



This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
<http://www.icnl.org/knowledge/library/index.php>
for further resources and research from countries all over the world.

Disclaimers

Content. The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

Translations. Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

Warranty and Limitation of Liability. Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

MARSHALL ISLANDS

Trust Act 1994

Table of Contents

Part I - Preliminary

- 1A. Definitions
- 2. Creation of a Trust
- 3. Existence of a trust
- 4. Property which may be placed in a trust
- 5. Transfer of property to a trust
- 6. Beneficiaries of a trust
- 7. Validity of a Trust
- 8. Duration of a trust
- 9. Employer trusts

Part II - Trustees

- 10. Number of trustees
- 11. Appointment out of Court of new or additional trustee
- 12. Resignation or removal of trustee
- 13. Position of continuing trustees on reduction in number of trustees
- 14. Duties of trustee
- 15. Duty of co-trustees to act together
- 16. Impartiality of trustee
- 17. Powers of trustee
- 18. Delegation by trustee
- 19. Remuneration and expenses of trustee
- 20. Power to appropriate
- 21. Corporate trustee acting by resolution
- 22. Trustee may refuse to make disclosure
- 23. Liability for breach of trust
- 24. Trustee acting in respect of more than one trust
- 25. Dealings by trustee with other parties
- 26. Constructive trustee
- 27. Position of outgoing trustee
- 28. Class interest
- 29. Power to provide for variation of terms of trust
- 30. Power of accumulation and advancement
- 31. Power of appointment
- 32. Power of revocation
- 35. Failure or lapse of interest
- 36. Termination of a trust

Part III - Application Of Marshall Islands Law

- 37. Recognition of a trust by the law of The Republic of the Marshall Islands
- 38. Governing Law
- 39. Matters determined by governing law
- 40. Exclusion of foreign law
- 41. Change of Governing Law
- 42. Spendthrift or protective trust
- 43. Heirship rights
- 44. Retention of control and benefits by settlor
- 45. Fraudulent conveyance
- 46. Commencement of proceedings
- 47. Bankruptcy of the settlor

Part IV - Powers Of The Court

- 48. Jurisdiction of court
- 49. Appointment by the Court of trustee
- 50. Power to authorize remuneration
- 51. Powers of new trustee appointed by the Court
- 52. Power to relieve trustee from personal liability
- 53. Power to make beneficiary indemnify for breach of trust
- 54. Variation of terms of a trust by the Court and approval of particular transactions
- 55. Application to and certain powers of the Court
- 56. Payment of costs
- 57. Nature of trustee's estate, following trust property and insolvency of trustee
- 58. Protection of persons dealing with trustee
- 59. Limitation of actions or prescription

Part V - Registration Of Trusts

- 60. Application for registration
- 61. Registration
- 62. Annual certificate of registration
- 63. Registration of trust instrument
- 64. Registered office
- 65. Proceedings by or against a trust

Part VI - Miscellaneous

- 66. Appointment of Registrar
- 67. Application of this Act

- 68. Resident Beneficiaries
- 69. Confidentiality
- 70. Instruction to Revisor

PART I - Preliminary

Short Title.

1. This Act may be cited as The Trust Act of 1994.

Definitions.

- 1A. (1) In this Act, unless the context otherwise requires, the term:

"beneficiary" means a person entitled to benefit under a trust or in whose favor a discretion to distribute property held on trust may be exercised;

"breach of trust" means a breach of any duty imposed on a trustee by this Act or by the terms of the trust;

"corporations" means a body corporate wherever incorporated;

"Court" means The High Court of the Republic of the Marshall Islands;

"dispose and disposition" in relation to property includes -

(a) every form of conveyance transfer assignment sale gift lease license easement profit mortgage charge pledge encumbrance or other transaction absolute or limited by which any legal or equitable interest in property is created, transferred or extinguished;

(b) the disposal of an interest in or right over property by the exercise of a power of appointment, power of

maintenance, power of advancement or other authority;
and also includes the conferring or variation or
surrender of such powers or authority;

- (c) a contract to make any such disposition referred to in
paragraph (a) or (b);

"foreign trust" means a trust whose proper law is the law of some
jurisdiction other than the Republic of the Marshall Islands;

"insurance" includes assurance;

"interdict" means a person, other than a minor, who under the law of
the Marshall Islands or under the law of his domicile does not have
legal capacity;

"Marshall Islands" means The Republic of The Marshall Islands;

"Marshall Islands trust" means a trust or disposition which is
registered under this Act and in respect of which:

- (a) at least one of the trustees is licensed in the Republic of
the Marshall Islands and is either:
 - (i) a foreign corporation registered in the Marshall
Islands; or
 - (ii) a Marshall Islands corporation; or
 - (iii) a trustee company; and

(b) the beneficiaries are non-resident; and

(c) whose proper law is the law of the Marshall Islands;

"minor" means a person who under the law of his domicile has not reached the age of legal capacity;

"person" includes any natural person, partnership, association or corporation, singly or jointly with others, and without regard to his or their nationality, residence, domicile, jurisdiction of incorporation, establishment, or creation.

"personal representative" means the executor or administrator for the time being of a deceased person and, in the context of a Marshall Islands trust, includes the principal heir;

"power of appointment" includes a discretionary power to transfer, grant or create a beneficial interest in property, with or without the furnishing of valuable consideration by the beneficiary of the power, including a power, the exercise of which is subject to the consent of a third party;

"property" means property of any description wherever situated, and, in relation to rights and interests includes those rights and interests whether vested, contingent, defeasible or future, excluding Marshall Islands real property governed by customary and traditional law;

"protector" in relation to a trust means a person who is the holder of a power which when invoked is capable of directing a trustee in matters

relating to the trust and in respect of which matters the trustee has a discretion and includes a person who is the holder of a power or appointment or dismissal of trustees;

"registrar" means the Trust Company of The Marshall Islands. The Trust Company shall appoint such deputy registrars outside of the Republic as it deems appropriate;

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

"terms of a trust" means the written or oral terms of a trust, and also means any other terms made applicable by the proper law;

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

"trust" includes -

- (a) the trust property; and
- (b) the rights, powers, duties, interests, relationships and obligations under a trust;

"trust property" means the property for the time being held in a trust;

"trust corporation" means a body corporate incorporated pursuant to the Associations Law with registered office in the Marshall Islands or

a body corporate registered as a foreign entity pursuant to Chapter 12 of the Associations Law and in both cases holding a license to carry on trust business granted pursuant to The Trust Companies Act.

"unit trust" means any trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

(2) Where in this act there is a reference to a Section by number only, and without further identification, such reference shall be construed as a reference to the Section of that number contained in this Act.

(3) Where in any Section or other division of this Act there is a reference to a Part, paragraph, sub-paragraph or clause by number or letter only, and without further identification, such reference to the Part, paragraph, sub-paragraph or clause of that number or letter contained in the Section or other division of this Act in which such reference occurs.

(4) Unless the context otherwise requires, where this Act refers to any enactment, the reference is a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

(5) As used in this Act, unless it is otherwise provided or the context requires a different construction, application or meaning:

- (a) words importing the singular include and apply to several persons, parties or things;
- (b) words importing the plural include the singular;
- (c) words importing the masculine gender include the feminine; and
- (d) words used in the present tense include the future.

Creation of a Trust.

2.(1) A trust may come into existence in any manner including, but not limited to:

- (a) an oral declaration; or
- (b) an instrument in writing (including a will or codicil); or
- (c) by conduct.

Existence of a trust.

3. A trust exists where a person (known as a trustee) holds or has vested in him or is deemed to hold or have vested in him property (of which he is not the owner in his own right) -

- (a) for the benefit of any person (known as a beneficiary) whether or not yet ascertained or in existence; and/or
- (b) for any purpose which is not for the benefit only of the trustee.

Property which may be placed in a trust.

4. Subject to paragraph (2) of **section 7** and to the customary and traditional laws regarding ownership of land in the Marshall Islands -

- (a) any property may be held by or vested in a trustee upon trust; and
- (b) a trustee may accept from any person property to be added to the trust property.

Transfer of property to a trust.

5. If a person domiciled outside of the Marshall Islands transfers or disposes of property during his lifetime to a trust -

- (a) he shall be deemed to have had capacity to do so if he is at the time of such transfer or disposition of full age and of sound mind under the law of his domicile; and
- (b) no rule relating to inheritance or succession (including forced heirship or similar rights) of the law of his domicile or any other system of law shall affect any such transfer or disposition or otherwise affect the validity of such trust.

Beneficiaries of a trust.

6. (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 the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit.

(3) Subject to paragraph (4) of **Section 27**, the terms of a trust may impose upon a beneficiary an obligation as a condition for benefit.

(4) A beneficiary may disclaim his whole interest.

(5) A disclaimer under paragraph (4) shall be irrevocable.

(6) Subject to the terms of the trust, a beneficiary may disclaim part of his interest, whether or not the beneficiary has received some benefit from his interest.

(7) A disclaimer shall be in writing.

(8) Subject to the terms of the trust, a disclaimer made under paragraph (6) may be temporary and, if so provided in the writing effecting the disclaimer, shall be capable of revocation in the manner and under the circumstances mentioned in the trust instrument or referred to therein.

- (9) The interest of a beneficiary shall constitute moveable property.
- (10) Subject to the terms of the trust, a beneficiary may sell, pledge, charge or otherwise deal with his interest in any manner.
- (11) A settlor or a trustee of a trust may also be a beneficiary of the trust.

Validity of a Trust.

7. (1) Subject to paragraphs (2) and (3), a trust shall be valid and enforceable in accordance with its terms.

(2) A trust shall be invalid -

(a) to the extent that -

- (i) it purports to do anything the doing of which is contrary to the law of the Marshall Islands; or
- (ii) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of the Marshall Islands; or
- (iii) it purports to apply directly to immoveable property situated in the Marshall Islands; or
- (iv) it is created for a purpose in relation to which there is no beneficiary, not being a charitable purpose;

(b) to the extent that the Court declares that -

(i) the trust was established by duress, fraud,
mistake, undue influence or misrepresentation;
or

(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.

(3) Where a trust is created for two or more purposes of which some are
lawful and others are unlawful -

(a) if those purposes cannot be separated the trust shall be
invalid;

(b) where those purposes can be separated the Court may
declare that the trust is valid as to the purposes which
are lawful.

(4) Where a trust is partially invalid the Court may declare what property
is trust property, and what property is not trust property.

(5) Where clause (iii) of sub-paragraph (a) of paragraph (2) applies, any
person in whom the title to such immoveable property is vested shall not be
deemed to be, a trustee of such immoveable property.

(6) Property as to which a trust is wholly or partially invalid shall, subject to paragraph (5) and subject to any order of the Court, be held by the trustee in trust for the settlor absolutely or if he is dead for his personal representative.

(7) In paragraph (6) "Settlor" means the particular person who provided the property as to which the trust is wholly or partially invalid.

(8) An application to the Court may be made by -

- (a) the Attorney General;
- (b) the trustee;
- (c) a beneficiary; or
- (d) any person with leave of the Court.

Duration of a trust.

8. (1) Subject to paragraph (2) and **section 9**, a trust may continue until the one hundredth anniversary of the date on which it came into existence and if not sooner terminated shall then terminate.

(2) Paragraph (1) shall not apply to a trust for a charitable purpose.

Employer trusts.

9. A trust created by an employer as part of a stock bonus, pension, disability, death benefit or profit sharing plan for the benefit of some or all of his employees, to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the fund held in

trust, shall be exempted from the application of **Section 8** paragraph (1), and may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which it is created.

Part II - Trustees.

Number of trustees.

10. (1) Subject to the terms of a trust, the number of trustees shall not be less than two, unless only one trustee was originally appointed.

(2) Where there is no trustee or less than the number required under paragraph (1) a trust shall not fail on that account.

Appointment out of Court of new or additional trustee.

11. (1) Where the terms of a trust contain no provision for the appointment of a new or additional trustee the trustees for the time being or the last remaining trustee or the personal representative or the liquidator of the last remaining trustee 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 powers, discretions and duties 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.

Resignation or removal of trustee.

12. (1) Subject to paragraph (3), a trustee, not being a sole trustee, may resign his office by notice in writing delivered to his co-trustees.

(2) A resignation takes effect on the delivery of notice in accordance with paragraph (1).

(3) A resignation -

- (a)* given in order to facilitate a breach of trust; or
- (b)* which would result in there being no trustee or fewer than the number of trustees required under paragraph (1) of **Section 10**, shall have no effect.

(4) A trustee shall cease to be a trustee of the trust immediately upon -

- (a)* his removal from office by the Court; or
- (b)* his resignation becoming effective; or
- (c)* notwithstanding any other provision of this Section, approval by the Court of his petition to resign; or
- (d)* the coming into effect of a provision in the terms of a trust under which he is removed from office or otherwise ceases to hold his office.

(5) A person who ceases to be a trustee under this Section shall concur in

executing all documents necessary for the vesting of the trust property in the new or continuing trustees.

Position of continuing trustees on reduction in number of trustees.

13. Subject to the terms of the trust, where the number of trustees falls below the minimum number required under paragraph (1) of **Section 10**, the required number of new trustees shall be appointed and until such minimum number is reached the surviving or continuing trustees shall act only for the purpose of preserving the trust property.

Duties of trustee.

14. (1) A trustee shall in the execution of his duties and in the exercise of his powers and discretions -

(a) act -

(i) with due diligence;

(ii) as would a prudent person;

(iii) to the best of his ability and skills; and

(b) observe the utmost good faith.

(2) Subject to this Act, a trustee shall carry out and administer the trust in accordance with its terms.

(3) Subject to the terms of the trust, a trustee shall -

(a) so far as is reasonable preserve the value of the trust

property;

- (b) so far as is reasonable enhance the value of the trust property.

(4) Except -

- (a) with approval of the Court; or
- (b) as permitted by this act or expressly provided by the terms of the trust;
a trustee shall not -
 - (i) directly or indirectly profit from his trusteeship;
or
 - (ii) cause or permit any other person to profit
directly or indirectly from such trusteeship; or
 - (iii) on his own account enter into any transaction
with the trustees or relating to the trust property
which may result in such profit.

(5) A trustee shall keep accurate accounts and records of his trusteeship.

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

Duty of co-trustees to act together.

15. (1) Subject to the terms of the trust, where there is more than one trustee all the trustees shall join in performing the trust.

(2) Subject to paragraph (3), where there is more than one trustee no power or discretion given to the trustees shall be exercised unless all the trustees agree on this exercise.

(3) The terms of a trust may empower trustees to act by a majority but a trustee who dissents from a decision of the majority of the trustees may require his dissent to be recorded in writing.

16. Impartiality of trustee.

16. Subject to the terms of the trust, where there is more than one beneficiary, or more than one charitable purpose, or at least one beneficiary and at least one charitable purpose, a trustee shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

Powers of trustee.

17.(1) Subject to the terms of the trust and subject to his duties under this Act, a trustee shall in relation to the trust property have all the same powers as a natural person acting as the beneficial owner of such property.

(2) A trustee shall exercise his powers only in the interests of the beneficiaries and in accordance with the terms of the trust.

(3) The terms of a trust may require a trustee to obtain the consent of some other person before exercising a power or a discretion.

(4) A person who consents as provided in paragraph (3) shall not by virtue of so doing be deemed to be a trustee.

Delegation by trustee.

18. (1) A trustee shall not delegate his powers unless permitted to do so by this Act or by the terms of the trust.

(2) Except where the terms of the trust specifically provide to the contrary,

a trustee -

(a) may delegate management of trust property to and employ investment managers whom the trustee reasonably considers competent and qualified to manage the investment of trust property; and

(b) may employ accountants, advocates, attorneys, bankers, brokers, custodians, investment advisers, nominees, property agents, solicitors and other professional agents or persons to act or advise in relation to any of the affairs of the trust or to hold any of the trust property.

(3) A trustee shall not be liable for any loss to the trust arising from a delegation or appointment under paragraph (2) who, in good faith and without neglect, makes such delegation or appointment or permits the continuation thereof.

(4) A trustee may authorize a person referred to in paragraph (2) to retain any commission or other payment usually payable in relation to any transaction.

Remuneration and expenses of trustee.

19. (1) Unless authorized by -

- (a) the terms of the trust; or
- (b) the consent in writing of all of the beneficiaries; or
- (c) any order of the Court;

a trustee shall not be entitled to remuneration for his services.

(2) A trustee may reimburse himself out of the trust for or pay out of the trust all expenses and liabilities reasonably incurred by him in connection with the trust.

Power to appropriate.

20. Subject to the terms of the trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such manner and in accordance with such valuation in his sole discretion.

Corporate trustee acting by resolution.

21. A corporate trustee may -

- (a) act in connection with a trust by a resolution of such corporate trustee or of its board of directors or other governing body; or
- (b) by such a resolution appoint one or more of its officers or employees to act on its behalf in connection with the

trust.

Trustee may refuse to make disclosure.

22. Subject to the terms of the trust and subject to any order of the Court, a trustee shall not be required to disclose to any person, government or agency thereof, any document which -

- (a) discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred or imposed upon him; or
- (b) discloses the reason for any particular exercise of such power of discretion or performance of duty or the material upon which such reason shall or might have been based; or
- (c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty; or
- (d) relates to or forms part of the accounts of the trust,

unless, in a case to which sub-paragraph (d) applies, that person is a beneficiary under the trust not being a charity, or a charity which is referred to by name in the terms of the trust as a beneficiary under the trust.

Liability for breach of trust.

23. (1) Subject to this Act and to the terms of the trust, a trustee shall be liable

for a breach of trust committed by him or in which he has concurred.

(2) A trustee who is liable for a breach of trust shall be liable for -

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

(b) the profit, if any, which would have accrued to the trust property if there had been no such breach.

(3) Where there are two or more breaches of trust, a trustee shall not set off a gain from one breach of trust against a loss resulting from another breach of trust.

(4) A trustee shall not be liable for a breach of trust committed prior to his appointment, if such breach of trust was committed by some other person.

(5) A trustee shall not be liable for a breach of trust committed by a co-trustee unless -

(a) he becomes aware or ought to have become aware of the commission of such breach or of the intention of his co-trustee to commit a breach of trust; and

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

(6) A beneficiary may -

(a) relieve a trustee of liability to him for a breach of trust;

(b) indemnify a trustee against liability for a breach of trust.

(7) Paragraph (6) shall not apply unless the beneficiary-

(a) has legal capacity;

(b) has full knowledge of all material facts; and

(c) is not improperly induced by the trustee to take action under paragraph (6).

(8) Where two or more trustees are liable in respect of a breach of trust, they shall be liable jointly or severally.

(9) A trustee who becomes aware of a breach of trust to which paragraph (4) relates shall take all reasonable steps to have such breach remedied.

(10) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from his own fraud, wilful misconduct or gross negligence.

(11) In the management of a trust the trustees shall discharge their duties and -

(a) act -

(i) with due diligence;

(ii) as would a prudent person;

(iii) to the best of his ability and skills; and

(b) observe the utmost good faith.

Trustee acting in respect of more than one trust.

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

(2) A trustee of a trust shall disclose to his co-trustee any interest which he has as trustee of another trust, if any transaction in relation to the first mentioned trust is to be entered into with the trustee of such other trust.

Dealings by trustee with other parties.

25. (1) Subject to paragraph (2), where in any transaction or matter affecting a trust a trustee informs another party to the transaction or matter that he is acting as trustee, a claim by such other party in relation to that transaction or matter shall extend only to the trust property.

(2) Nothing in paragraph (1) shall affect the liability of a trustee for breach of trust.

(3) Where in any such transaction or matter as is referred to in paragraph (1), a trustee fails to inform such other party that he is acting as trustee and

that party is otherwise unaware of it, the trustee shall -

- (a) be personally liable to such other party in respect thereof, and
- (b) have a right of recourse to the trust property by way of indemnity against such personal liability.

Constructive trustee.

26. (1) Subject to paragraph (2), where a person (in this Section referred to as a constructive trustee) makes or receives any profit, gain or advantage from a breach of trust he shall be deemed to be a trustee of that profit, gain, or advantage.

(2) Paragraph (1) shall not apply to a bona fide purchaser of property for value and without notice of a breach of trust.

(3) A person who is or becomes a constructive trustee shall deliver up the property of which he is a constructive trustee to the person properly entitled to it.

(4) This Section shall not be construed as excluding any other circumstances under which a person may be or become a constructive trustee.

Position of outgoing trustee.

27. (1) Subject to paragraph (2), when a trustee resigns, retires or is removed, he shall duly surrender trust property in his possession or under his control.

(2) A trustee who resigns, retires or is removed may require reasonable security for liabilities whether existing future contingent or otherwise before

surrendering trust property.

(3) A trustee who resigns, retires or is removed and has complied with paragraph (1) shall be released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or his duty as a trustee except liability -

(a) arising from any breach of trust to which such trustee (or in the case of a corporate trustee any of its officers or employees) was a party or to which he was privy;

(b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees.

(4) Any provision in the terms of a trust purporting to indemnify a trustee to an extent greater than is provided by this Section shall be invalid.

Class interest.

28. (1) In this Section "class interest" means a trust or an interest under a trust which is in favor of a class of persons.

(2) Subject to the terms of a trust, the following rules shall apply where a trust or an interest under a trust is in favor of a class of persons -

Rule 1. A class closes when it is no longer possible for any

other person to become a member of the class.

Rule 2. A woman who is over the age of fifty-five years shall be deemed to be no longer capable of bearing a child.

Rule 3. Where any class interest relates to income and for any period there is no member of the class in existence the income shall be accumulated and, subject to Section 8, shall be retained until there is a member of the class in existence or the class closes.

Power to provide for variation of terms of trust.

29. (1) The terms of a trust may be varied in any manner provided by its terms.

(2) This Section is in addition to Section 54.

Power of accumulation and advancement.

30. (1) Subject to Section 8, the terms of a trust may direct or authorize the accumulation for any period of all or part of the income of the trust.

(2) Subject to paragraph (3), income of the trust which is not accumulated under paragraph (1) shall be distributed.

(3) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, where a beneficiary is a minor and whether or not his interest -

(a) is a vested interest; or

(b) is an interest which will become vested -

(i) on attaining the age of majority; or

(ii) at any later age; or

(iii) upon the happening of any event,

the trustee may -

(A) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or such later age or the happening of such event;

(B) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary;

(C) advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest.

(4) The receipt of a parent or the lawful guardian of a beneficiary who is a minor shall be a sufficient discharge to the trustee for a payment made under paragraph (3).

(5) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, the trustee may advance or apply for the benefit of a beneficiary part of the trust property prior to the date of the

happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.

(6) Any part of the trust property advanced or applied under paragraph (5) shall be brought into account in determining from time to time the share of the beneficiary in the trust property.

(7) No part of the trust property advanced or applied under paragraph (5) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

Power of appointment.

31. The terms of a trust may confer on the trustee or any other person power to appoint or assign 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, whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

Power of revocation.

32. (1) A trust and any exercise of a power under a trust may be expressed to be -

(a) revocable whether wholly or partly; or

(b) capable of variation.

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

(3) Subject to the terms of the trust, if the trust is revoked the trustee shall hold the trust property in trust for the settlor absolutely.

(4) Where a trust is partly revoked paragraph (3) shall apply to the property which is the subject of such revocation.

(5) In paragraph (3) "Settlor" means the particular person who provided the property which is the subject of revocation.

Power to lease.

33. Except as otherwise provided by the terms of the trust, the trustee can properly lease trust property for such periods and with such provisions as are reasonable.

Power to mortgage or pledge or borrow money.

34. (1) A trustee cannot properly mortgage or pledge trust property, unless a power to mortgage or pledge is conferred by the terms of the trust.

(2) A trustee cannot properly borrow money on credit of the trust estate and charge the trust estate therefor, unless a power to do so is conferred by the terms of the trust.

Failure or lapse of interest.

35. (1) Subject to the terms of a trust and subject to any order of the Court, where -

(a) an interest lapses; or

- (b) a trust terminates; or
- (c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust; or
- (d) property is vested in a person which is not for his sole benefit and the trusts upon which he is to hold the property are not declared or communicated to him,

the interest or property affected by such lapse, termination, lack of beneficiary or lack of declaration or communication of trusts shall be held by the trustee or the person referred to in sub-paragraph (d), as the case may be, in trust for the settlor absolutely or if he is dead for his personal representative.

(2) Where an interest or property is held by the trustee for a charitable purpose which has ceased to exist or is no longer applicable, that interest or property shall be held for such other charitable purpose as the Court may declare to be consistent with the original intention of the settlor.

(3) In paragraphs (1) and (2) "settlor" means the particular person who provided the interest or property affected as mentioned in paragraph (1).

(4) An application to the Court under this Section may be made by the Attorney General.

Termination of a trust.

36. (1) On the termination of a trust the trust property shall be distributed within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.

(2) Notwithstanding paragraph (1), the trustee may require reasonable security for liabilities whether existing future contingent or otherwise before distributing trust property.

(3) Without prejudice to the powers of the Court under paragraph (4) and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are interdicts or minors they may require the trustee to terminate the trust and distribute the trust property among them.

(4) The Court may -

- (a) require the trustee to distribute the trust property; or
- (b) direct the trustee not to distribute the trust property; or
- (c) make such other order as the Court thinks fit.

(5) In this Section "liabilities" includes contingent liabilities.

(6) An application to the Court under this Section may be made by the Attorney General, a trustee, a beneficiary or, with the leave of the Court, by any other person.

PART III - Application Of Marshall Islands Law To A Trust.

Recognition of a trust by the law of The Republic of the Marshall Islands

37. Subject to this act, a trust shall be recognised by the law of the Marshall Islands as valid and enforceable.

Governing Law.

38.(1) The governing law of a trust shall be the law of the jurisdiction -

(a) expressed by the terms of the trust as the proper law; or
failing that

(b) intended by the settlor as the proper law; or failing
either

(c) with which the trust at the time it was created had the
closest connection.

(2) A term of a trust expressly selecting the laws of the Marshall Islands to govern the trust is valid, effective and conclusive regardless of any other circumstances.

(3) A term of a trust specifying that the laws of the Marshall Islands are to govern a particular aspect of the trust or that the Marshall Islands or the courts of the Marshall Islands are the forum for the administration of the trusts or any like provision is conclusive evidence, subject to any contrary term of the trust, that the parties intended the laws of the Marshall Islands to be the governing law of the trust and is valid and effective accordingly.

Matters determined by governing law.

39. (1) All questions arising in regard to a trust which is for the time being governed by the law of the Marshall Islands or in regard to any disposition of property upon the trusts thereof including, without prejudice to the generality

of the foregoing, questions as to -

- (a) subject to subsection 2(c), the capacity of any settlor;
- (b) any aspect of the validity of the trust or disposition or the interpretation or effect thereof;
- (c) the administration of the trust, whether the administration be conducted in the Marshall Islands or elsewhere, including questions as to powers, obligations, liabilities and rights of trustees and their appointment and removal; or
- (d) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment, and the validity of any exercise thereof,

are to be determined according to the laws of the Marshall Islands, without reference to the laws of any other jurisdictions with which a trust or disposition may be connected.

(2) Subject to the provisions of this Act subsection (1) shall -

- (a) not validate any disposition of property which is -
 - (i) neither owned by the settlor nor the subject of a power in that behalf vested in the settlor,

(ii) nor does that subsection affect the recognition of foreign laws in determining whether the settlor is the owner of such property or the holder of such power;

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

(c) as regards the capacity of a corporation, not affect the recognition of the laws of its place of incorporation;

(d) not affect the recognition of foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property;

(e) not validate any trust of real property or disposition of real property which is void ab initio according to the laws of such jurisdiction;

(f) not validate any testamentary trust or testamentary disposition which is invalid according to the laws of the testator's domicile.

(3) A disposition of property located at a place beyond the Marshall Islands to a Marshall Islands trust or a trust that shall subsequently become a Marshall Islands trust shall if made in accordance with the law of that place governing such disposition be deemed to be a valid disposition notwithstanding any law of the Marshall Islands to the contrary.

Exclusion of foreign law.

40. Without limiting the generality of **section 39**, it is expressly declared that no trust governed by the laws of the Marshall Islands and no disposition of property to be held upon the trust thereof is 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 recognize the concept of a trust either in part or in whole; or
- (b) the 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 of foreign law or any foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests; or
- (c) the laws of the Marshall Islands or the provisions of this Act or the principal Act are inconsistent with any foreign law.

Change of Governing Law.

41. (1) The governing law of a trust may be changed to or from the laws of the

Marshall Islands provided that:

- (a) in the case of a change to the law of the Marshall Islands, such change is recognized by the governing law of the trust previously in effect;
- (b) in the case of a change from the law of the Marshall Islands:
 - (i) the new governing law would recognize the validity of the trust and the respective interests of the beneficiaries;
 - (ii) the registrar is notified of the change in governing law;
 - (iii) all fees due for the registration of the trust in the Marshall Islands have been paid.

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

Spendthrift or protective trust.

42. (1) The terms of a trust may make the interest of a beneficiary liable to termination.

(2) Without prejudice to the generality of paragraph (1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to -

- (a) a restriction on alienation or disposal; or

- (b) diminution or termination in the event of the beneficiary becoming bankrupt or any of his property becoming liable to sequestration for the benefit of his creditors;

(3) Should all or part of a protective or spendthrift trust become subject to termination, diminution or restriction, then the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one of the following persons -

- (a) the beneficiary in question and his or her wife or husband, if any, and his or her children or more remote issue, if any; or
- (b) if there is no wife or husband or issue of the beneficiary in existence, the beneficiary and the person who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(4) A trust under which the interest of a beneficiary is subject to restriction, diminution or termination under paragraph (2) is a spendthrift or protective trust.

(5) A provision in the terms of a trust requiring the interest of a

beneficiary in trust property to be held upon a spendthrift or protective trust shall be construed as a requirement that the interest of the beneficiary be subjected to restriction, diminution or termination as mentioned in paragraph (2).

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

Heirship rights.

43. No trust or any aspect of such trust governed by the laws of the Marshall Islands and no disposition of property to be held upon the trusts thereof is 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 such trust or disposition 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.

Retention of control and benefits by settlor.

44. A trust and a registered instrument shall not be declared invalid or a disposition declared void or be affected in any way by reason of the fact that the settlor, and if more than one, any of them, either -

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

(b) retains, possesses or acquires a power of disposition over property of the trust or the subject of the instrument;

- (c) retains, possesses or acquires a power to amend the trust or instrument;
- (d) retains, possesses or acquires any benefit interest or property from the trust or any disposition or pursuant to the instrument;
- (e) retains, possesses or acquires the power to remove or appoint a trustee or protector;
- (f) retains, possesses or acquires the power to direct a trustee or protector on any matter;
- (g) is a beneficiary of the trust or instrument either solely or together with others.

Fraudulent conveyance.

45. (1) Where it is proven by a creditor that a trust settled or established or property disposed to a trust -

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

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

(2) In determining whether a trust, settled or established or a disposition, has rendered the settlor insolvent or without property by which a creditor's claim (if successful) may be satisfied, regard shall be had to the fair market value of the settlor's 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 in the event that the fair market value of such property exceeded the value of the creditor's claim, at that time, after the settlement, establishment or disposition then the trust so settled or established or the disposition shall, for the purposes of this Act, be deemed not to have been so settled, established or the property disposed of with the intent to defraud the creditor.

(3) A trust settled or established and a disposition to such trust shall not be fraudulent as against a creditor of a settlor -

(a) if settled, established or the disposition takes place after the expiration of 2 years from the date that the creditor's cause of action accrued; or

(b) where settled, established or the disposition takes place before the expiration of 2 years from the date that the creditor's cause of action accrued, that creditor fails to commence such action before the expiration of 1 year from the date such settlement, establishment or disposition took place.

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

(5) A settlor shall not have imputed to 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 two years from the date of that creditor's cause of action accruing;

(b) has retained, possesses or acquires any of the powers or benefits referred to in paragraph (a) to (g) of section 44.

(6) Where a trust is liable to satisfy a creditor's claim in the manner provided for in subsection (1) but is unable to do so by reason of the fact that the property has been disposed of, other than to a bona fide purchaser for value without notice, then any such disposition shall be void.

(7) For the purpose of this section the burden of proof of the settlor's intent to defraud the creditor lies with the creditor.

(8) For the purposes 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) in the case of an action upon a judgment, the date of the cause of action accruing shall be, the date of that act or omission or where 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, which gave rise to the judgment itself.

(9) The provisions of this section shall apply to all proceedings by every creditor alleging fraud against a settlor of a Marshall Islands trust, or against any person who shall settle property upon, or dispose of property to, or establish a Marshall Islands trust on behalf of that settlor, to the exclusion of any other remedy, principle or rule of law whether provided by statute or

founded in equity or common law.

(10) In this section, the term "creditor" includes any person who alleges a cause of action.

Commencement of proceedings.

46. (1) No action or proceedings whether pursuant to this Act or at common law or in equity to,

(a) set aside the settlement of a Marshall Islands trust; or

(b) set aside any disposition to any Marshall Islands trust,

shall be commenced, unless such action or proceedings is commenced -

(c) in the High Court of the Marshall Islands; and

(d) before the expiration of 2 years from the date of, -

(i) the settlement of the Marshall Islands trust that is sought to be set aside; or

(ii) the disposition to the Marshall Islands trust that is sought to be set aside,

as the case may be.

(2) No action or proceedings whether pursuant to this Act 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 a Marshall Islands trust; and

(b) seeking to derive a legal or equitable interest in that property, unless such action or proceedings is commenced -

(c) in the High Court of the Marshall Islands; and

(d) 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 a Marshall Islands trust.

(3) No action or proceeding to which subsections (1) or (2) of this section or **section 45** shall apply, whether substantive or interlocutory in nature, shall be determined and no other shall be made, or granted by the High 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 High Court by affidavit, filed therein, that -

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

(b) where the action or proceeding shall allege fraud or be founded upon some other action or proceedings alleging fraud, the determination or order sought would

not be contrary to the provisions of **section 45**.

(4) Every affidavit required to be filed pursuant to subsection (3) shall be made by the person on whose behalf the action or proceedings is brought or, in the case of a body corporate, an officer thereof, and every such person or officer, as the case may be, 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 shall have accrued;
- (c) the date upon which the property, in respect of which the action or proceedings is brought, was settled on or disposed to the Marshall Islands trust;
- (d) whether an action or proceedings have been commenced in respect of the cause of action or those proceedings were commenced.

(5) The provisions of this section shall apply to every Marshall Islands trust expressed to be governed by the law of the Marshall Islands and, in the event that a trust shall be registered as a Marshall Islands trust, and shall change the law by which it is governed to that of the Marshall Islands, then every proceeding after the date of registration by a person claiming to be interested in, or to be prejudiced by, the settlement of property upon such trust, or any disposition of property to such trust before registration, shall be commenced subject to subsections (1) and (2) and every determination and

order shall be made subject to subsection (3) as if upon the date that such settlement or disposition was made the trust was a Marshall Islands trust governed by the law of the Marshall Islands.

Bankruptcy of the settlor.

47. Notwithstanding any provision of the law of the settlor's domicile or place of ordinary residence or the settlor's current place of incorporation and notwithstanding further that a trust is voluntary and without valuable consideration being given for the same, or is made on or for the benefit of the settlor spouse or children of the settlor or any of them, a trust and a disposition to a trust shall not be void or voidable in the event of the settlor's bankruptcy insolvency or liquidation (other than in the case of a settlor corporation that is in liquidation) or in any action or proceedings at the suit of creditors of the settlor but shall remain valid and subsisting and take effect according to its tenor, subject to the provisions of **section 45**.

PART IV - Powers Of The Court.

Jurisdiction of court.

48. The Court has jurisdiction where -

- (a) the trust is a Marshall Islands trust; or
- (b) a trustee of a foreign trust is resident in the Marshall Islands; or
- (c) any trust property of a foreign trust is situated in the

Marshall Islands; or

- (d) administration of any trust property of a foreign trust is carried on in the Marshall Islands.

Appointment by the Court of trustee.

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

(2) In particular and without prejudice to the generality of the foregoing provision, the Court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a person of unsound mind, or is bankrupt, or is a corporation which is in liquidation or has been dissolved.

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

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

Power to authorize remuneration.

50. Where the Court appoints a trustee either solely or jointly with another

person, the Court may authorize the corporation to charge such remuneration for its services as trustee as the Court may in its sole discretion determine.

Powers of new trustee appointed by the Court.

51. Every trustee appointed by the Court shall, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Power to relieve trustee from personal liability.

52. (1) The Court may relieve a trustee either wholly or partly from personal liability for a breach of trust where it appears to the Court that -

(a) he is or may be personally liable for the breach of trust;

(b) he has acted honestly and reasonably;

(c) he ought fairly to be excused -

(i) for the breach of trust; or

(ii) for omitting to obtain the directions of the Court in the matter in which such breach arose.

(2) Paragraph (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act.

Power to make beneficiary indemnify for breach of trust.

53. (1) Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the Court may by order impound

all or part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through him.

(2) Paragraph (1) applies whether or not such beneficiary is a minor or an interdict.

Variation of terms of a trust by the Court and approval of particular transactions.

54. (1) Subject to paragraph (2), the Court may if it thinks fit, by order approve on behalf of -

- (a) a minor or interdict having, directly or indirectly, an interest, whether vested or contingent, under the trust;
or
- (b) any person, whether ascertained or not, 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 of persons; or
- (c) any person unborn; or
- (d) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is any

other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of the trust or enlarging the powers of the trustee of managing or administering any of the trust property.

(2) In the foregoing subsection "protective trusts" and "principal beneficiary" have the same meaning as specified in **Section 42**.

(3) The Court shall not approve an arrangement on behalf of any person coming within sub-paragraph (a), (b) or (c) of paragraph (1) unless the carrying out thereof appears to be for the benefit of that person.

(4) Where in the management or administration of a trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee by the terms of the trust or by law the Court may confer upon the trustee either generally or in any particular circumstances a power for that purpose on such terms and subject to such provisions and conditions, if any, as the Court thinks fit and may direct in what manner and from what property any money authorized to be expended and the costs of any transactions are to be paid or borne.

(5) An application to the Court under this Section may be made by any person referred to in paragraph (3) of **Section 55**.

(6) Nothing in the foregoing provisions of this section shall apply to trusts affecting property settled by any law of the Marshall Islands.

Application to and certain powers of the Court.

55. (1) A trustee may apply to the Court for direction concerning the manner in which he may or should act in connection with any matter concerning the trust and the Court may make such order, if any, as it thinks fit.

(2) The Court may, if it thinks fit -

(a) make an order concerning -

(i) the execution or the administration of any trust;
or

(ii) the trustee of any trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and payments, whether payments into Court or otherwise; and

(iii) a beneficiary or any person having a connection with the trust;

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

(c) rescind or vary any order or declaration made under this Act, or make any new or further order or declaration.

(3) An application to the Court for an order or declaration under paragraph (2) may be made by the Attorney General or by the trustee or a beneficiary or, with the leave of the Court, by any other person.

Payment of costs.

56. The Court may order the costs and expenses of and incidental to an application to the Court under this Act to be raised and paid out of the trust property or to be borne and paid in such manner and by such persons as it thinks fit.

Nature of trustee's estate, following trust property and insolvency of trustee.

57. (1) Subject to paragraph (2) -

(a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust; and

(b) such property shall not be deemed to form part of his assets.

(2) Where the trustee is also a beneficiary of the same trust, paragraph (1) shall not apply to his interest in the trust property as a beneficiary.

(3) Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered unless -

- (a) it is not identifiable; or
- (b) it is in the hands of a bona fide purchaser for value without notice of a breach of trust.

(4) Where a trustee becomes insolvent or upon seizure, execution or any similar process of law being made, taken or used against any of his property his creditors shall have no right or claim against the trust property except to the extent that the trustee himself has a claim against the trust or has a beneficial interest in the trust.

Protection of persons dealing with trustee.

58. (1) A bona fide purchaser for value without actual notice of any breach of trust -

- (a) may deal with a trustee in relation to trust property as if the trustee was the beneficial owner of the trust property; and
- (b) shall not be affected by the trusts on which such property is held.

(2) No person paying or advancing money to a trustee shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the propriety of the transaction or the application of the money.

Limitation of actions or prescription.

59. (1) No period of limitation or prescription shall apply to an action brought against a trustee -

- (a) in respect of any fraud to which the trustee was a party or to which he was privy; or
- (b) to recover from the trustee trust property -
 - (i) in his possession; or
 - (ii) under his control; or
 - (iii) previously received by him and converted to his use.

(2) Save as provided in paragraph (1), the period within which an action founded on breach of trust may be brought against a trustee by a beneficiary is -

- (a) three years from the delivery of the final accounts of the trust to the beneficiary; or
- (b) three years from the date on which the beneficiary first has knowledge of the occurrence of a breach of trust,

whichever period shall first begin to run.

(3) Where the beneficiary is a minor the period referred to in paragraph

(2)

shall not begin to run before the day on which the beneficiary ceases to be a

minor.

PART V - Registration Of Trusts

Application for registration.

60. Application for registration of a trust shall be made to the Registrar in the prescribed form and accompanied by the prescribed fee.

Registration.

61. (1) No trust shall be registered as a trust until there has been filed with the Registrar either:

(a) a certificate from a trustee that:

- (i) the trust upon registration will be a Marshall Islands trust;
- (ii) a notice of the establishment of the trust; and
- (iii) a notice listing the address of the registered office of the trust **as defined in section 64;**

or,

(b) a copy of the trust instrument along with a notice listing the address of the registered office of the trust.

(2) Upon receipt of a certificate and notice referred to in subsection (1) of this section the Registrar shall register that trust upon the Register of Trusts kept for that purpose and issue a certificate of registration in the prescribed

form.

(3) A certificate of registration under the hand and seal of the Registrar shall be conclusive evidence that all the requirements of this Act in respect of registration and other matters precedent and incidental thereto have been complied with and that the trust referred to therein was duly registered under this Act.

(4) Every trust registered in accordance with subsection (2) within 30 days of the trust being settled or established shall be deemed to have been so registered at the time it was settled or established and the provisions of this Act shall apply to such trust from that time as if it were a trust.

(5) The time period specified in paragraph (4) of this Section may, upon application and showing of cause, be extended or waived by the Registrar.

Annual certificate of registration.

62. (1) A certificate of registration issued pursuant to **section 61 (2)** shall be valid and effective for one year from the date of registration specified in that certificate.

(2) Application for renewal of registration may be made upon:

(a) filing with the Registrar an application for renewal of registration in the prescribed form;

(b) payment of the prescribed fee.

(3) Application for renewal of registration may be made within the period of 90 days of the date of expiry of the last certificate of registration, no

application for renewal of registration pursuant to subsection (2) shall be granted where application is not made or the prescribed fee paid within such period.

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

(5) The time period specified by paragraph (3) of this Section may, upon application and showing of cause, be extended or waived by the Registrar.

Registration of trust instrument.

63. Any person who is a trustee may provide the Registrar with a copy of the trust instrument or any amendment thereto which shall be certified in the manner prescribed and the Registrar shall register that copy as a true copy and file the same.

Registered office.

64. (1) The registered address of a trust in the Marshall Islands shall be the office of the Marshall Islands trustee.

(2) The address for service of any document upon a trust shall be the registered office of that trust.

Proceedings by or against a trust.

65. Where any proceedings are instituted by or against a trust it shall be sufficient to name the Marshall Islands trustee and it shall not be necessary to join in the action any other trustee.

PART VI - Miscellaneous

Appointment of Registrar.

66. The Registrar of Trusts shall be appointed by the Cabinet.

[Note: 1.4 of the Business Corporation Act makes the registrar of non-resident corporations also the registrar of trusts].

Application of this Act.

67. (1) Unless the context otherwise requires the provisions of this Act shall apply to:

- (a)* Marshall Islands trusts; and
- (b)* all registered instruments whether they take effect on, before or after the commencement of this Act;
- (c)* any disposition to or by a Marshall Islands trust.

(2) A trust registered under this Act shall be a valid trust notwithstanding that it may be invalid according to the law of the settlor's domicile or residence or place of current incorporation.

(3) In determining the existence and validity of a trust registered under this Act the Court shall apply;

- (a)* the provisions of this Act; and
- (b)* any other law of the Marshall Islands; and

- (c) any other law, which would be applied; if to do so,
would validate the trust.

Resident Beneficiaries.

68. The provisions of this Act shall not have any application to a beneficiary who is a resident of the Marshall Islands.

Confidentiality.

69. (1) Except where the provisions of this Act require and subject to subsection (2) of this section, it shall be an offence for a person to divulge or communicate to any other person information relating to the establishment, constitution, business undertaking or affairs of a Marshall Islands trust.

(2) All judicial proceedings, other than criminal proceedings relating to a Marshall Islands trust shall, unless ordered otherwise, be heard in camera and no details of the proceedings shall be published by any person without leave of the Court or person presiding.

Instruction to Revisor

70. When codifying this Act in the Marshall Islands Revised Code, the following may be included for reference purposes to indicate arrangement of sections and applicable pagination, if so desired:

PART I - Preliminary

- 1A. Definitions
- 2. Creation of a Trust
- 3. Existence of a trust
- 4. Property which may be placed in a trust

5. Transfer of property to a trust
6. Beneficiaries of a trust
7. Validity of a Trust
8. Duration of a trust
9. Employer trusts

PART II - Trustees

10. Number of trustees
11. Appointment out of Court of new or additional trustee
12. Resignation or removal of trustee
13. Position of continuing trustees on reduction in number of trustees
14. Duties of trustee
15. Duty of co-trustees to act together
16. Impartiality of trustee
17. Powers of trustee
18. Delegation by trustee
19. Remuneration and expenses of trustee
20. Power to appropriate
21. Corporate trustee acting by resolution
22. Trustee may refuse to make disclosure
23. Liability for breach of trust
24. Trustee acting in respect of more than one trust
25. Dealings by trustee with other parties
26. Constructive trustee
27. Position of outgoing trustee
28. Class interest
29. Power to provide for variation of terms of trust
30. Power of accumulation and advancement
31. Power of appointment
32. Power of revocation
35. Failure or lapse of interest
36. Termination of a trust

PART III - Application Of Marshall Islands Law

37. Recognition of a trust by the law of The Republic of the Marshall Islands
38. Governing Law
39. Matters determined by governing law
40. Exclusion of foreign law
41. Change of Governing Law
42. Spendthrift or protective trust
43. Heirship rights
44. Retention of control and benefits by settlor
45. Fraudulent conveyance
46. Commencement of proceedings
47. Bankruptcy of the settlor

PART IV - Powers Of The Court

- 48. Jurisdiction of court
- 49. Appointment by the Court of trustee
- 50. Power to authorize remuneration
- 51. Powers of new trustee appointed by the Court
- 52. Power to relieve trustee from personal liability
- 53. Power to make beneficiary indemnify for breach of trust
- 54. Variation of terms of a trust by the Court and approval of particular transactions
- 55. Application to and certain powers of the Court
- 56. Payment of costs
- 57. Nature of trustee's estate, following trust property and insolvency of trustee
- 58. Protection of persons dealing with trustee
- 59. Limitation of actions or prescription

PART V - Registration Of Trusts

- 60. Application for registration
- 61. Registration
- 62. Annual certificate of registration
- 63. Registration of trust instrument
- 64. Registered office
- 65. Proceedings by or against a trust

PART VI - Miscellaneous

- 66. Appointment of Registrar
- 67. Application of this Act
- 68. Resident Beneficiaries
- 69. Confidentiality
- 70. Instruction to Revisor