any successor in title;

(g) “undervalue” in relation to a disposition of property means:

(i) the provision of no consideration for the disposition; or

(ii) a consideration for the disposition the value of which in money or money's worth is significantly less than the value of the property the subject of the disposition.

### **Fraudulent disposition void**

**23.(1)** Subject to this Act, every disposition of property made with intent to defraud and at under value shall be voidable at the instance of the creditor thereby prejudiced.

**(2)** The burden of establishing an intent to defraud for the purposes of this Act shall be upon the creditor seeking to set aside the disposition.

### **Certain rights**

**24.** In the event that any disposition is set aside pursuant to this Act then

(a) if the Court is satisfied that the transferee has not acted in bad faith:

- (i) the transferee shall have a first and paramount charge over the property, the subject of the disposition of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the Court), and
  - (ii) the fraudulent disposition shall be set aside subject to the proper fees, costs, pre-existing rights claims and interests of the transferee (and of any predecessor transferee who has not acted in bad faith); and
- (b) if the Court is satisfied that a beneficiary of a trust has not acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust, or any other person and otherwise properly exercised.

**Extent of avoidance of fraudulent dispositions**

**25.** A disposition shall be set aside pursuant to this Act only to the extent necessary to satisfy the obligation to a creditor at whose instance the disposition has been set aside together with such costs as the Court may allow.

#### **Act not to validate certain disposition**

**26.** Nothing in this Act shall validate any disposition of property which is neither owned by the transferor nor the subject of a power in that behalf vested in the transferor, and this Act does not affect the recognition of foreign laws in determining whether the transferor is the owner of such property or the holder of such power.

### **PART VIII - Duties and Powers Of Trustees**

#### **General duties of trustees**

- 27.(1)** A trustee shall in the execution of his functions
- (a)* act with due diligence; and
  - (b)* observe utmost good faith; and
  - (c)* act to the best of his skills and abilities; and
  - (d)* exercise the standard of care of a reasonable and prudent man

of business.

(2) A trustee shall carry out and administer the trust in accordance with this Act and, subject thereto, in accordance with the terms of the trust.

(3) A trustee shall owe a fiduciary duty to the beneficiaries of the trust, the members of a class for whose benefit the trust was established, or the purpose for which the trust was established.

(4) Where a fiduciary duty is owed to a purpose for which a trust was established, that duty may be exercised by the protector of the trust or (in the case of a trust established for a charitable purpose) by the Attorney-General.

(5) A trustee shall, subject to the terms of the trust and the provisions of this Act

(a) ensure that the trust property is held by or vested in him or is otherwise under his control; and

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

(6) Except with the approval of the Court or in accordance with the terms of the

trust or the provisions of this Act, a trustee shall not-

- (a) derived, directly or indirectly, any profit from his trusteeship;
- (b) enter or permit to be entered into any transaction with his co-trustees or relating to the trust property which may result in any such profit.
- (c) on his own account enter into any transaction with his co-trustees or relating to the trust property which may result in any such profit.

(7) The trustee of a trust shall keep accurate accounts and records of his trusteeship.

(8) A trustee shall keep trust property separate from his own property and separately identifiable from any other property of which he is a trustee.

#### **Duty to supply information and confidentiality**

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

administration to:

- (a) the Court;
- (b) the settlor or protector of the trust;
- (c) in the case of a trust established for a charitable purpose, the Attorney-General;
- (d) subject to terms of the trust, any beneficiary of the trust who is of full age and capacity; and
- (e) subject to the terms of the trust, any charity for the benefit of which the trust was established.

(2) Subject to the provisions of the Act and to the terms of the trust, and except as is necessary for the proper administration of the trust or by reason of any other Act, the trustee of a trust shall keep confidential all information regarding the state and amount of the trust property or the conduct of the trust administration.

(3) A trustee is not (subject to the terms of the trust and to any order of the Court) obliged to disclose documents which reveal-

- (a) his deliberations as to how he should exercise his function as trustee;
- (b) the reasons for any decision made in the exercise of those functions;
- (c) any material upon which such a decision was or might have been based.

#### **Duty of trustees to act together**

**29.(1)** Subject to the terms of the trust all the trustees of a trust shall join in the execution of the trust.

**(2)** Subject to subsections (3) and (4), no functions conferred on trustees shall be exercised unless all the trustees agree on their exercise.

**(3)** Subject to the terms of the trust and to subsection (4), any functions conferred on trustee of a charitable trust shall be exercised if more than one half of the trustees for the time being of the trust agree on their exercise.

**(4)** The terms of a trust may empower the trustees to act individually or by a majority with respect to the exercise of some or all of the functions conferred on the trustees or to delegate the exercise of these functions to one or more trustees.

(5) A trustee who dissents from a decision of the majority of trustee or of the trustees to whom any functions have been delegated may require his dissent to be recorded in writing.

### **Duty to act impartially**

30.(1) Subject to the terms of the trust, where a trust is established for one or more beneficiaries or purposes (whether concurrent or consecutive), a trustee (other than a trustee who is also a beneficiary) shall act impartially as between these beneficiaries and purposes.

(2) Subject to the terms of the trust and the provisions of this Act, any rule of law which requires a trustee to buy, hold or sell certain investments or to apportion the capital or income of the trust fund between beneficiaries is hereby abolished.

### **General power of trustee**

31.(1) Subject to the terms of the trust and the provisions of this Act, a trustee shall have in relation to the property all the powers of a beneficial owner.

(2) Subject to the terms of the trust and the provisions of the trust and the provisions of the Act a trustee shall exercise his functions only in the interest of the beneficiaries or of the purpose for which the trust is established and in accordance



with the terms of the trust.

(3) Where the terms of a trust provide that the trustee may add or remove beneficiaries or purposes for which the trust is established, then if such power is exercised properly and on the basis of valid considerations the exercise of the power shall not be regarded as a breach of the duty of the trustee under the trust.

(4) A trustee may sue and be sued as trustee.

(5) The terms of a trust may require a trustee to consult or obtain the consent of another person before exercising any functions under this trust.

(6) Where he considers it necessary or desirable in the interests of the good administrations of the trust, a trustee may consult a lawyer, accountant, investment advisor or other person in relation to the affairs of the trust.

(7) A person shall not, merely by virtue of giving or refusing his consent to the exercise of any functions or being consulted in relation to the affairs of a trust, be deemed to be a trustee or to owe a fiduciary duty to the beneficiaries of the trust.

### **Powers of investment**

**32.(1)** Subject to the terms of the trust and to the provisions of this Act, a trustee

may invest any money requiring investment in any investment or property of whatsoever kind situated and whether producing income or not and whether involving any liability or not and upon such security (if any) as the trustee in his absolute discretion think fit as if that trustee were the absolute owner thereof.

(2) Where the terms of a trust or any other instrument provide that any money requiring investment shall only be invested in “authorized trustee investments” (or any similar expression) that the money shall be invested only in such investments as are specified in the First Schedule.

(3) The terms of a trust may provide that the First Schedule shall apply to the trust with such modifications as are specified by the terms of the trust.

(4) The Attorney-General may by Order published in the *Gazette* amend the list authorized by the terms of the trust or by the general law.

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

(6) Subject to the terms of the trust, in selecting investments a trustee or (as the case may be) any investment advisor or other person to whom the trust has

delegated the management of the trust property shall have regard

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

(b) to the suitability to the trust of the investments proposed,

(7) Subject to the terms of the trust, before investing money in any investment a trustee shall consider whether he should obtain appropriate advice as to whether the investment is suitable and satisfactory and (if he considers that the obtaining of such advice is necessary) shall obtain and consider such advice accordingly.

(8) Subject to the terms of the trust, a trustee shall determine whether and at what intervals he should obtain appropriate advice as to whether the existing investments of the trust are suitable and satisfactory and (if he considers that the obtaining of such advice is necessary) shall obtain and consider such advice accordingly.

(9) For the purposes of subsection (7) and (8), advice is appropriate if it is the advice of a person who is reasonably believed by the trustee to be qualified to give it in the course of his employment (including employment with a trustee of the trust).

### **Implied powers of trustees**

**33.(1)** Subject to the terms of the trust, the powers contained in the Second Schedule shall apply to all trusts to which this section applies.

**(2)** The terms of a trust may provide that some or all of the powers contained in the Second Schedule shall apply to that trust, with or without modification.

### **Delegation by trustees**

**34.(1)** A trustee may not delegate the exercise of his function unless permitted to do so by this Act or by the terms of the trust.

- (2)** Except where the terms of the trust provide to the contrary, a trustee may-
- (a)* delegate the management of trust property to and appoint investment managers whom the trustee reasonably considers to be qualified to manage the investment of the trust property;
  - (b)* appoint and employ any lawyer, accountant or other person to act in relation to any of the affairs of the trust or to hold any of the trust property; and
  - (c)* authorize any such manager or person to retain or receive commission or other payment usually payable for services of

the description rendered.

**(3)** A trustee shall not be liable for any loss arising to the trust from a delegation or appointment under subsection (2) or from the default of any such delegate or appointee provided that the trustee exercised the standard of care of a reasonable and prudent man of business in

*(a)* the selection of the delegate or appointee; and

*(b)* the supervision of the activities of the delegate or appointee.

#### **Reimbursement of expenses**

**35.** A trustee shall be entitled to be reimbursed out of the trust property all expenses properly incurred by him in connection with the trust.

#### **Payment of trustees**

**36.(1)** Subject to the terms of the trust, an individual trustee engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for business transacted, time spent and acts done by him or any partner or employee of his or of his firm in connection with the trust including acts which a trustee not being engaged in any profession or business could have done personally.

(2) Subject to the terms of the trust, a corporate trustee shall be entitled to such remuneration as may from time to time be agreed in writing between such corporation and the settlor or protector or (in the absence of such agreement) in accordance with the standard terms and conditions as to the administration of trust current from time to time.

(3) Where the terms of a trust provide that a trustee shall not receive any payment for acting as such, payment may nevertheless be authorized

(a) by the Court; or

(b) by some or all of the beneficiaries of the trust;

but a beneficiary may not authorize such payment if the beneficiary

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

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

(iii) is improperly induced by the trustee to authorize such payment.

(4) Where only some of the beneficiaries authorize payment to a trustee in

accordance with subsection (3), the payment shall be made out of the share of the trust property which the opinion of the trustee is referable to the interests of those beneficiaries who so authorize payment.

### **Power to consent**

37. Subject to the terms of the trust, a trustee may, without the consent of any appropriate beneficiary, appropriate trust property in or towards satisfaction of the interests of a beneficiary in such manner and in accordance with such valuation as he considers appropriate.

### **Power and duty maintenance**

38.(1) Subject to the terms of the trust and to any prior interest or charge affecting the trust property, where any property is held by a trustee in trust for any beneficiary for any interest whatsoever

(a) while the beneficiary is a minor, the trustee

(i) may, at his discretion, pay to the parent or guardian of the beneficiary or otherwise apply the whole or part of the income attributable to that interest for or towards the maintenance, education or benefit of the beneficiary; and

(ii) shall accumulate the residue of that income as an accretion to the trust property and as one fund with the trust property for all purpose;

but the trustee may while the beneficiary is a minor apply those accumulations as if they were income of the then current year;

(b) if the beneficiary is no longer a minor and his interest has not yet vested in possession, the trustee shall thenceforth pay the income attributable to the interest to the beneficiary until his interest vests in possession or terminates.

### **Power of advancement**

39. Subject to the terms of the trust, a trustee may in his discretion pay or apply trust property for the advancement or benefit of any beneficiary whose interest in the trust has not yet vested in possession.

(2) Any trust property so paid or applied shall be brought into account in determining the share of the beneficiary in the trust property.

(3) No such payment or application shall be made which prejudices any person entitled to any prior interest unless such person is of full age and consents to the



payment or application (if such person is not of full age) the Court consents; and

(4) the part of the trust property so paid or advanced shall not exceed the presumptive share of the beneficiary in the trust property.

### **Accumulation**

40. Whenever any property is directed to be held on an accumulation and maintenance and maintenance trust for the benefit of a beneficiary or class of settlements beneficiaries, the provisions of the two foregoing sections of the Act shall (unless the terms of the trust otherwise provide) apply to the interests of such beneficiary or beneficiaries.

### **Receipt of parents and guardians**

41. The receipt of a parent or guardian of a beneficiary who is and a minor or is under legal disability shall be sufficient discharge to the trustee for a payment to or for the benefit of the beneficiary.

### **Power of appointment**

42. The terms of a trust may confer on the trustee or any other person power to appoint all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person or valid charitable or non-charitable

purpose (whether or not such person was a beneficiary of the trust or such purpose was an object of the trust prior to such appointment).

### **Power of revocation or variation**

**43.(1)** A trust and any exercise of a power or discretion under a trust may be expressed to be capable of revocation (in whole or in part) or of variation.

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

**(3)** Subject to the terms of the trust, if a trust is revoked in whole or in part, the trustee shall hold the trust property or the part of the trust property which is the subject of the revocation, in trust for the settlor absolutely or, if he is dead, as if it had formed part of his estate on death.

## **PART IX - Variation Of Trust**

### **Variation of trust**

**44.** The Court may, on the application of any beneficiary, the trustee, the settlor or his personal representatives, or the protector of a trust, approve on behalf of-

- (a) a minor or a person under legal disability having, directly or indirectly, an interest, vested or contingent, under the trust;
- (b) any person unborn;
- (c) any person who is presently unascertained but who may become entitled, directly or indirectly, to an interest under the trust, as being (at a future date or on the happening of a future event) a person of any specified description or a member of any specified class; or
- (d) any person, in respect an interest that may accrue to him by virtue of the exercise of a discretionary power on the failure or determination of an interest under a protective or spendthrift trust,

any arrangement which varies or revokes the terms of the trust or enlarges or modified the powers of management or administration of the trustee, whether or not there is another person with a beneficial interest who is capable of assenting to the arrangement provided that the Court shall not approve an arrangement on behalf of a person mentioned in paragraph (a), (b) or (c) unless the arrangement appears to be for his benefit.

### **Approval of particular transaction**

45. Where, in the management or administration of a trust, a transaction is, in the opinion of the Court, expedient, but cannot be effected because the necessary power has not been conferred on the trustee by the terms of trust or by law, the Court, on the application of the trustee may-

- (a) confer upon the trustee, generally or in any particular circumstances, the necessary power, on such terms and subject to such conditions as the Court thinks fit; and
- (b) direct the manner in which, and the property from which, any monies authorized to be expended, and the costs of any transaction, are to be paid or borne.

### **PART X - Miscellaneous**

#### **Language of trusts**

46. Where the deed creating an international trust is in a language other than English the deed must be accompanied by a certified English translation.

#### **Confidentiality**

**47.(1)** Without affecting section 17 (2) but subject to terms of an international trustee and to the Court, no trustee or other person shall disclose any of the following information or documents respecting an international trust:

- (a) the name of the settlor or any beneficiary;
- (b) the trustees deliberations as to the manner in which a power or discretion was exercised or a duty conferred by the terms of the trust or by law as performed;
- (c) the reason for the exercise of the power or discretion or the performance of the duty or any evidence upon which such reason might have been based;
- (d) any other matter or thing respecting an international trust.

**(2)** Notwithstanding subsection (1), the trustee shall, at the request of a beneficiary, disclose any document or information relating to or forming part of the accounts of the international trust.

**(3)** Notwithstanding any other law but subject to subsection (4), the Court may, in any civil or criminal proceedings, allow the disclosure of information or

documents referred to in such circumstances as the court thinks fit.

(4) For the purposes of subsection (3), in making an order under that subsection the court shall, *inter alia*, have regard to the importance of the information or document to the outcome of the proceedings.

(5) A person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to a fine of one hundred thousand dollars or imprisonment for two years, or both.

#### **Restriction on claim against trust**

48. Notwithstanding anything contained in any enactment or rule of law, no creditor shall commence any action or proceeding against any trust property governed by this Act unless the sum of twenty-five thousand dollars is first deposited with the Registrar 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.

#### **Income tax**

49.(1) The income from an international trust that is received by a beneficiary who is not resident in Grenada is exempt from income tax.

(2) An international trust is exempt from any tax, duty or other impost in Grenada on the funds of the trust that comprise foreign currency or foreign securities.

### **Registration of trusts**

**50.(1)** The Registrar shall maintain a Register of trusts.

(2) The settlor or a trust may apply but (subject to the terms of the trust) is not obliged to apply to the Registrar to enter the trust on the Register.

(3) An application for entry on the Register shall be accompanied by

(a) a certified copy of the instrument creating the trust; and

(b) a fee of \$1,500

(4) The Registrar shall, on receipt of the instruments or fee referred to in subsection (3)-

(a) enter on the Register the name of the trust, (if any) and the name of the settlor and the beneficiary or the purpose for which the trust is established; and

(b) issue to the trustee a certificate of registration.

(5) Where the terms of a registered trust have been varied, the trustee shall send to the Registrar a notification of such variation together with a fee of \$250 and the Registrar shall amend the entry on the Register accordingly and issue an amended certificate of registration.

(6) Where a registered trust terminates, the trustee shall notify the Registrar and return the certificate of registration and the Registrar shall cancel the entry on Register and the certificate of registration.

(7) The Register shall not be open for inspection except that the trustee of a trust may in writing authorise a person to inspect entry of that trust on the Register.

(8) The Minister of Finance may by order vary the fees specified in subsections (3) and (5).

### **Non-application**

51. The Exchange Control Act, Cap. 93 and the Real Property Act, Cap 275 shall not apply to international trusts.

### **Jurisdiction of Magistrate**

52. Notwithstanding anything contained in any other enactment, a magistrate



shall have jurisdiction under this Act with respect to the officers created thereunder notwithstanding the fact that the amounts of the fines exceeds the monetary limitation placed by law on a magistrate

### **Commencement**

**53.** This Act shall come into operation on a date to be fixed by proclamation.

## **FIRST SCHEDULE**

### **(Section 32(2))**

#### **Authorized Trustee Investment**

**1.** The following shall be regarded as authorized trustee investments:

*(a)* securities issued by, or the payment of interest on which is guaranteed by, the Government of Grenada;

*(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 State within the Commonwealth;

**(iv)** the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, 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 1994 that is a licensed financial institution within the meaning of the Banking Act 1993;

(d) debentures issued by a quoted company;

(e) units in a quoted unit trust;

(f) quoted shares;

(g) freehold property situated in Grenada and leasehold property situated in Grenada of which the unexpired term at the time of the investment is not less than forty years and mortgages of such freehold or leasehold property.

2. In this Schedule, unless the context otherwise requires, the following expression 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, the American Stock Exchange, the National Association of Security Dealers'

Automated Quotation System of the United States of America and any other stock exchange specified, by order, by the Minister of Finance;

debentures includes debentures 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;

quoted unit trust means a unit trust the units in which are quoted on an approved stock exchange;

securities includes shares, debentures, treasury bills and tax reserve certificates;

shares include stock.

## **SECOND SCHEDULE**

### **(Section 33)**

#### **Implied Powers of Trustees**

### **Trust for Sale and Investment**

1.(1) The trustee shall hold real or immovable property included in the trust property on trust for sale with power to postpone the sale of the whole or any part of it for such period as he thinks fit and shall hold all other investment included in the trust property on trust either (at his discretion) to retain them for such period as he thinks fit or to sell or otherwise dispose of the whole or any part of them.

(2) The trustee shall hold all money received or held by him as capital money (including the net proceeds of such sale) on trust to invest it in any manner authorized by the terms of the trust as he thinks fit.

(3) The trustee may change investments included in the trust property into others authorized by the terms of the trust.

### **Powers respecting trustee investment**

2.(1) Where in the event that any land, building or chattels were producing income, the whole of such income would or might be payable to any person under the terms of the trust, the trustee may permit such person together with the members of his household to reside in and occupy such land or building or to the enjoy the use or benefit of such chattels either gratuitously or on such terms as the trustee shall think fit.

(2) The trustee shall have power to purchase any land, building or chattels or any interest therein for the use or occupation of any one or more persons (such use or occupation to be only in accordance with the preceding sub-paragraph of this paragraph) or partly for such use and partly as an investment.

(3) The trustee shall have power to employ any capital of the trust property or take such other steps as may from time to time be requisite to insure, protect, maintain or preserve or to remove the value of or to guard against any loss of value of the trust property or the income thereof.

### **Corporation**

3.(1) The trustee may promote or incorporate any corporation to carry on any trade or hold any investment.

(2) Where all or any part of the capital of a corporation is included in the trust property the assets of such corporation shall not be impressed with any of the trust but the trustee may nevertheless cause or procure such corporation to do any act or thing as regards the assets of the corporation as he is empowered to do as regards the trust property.

### **Appropriation**

4. The trustee shall have power to appropriate any investments or property from time to time forming part of the trust properly in its actual state of investment in or towards the satisfaction of the beneficial interest of any person interested in the trust property upon making such valuation if any as the trustee may think fit and without the necessity of obtaining the consent of any person.

#### **Holding and custody of investments**

5. Investments included in the trust property may be held or in the name of or under the control of any person (whether or not trustee) as nominee or bailee for the trustee and in that case the trustee shall not be responsible for any default of such nominee or bailee of good standing appointed in good faith.

6. Where the trust property includes any land (in this paragraph called "the land")-

(a) the trustee may sell, exchange lease, mortgage, charge, grant any licence over (whether exclusive or not) and otherwise dispose of the land or any interest therein;

(b) the trustee may spend capital money on erecting buildings on the land or on demolishing and rebuilding or on altering or

improving buildings on it or otherwise on improving the land as he thinks fit (and any certificate of any architect or surveyor employed by the trustee or of any trustee who is qualified as an architect or surveyor that the work specified in such certificate consists only of alteration or improvement shall be conclusive as between the trustee and all persons interested under the trust that any capital money spent on such work was properly spent by the trustee in exercise of the powers conferred by this sub-paragraph);

- (c) the trustee may observe and perform all obligations imposed on or incurred by him as owner or lessor or lessee of the land and shall be entitled to be indemnified out of every part of the trust property against all personal liability imposed on him or by a breach of any one or more of such obligations; and in this sub-paragraph obligations include every obligation whether imposed by contract or by general law or otherwise;
- (d) the trustee may employ any of the capital of the trust property in repairing, developing, enlarging, equipping, furnishing, insuring and maintaining the land and buildings and



fixture on it.

7. Where the trust property includes any chattel the trustee may employ any of the capital of the trust property in repairing or insuring the chattel and may store, lend or hire it on such terms as he thinks fit.

### **Borrowing**

8. (1) The trustee may borrow on such terms as he think fit and for such purpose may mortgage or charge all or any of the assets included in the trust property.

(2) The trustee shall hold any borrowed money as capital of the trust property and as one fund with other money and investments included in the trust property or as a separate fund as he think fit and shall invest, advance, distribute, pay or otherwise deal with such money in accordance with the trusts and powers relating to the capital of the trust property.

(3) The trustee may repay borrowed money and pay interest out of the capital of the trust property.

### **Insurance**

9. The trustee may effect and maintain out of the capital of the trust property any policy on insurance upon the life of any person or under which the death of

any person is one of the events under which money becomes payable.

### **Loans to Beneficiaries**

10. Where in the event that any money forming part only of the trust property is producing income the whole of such income would or might be payable to any person under the terms of the trust the trustee may lend such money to that person either free of interest or upon such terms relating to interest and to repayment and either with or without security as the trustee in his absolute discretion thinks fit.

### **Release of Powers**

11. The trustee may in his absolute discretion at any time and from time to time by instrument in writing release or restrict the future exercise of any powers conferred on him by the terms of the trust or by the general law either wholly or to the extent specified in any such instrument.

### **Trustee Appointed as Directors**

12. Any trustee who shall be or become a director or the holder of any other office or employment in any company any of whose shares shall form part of the trust property shall be entitled to retain for his own use and benefit of a reasonable fees or remuneration received by him in connection with such office or employment as may be directly or indirectly due to the exercise or non-exercise of

any votes in respect of any of the shares forming part of the trust property.

### **Associated Parties**

13. If the trustee places or causes to be placed any banking, brooking or other business with an associated or other person so that (but for this paragraph) he would be liable to account in any manner to the trust property he shall ensure that such business is done on such terms as that person would make with an unassociated customer or client and if he does so he shall not be required to account for any receipt from or profit of such person from such business.

### **Sundry Powers**

14.(1) The powers of the trustee shall extend to any and every act or omission of the trustee which is necessary or desirable for the due execution of the trust and the protection and realization and the due administration of the investments in the trust property and the costs of and incidental to every act of the trustee shall be met out of income or capital of the trust property or partly out of each (as the trustee thinks fit).

(2) In addition to all the powers vested in the trustee by the terms of the trust or the general law the trustee shall have and may exercise from time to time the following powers:

- (a) to compromise and settle for such consideration and upon such terms and conditions as the trustee may consider advisable all matters arising in relation to the trust;
- (b) to pay out of the income or capital of the trust property all the costs of and incidental to the preparation and execution of the trust instrument:
- (c) to receive any property from any person as an addition to the trust property either by gift *inter vivos* or by will or under the provisions of any other trust or otherwise.

15. Any revocable appointment, decision or resolution of the trustee may be treated by him for any purpose as irrevocable unless and until it is revoked.