

International Trust Act

SAINT LUCIA

No. 15 of 2002

Arrangement of Sections

PART I

Short Title and Interpretation

1. Short title and commencement.
2. Interpretation.
3. Trusts, trustees and beneficiaries generally.
4. Application of Act.

PART II

Registration of International Trusts

5. Appointment of Registrar and Deputy Registrars.
6. Indemnity of Officers
7. Registered Office
8. Application for registration.
9. Registration.
10. Qualifications for trust to be or remain registered.
11. Language and translation.
12. Fees payable to Registrar.
13. Cancellation of registration
14. Appeals against cancellation.

PART III

Validity

15. Validity of international trust.
16. Presumption of irrevocability.
17. Duration of trust and accumulation of income.
18. Retention of control by settlor.

PART IV

Protective International Trusts

19. Protective international trusts.

PART V
Charitable International Trusts

20. Charitable international trusts.

PART VI
Purpose International Trusts

21. Trusts for non-charitable purposes.

22. Extension of cy-pres.

PART VII
Protector and Similar Appointments

23. Protector of a trust.

PART VIII
Termination of Trusts

24. Failure or lapse of interest.

25. Failure of charitable international trust.

26. Termination of international trust.

PART IX
Breach of International Trust

27. Liability for breach of trust.

28. Constructive trusts.

29. Tracing trust property.

30. Beneficiary may relieve or indemnify trustee.

31. Power to relieve trustee from personal liability.

PART X
Proper Law and Effect of Foreign Law

32. Proper law of trust.

33. Change of proper law.

34. Exclusion of foreign laws and rights arising thereunder.

PART XI
Powers of the Court, Proceedings and Limitations

35. Jurisdiction of the Court.

36. Court's determination of validity.

37. Saving of certain rights.

38. Extent of invalidity for creditors.

- 39. Foreign judgments not enforceable.
- 40. Application for directions.
- 41. Payment of cost.
- 42. Limitation on commencement of proceedings.
- 43. Security for costs.

PART XII

Disposition to or by an International Trust

- 44. Scope.
- 45. Avoidance of fraud.
- 46. Limitations.
- 47. Application.
- 48. Certain rights.
- 49. Extent of avoidance of relevant dispositions.
- 50. Statute of Elizabeth not applicable.

PART XIII

Tax Exemptions

- 51. Exemption of international trusts and Saint Lucia trusts from income tax.

PART XIV

Miscellaneous

- 52. Records and Accounts
- 53. Confidentiality.
- 54. Investments.
- 55. Bankruptcy.
- 56. Regulations.
- 57. Transitional
- 58. Repeal

PEARLETTE LOUISY
Governor-General

9th September, 2002

SAINT LUCIA
No. 15 of 2002

An Act to provide for the registration and regulation of international trusts in Saint Lucia and for related matters. [On Order]

BE IT ENACTED by the Queen's most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

PART I
Short Title and Interpretation

Short title and commencement

1.— (1) This Act may be cited as the International Trusts Act, 2002.

(2) This Act comes into force on a day to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2.— (1) In this Act —

“beneficiary” means a person entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised;

“Certificate of Registration” means Certificate of Registration issued under section 9;

“charitable international trust” means an international trust as described in Part V;

“charitable purpose” shall be construed in accordance with the provisions of Part V of this Act;

“Court” means the High Court of Saint Lucia;

“creditor” means a person to whom a financial obligation is owed;

“Deputy Registrar” means a Deputy Registrar of International Trusts appointed under section 5;

“Director” means the Director of International Financial Services appointed as such by the Public Service Commission, pursuant to section 11 of the Registered Agent and Trustee Licensing Act;

“insolvent” means being unable, or having no reasonable prospect of being able, to pay debts as and when they become due;

“international business company” means a company incorporated or continued under the International Business Companies Act;

“International Business Companies Act” means the International Business Companies Act, 1999, No.40;

“international trust” means a trust —

- (a) which is created by an instrument in writing;
- (b) in respect of which at all times at least one of the trustees is a Registered Trustee ;
- (c) in respect of which the trust property does not include any real property situated in Saint Lucia or an interest in any real property situated in Saint Lucia; and
- (d) which is registered under this Act;

“minor” means a person who has not attained full age under the proper law of the particular trust.

“Minister” means the Minister responsible for International Financial Services;

“person” includes a natural person, company, partnership, limited partnership or other body corporate or unincorporated body;

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

“Prescribed fees” means fees prescribed in the Regulations;

“property” means property of any description, including rights and interests whether vested contingent defeasible or future, wherever situated, including any share or interest therein, but excluding any real property situate in Saint Lucia;

“protector” means a protector appointed under section 23;

“protective international trust” means a protective international trust as described in Part IV;

“purpose international trust” means a purpose international trust as described in Part VI.

“Register” means the register to be maintained under section 9;

“Registered Agent and Trustee Licensing Act” means the Registered Agent and Trustee Licensing Act, 1999 No. 37;

“registered trustee” means a person holding a valid license under the Registered Agent and Trustee Licensing Act to act as a trustee for international trusts.

“Registrar” means the Registrar of International Trusts designated under section 5;

“Regulations” means Regulations made under section 56;

“relatives” in relation to a person means that person’s father and mother, spouse, the father and mother of his or her spouse, his or her brothers and sisters, the brothers and sisters of his or her spouse, his or her children and remoter issue and the spouse of such children and issue;

“repealed Act” means the Act repealed pursuant to section 57;

“resident” means any person, trust, company, partnership, limited partnership or other entity whether incorporated or un-incorporated which is resident in St. Lucia as defined in the Income Tax Act 1989;

“settlor” means a person who makes a disposition of property on or to a trust;

“tax” includes, stamp duty, levy, excise tax, income tax, capital gains tax and rates;

“trust property” means property held on trust.

Trusts, trustees and beneficiaries generally

3.— (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) The terms of a trust may impose upon a beneficiary an obligation as a condition for benefit.

(4) A beneficiary may disclaim his or her interest or any part of it, whether or not he or she has received any benefit from it.

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

(6) A disclaimer is not effective until received by the registered trustee.

(7) The number of trustees shall be such number as the settlor may determine and shall be set out in the trust deed.

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

(9) Where the terms of a trust contain no provision for the appointment of a new or additional trustee, then the following may act for the purpose of preserving the trust —

(a) the protector, if any; or

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

(c) the last remaining trustee; or

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

(e) if there is no such person (or no such person willing to act), the Court may appoint a new or additional trustee.

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

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

(12) 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.

Application of Act

4.— This Act applies only to a trust whether created before or after the commencement of this Act, which is an international trust ,

PART II

Registration of International Trusts

Appointment of Registrar and Deputy Registrars

5.— (1) There shall be a Registrar of International Trusts who shall be -

- (a) a public officer designated as such by the Minister; or
- (b) the Registrar of International Business Companies.

(2) With the approval of the Minister, the Registrar may designate one or more officers of the Registry to be Deputy Registrars.

(3) The Registrar, without divesting himself or herself of any of his or her own powers or duties may in writing authorise a Deputy Registrar to exercise and perform any such powers or duties and may at any time in writing vary or revoke such authorisation.

Indemnity of Officers

6.— The Registrar or a Deputy Registrar shall not be liable to any action or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise of powers under this Act, or under any regulations made thereunder.

Registered Office

7.— (1) The registered office of an international trust shall be the office of its registered trustee, which shall be the address for service for any documents in relation to an international trust.

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

Application for registration

8.— (1) A Registered Trustee may apply to the Registrar to register a trust as an international trust.

(2) an application made under subsection (1) shall be accompanied by —

(a) the prescribed fee;

(b) notice of the name and registered office of the international trust; and

(c) a certificate in the prescribed form from an attorney-at-law certifying that the trust upon registration, will be an international trust signed by the registered trustee.

Registration

9.— (1) Upon receipt of an application under section 8 the Registrar shall, subject to subsection (3) and subject to section 10 (1) and (2) -

(a) register the trust, in respect of which the application is made, as an international trust in a register to be maintained by the Registrar;

(b) transmit to the registered trustee a Certificate of Registration showing that the international trust has been duly registered and specifying the date upon which it was so registered under this Act.

(2) A Certificate of Registration shall be in the form set out in the Regulations.

(3) If for any reason the Registrar is of the opinion that an application for registration of an international trust does not meet the requirements for registration as an international trust he or she shall inform the registered trustee, giving the reason for the refusal.

Qualifications for trust to be or remain registered

10.— (1) A registered trustee shall not apply for the registration of a trust as an international trust unless the trust meets all of the requirements of an international trust under this Act.

(2) A trust may be registered under this Act only if it has a registered trustee.

(3) If, during the period in which a trust is registered under this Act, it fails to have at least one trustee who is a registered trustee in good standing, the co-trustees, the beneficiaries or the protector, if any, shall appoint a registered trustee, and, failing such appointment, the trust may be struck from the register.

(4) The register maintained by the Registrar shall not be open for inspection by members of the public, except that —

(a) the Registered Trustee of an international trust may, in writing, authorize a person to inspect the entry of that international trust on the register; and

(b) the Registrar shall promptly respond to inquiries made to the Registrar in writing to the questions whether a trust under a given name is duly registered on the register and whether a certificate of registration is genuine, but the Registrar shall not disclose any other information regarding that international trust unless authorised in writing by the Registered Trustee .

Language and translation

11.— (1) A document filed with the Registrar and not in the English Language shall be accompanied by a certified translation into the English Language.

(2) A document not in the English Language and not accompanied by a certified translation at the time of the application for the registration, shall not be accepted for registration by the Registrar.

(3) For the purpose of this section, a certified translation is a translation certified as a correct translation by a translator who is approved by the Registrar.

Fees payable to Registrar

12.— The fees payable in respect of an international trust shall be paid to the Registrar at such times and in such manner as may be prescribed.

Cancellation of registration

13.— The Registrar shall cancel the registration of an international trust —

(a) upon the written request of all the trustees for the international trust certified as such by the Registered Trustee named in the register;

(b) if the Registered Trustee certifies that the international trust has ceased to exist;

(c) if the Registrar is satisfied that a Certificate of Registration in respect of the international trust has been obtained by, or on account of, any fraud or mistake;

(d) in the event that the Registrar has not, within six months of the prescribed date received the prescribed annual fee.

Appeals against cancellation

14.— (1) The following procedures apply to appeals from decisions of the Registrar to cancel the registration of an international trust —

(a) the appellant, within twenty one days after the day on which the Registrar has given his or her decision, shall serve a notice in writing, signed by the appellant or his or her attorney-at-law, on the Registrar and the Attorney General, of the appellant's intentions to appeal and of the general grounds of the appeal, and the appellant may apply to the Court within fourteen days after the day on which the Registrar has given his or her decision for leave to extend the time within which notice of appeal prescribed by this section may be served, and the Court upon hearing of the application may extend the time prescribed by this section as it thinks fit;

(b) the Registrar shall, within fourteen days of receiving the notice of appeal, transmit a copy of his decision to the Registrar of the Court and to the Attorney General together with all papers relating to the appeal provided that the Registrar shall not be obliged to disclose any information if the Minister considers that the public interest would suffer by such disclosure;

(c) The Court may, upon the hearing of the appeal, confirm, reverse, or modify the decision of the Registrar or remit the matter with the opinion and directions of the Court to the Registrar.

(2) An appeal against the decision of the Registrar shall not operate as a suspension of the decision of the Registrar.

(3) The burden of proving that a cancellation of registration was not justified, shall lie on the registered trustee for the trust who shall be the appellant in the name of the trust.

**PART III
Validity****Validity of international trust**

15.— (1) An international trust shall be valid and enforceable if it meets the requirements of this Act and notwithstanding that it may be invalid according to the law of the settlor's domicile, residence or place of incorporation.

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

(a) in the administration of the trust anything done that is contrary to the law in force in Saint Lucia; or

(b) it purports to confer a right or power, or to impose any obligation, the exercise or effect of which is contrary to the law in force in Saint Lucia;

Presumption of irrevocability

16.— An international trust that does not contain a power of revocation shall be irrevocable by the settlor or the settlor's legal personal representative notwithstanding that the trust is created inter vivos or voluntarily by the settlor.

Duration of trust and accumulation of income

17.— (1) The terms of an international trust may provide for a duration or date of termination of the international trust but, subject to subsection (2), the maximum duration of an international trust shall be one hundred and twenty years.

(2) Subsection (1) does not apply to a purpose international trust or a charitable international trust which may continue without any limit as to time.

(3) The rules of law and equity known as the "rule against perpetuities" and the "rules against accumulations" shall not apply to an international trust.

Retention of control by settlor

18.— An international trust shall not be declared invalid if the settlor, or if more than one settlor, or any one of the settlors _

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

(b) retains, possesses or acquires a power to amend the international trust; or

(c) acquires any benefit, interest or property from the international trust; or

(d) retains possesses or acquires the power to remove or appoint a trustee, protector or advisor of the international trust; or

(e) retains, possesses or acquires the power to direct a trustee or protector of the international trust on any matter; or

(f) retains, possesses or acquires any specific power to appoint the capital or income from the international trust to persons other than the settlor himself or herself; or

(g) is a beneficiary of the international trust solely or together with others.

PART IV
Protective International Trusts

Protective international trusts

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

- (a) subject to termination upon the happening of a specified event;
- (b) subject to diminution, suspension or termination in the event of the beneficiary becoming insolvent or any of his or her property becoming liable to seizure or sequestration for the benefit of creditors; or
- (c) subject to a restriction on alienation of or dealing in that interest.

and in such a case the international trust shall be known for the purposes of this Act as a protective international trust.

(2) Where any property is held on a protective international trust for the benefit of a beneficiary, the trustee shall hold the property attributable to the interest of such beneficiary —

- (a) in trust to pay the income to the beneficiary until the interest terminates in accordance with the terms of the protective international trust; and
- (b) where the terms of the protective international trust do not provide otherwise, if a determining event occurs while the interest of the beneficiary continues, to pay the income and subject to the terms of the trust, the capital, to such of the following and if more than one, in such shares as the trustee in his or her absolute discretion shall appoint —
 - (i) the beneficiary or any spouse or child of the beneficiary; or
 - (ii) if there is no such spouse or child of the beneficiary the person who would be entitled to the estate of the beneficiary if he or she had then died intestate and domiciled in Saint Lucia.

(3) In subsection (2), a “determining event” shall mean the occurrence of any act or omission which would result in the capital or any income of the protective trust becoming payable to any person other than the beneficiary.

PART V
Charitable International Trusts

Charitable international trusts

20.— (1) An international trust may be created for a charitable purpose and in such a case the international trust shall be known as a charitable international trust.

(2) Subject to subsections (3) and (4), the following purposes shall be regarded as charitable:

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

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

(4) A purpose may be regarded as charitable whether it is to be carried out in Saint Lucia or elsewhere and whether it is beneficial to a community in Saint Lucia or elsewhere.

PART VI
Purpose International Trusts

Trusts for non-charitable purposes

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

- (a) the purpose is specific, reasonable and capable of fulfillment; and
- (b) the purpose as described in the international trust is not, unlawful or contrary to public policy in Saint Lucia.

Extension of cy-pres

22.— (1) Without limiting the provisions of section 24 the terms of a purpose international trust may provide that the doctrine of cy-pres is applicable to the purpose international trust.

PART VII
Protector of Trusts

Protector of a trust

23.— (1) The terms of an international trust may provide for the appointment of a protector of the international trust.

(2) A protector shall have the following powers, unless the terms of the international trust provide otherwise —

- (a) the power to remove a trustee and appoint a new or additional trustee;
- (b) the power to change the proper law of the international trust;
- (c) the right to receive notice in advance of specified actions of the trustee as set out in the trust instrument;
- (d) the right to receive information relating to or forming part of the accounts of the trust; and
- (e) such further powers as are conferred on the protector by the terms of the international trust.

(3) A protector may be a settlor, trustee or beneficiary of the international trust, or any other person.

(4) In the exercise of his or her powers the protector shall not be regarded as a trustee.

(5) Where there are more than two protectors of an international trust, subject to the terms of the international trust, any functions conferred on the protectors may be exercised if a majority of the protectors for the time being agree on their exercise.

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

PART VIII
Termination or Failure of International Trusts

Failure or lapse of interest

24.— Where —

- (a) an interest of a beneficiary of the international trust lapses; or
- (b) an international trust terminates other than as is provided for in section 25 (1);
and
- (c) there is no beneficiary and no person, whether or not then living who can become a beneficiary in accordance with the terms of the international trust;

the interest or trust property concerned shall, subject to the terms of the international trust, any Order of the Court, or section 26, be held by the trustee in trust for the settlor absolutely, or if he or she is dead, as if it had formed part of his or her estate at death.

Failure of charitable international trusts

25.— (1) Where property is held in a charitable international trust and—

- (a) the purpose has been, as far as may be, fulfilled;
- (b) the purpose cannot be carried out at all, or not according to the specification of the purpose in the charitable international trust;
- (c) the purpose provides a use for only part of the trust property;
- (d) the purpose was laid down by reference to an area or a class of persons which was then, but has since ceased to be, suitable or practicable for any reason in administering the charitable international trust;
- (e) the purpose, in the opinion of the trustees, has been adequately provided for by other means; or
- (f) the purpose has ceased to be charitable;

the remaining trust property shall be held for such other charitable purpose as the Court, upon the application of the trustee, may declare to be consistent with the original intention of the settlor.

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

(a) is then suitable or expedient; and

(b) is consistent with the original intention of the settlor.

(3) Without limiting the provisions of Part XII, the Court shall not make a declaration under subsection (1) or approve an arrangement under subsection (2) unless satisfied that any settlor, trustee, beneficiary, protector or class of beneficiaries interested in the trust has had an opportunity to be heard.

Termination of international trust

26.— (1) Without prejudice to any power of the Court, and except as may be provided in the terms of the international trust, where all the beneficiaries of the trust have been ascertained and none is a person under a legal disability or a minor, and all beneficiaries are in agreement so to do, they may in writing signed by all of them, direct the trustee to terminate the trust and distribute the trust property as the beneficiaries direct, so long as such distribution is not inconsistent with the terms of the international trust.

(2) A beneficiary of an interest under a protective international trust may not enter into an agreement referred to in subsection (1).

PART IX Breach of International Trust

Liability for breach of trust

27.— (1) Subject to the provisions of this Act and to the terms of an international trust a trustee who commits or concurs in a breach of an international trust is liable for —

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

(b) any profit which would have accrued to the international trust had there been no breach.

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

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

(a) the trustee becomes or ought to have become aware of the breach; and

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

(4) Where trustees are liable for a breach of an international trust, they are liable jointly or severally.

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

(6) Nothing in the terms of an international trust shall relieve a trustee of liability for a breach of the international trust arising from, the trustee's own fraud, self dealing or willful misconduct.

Constructive trusts

28.— (1) A person who derives a profit or obtains trust property as a result of a breach of an international trust shall be deemed to be a trustee of such profit or trust property unless that person derives or obtains in it good faith and without actual, constructive or implied notice of the breach of trust.

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

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

Tracing trust property

29.— Without prejudice to the personal liability of a trustee, trust property which has been changed or dealt with through a breach of the international trust or any property into which the trust property has been converted may be traced, followed and recovered unless —

(a) it is no longer identifiable; or

(b) it is in the hands of a good faith purchaser for value without actual, constructive or implied notice of the breach of the international trust.

Beneficiary may relieve or indemnify trustee

30.— (1) A beneficiary may relieve a trustee of liability to the beneficiary for a breach of an international trust or may indemnify a trustee against liability for a breach of the international trust.

(2) Subsection (1) does not apply if the beneficiary—

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

Power to relieve trustee from personal liability

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

PART X**Proper Law and Effect of Foreign Law****Proper law of trust**

32.— (1) Subject to any express provisions in the trust instrument, or any intention of the settlor derived from the trust instrument, the proper law applicable to an international trust shall be as in this Act.

(2) Subject to subsection (1), the terms of an international trust may provide —

- (a) for the severable aspects of the international trust, particularly aspects relating to the administration of the international trust, to be governed by a different law from the proper law of the international trust; and
- (b) for the law governing a severable aspect of the international trust to be changed from the law in force in Saint Lucia to the law of another jurisdiction and vice versa.

(3) A change in the proper law of an international trust shall not affect the legality or validity of the international trust or render any person liable for anything done before the change unless the liability would result under both the old and the new proper law of the international trust.

Change of proper law

33.— (1) Where the proper law of an international trust or the law governing the severable aspects of an international trust is changed from the law in force in Saint Lucia to the law of another jurisdiction (in this section referred to as the “new law”) no provision of the law in force in Saint Lucia shall operate to render void, invalid or unlawful any function conferred on the trustee under the new law.

(2) Where the proper law of an international trust or the law governing the severable aspects of a trust is changed from the law of another jurisdiction (in this section referred to as the “old law”) to the law in force in Saint Lucia, no provision of the old law shall operate to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the law in force in Saint Lucia.

Exclusion of foreign laws and rights arising thereunder

34.— An international trust governed by this Act or a disposition of property to be held upon the international trust, shall not be varied, declared void, voidable, liable to be set aside or defective in any manner, and the capacity of any settlor is not to be questioned by reason that

—
(a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of an international trust either in part or in whole;

(b) the international trust or disposition avoids or defeats rights, claims or interests conferred by the law of the foreign jurisdiction upon any person, or contravenes any law, rule, judicial or administrative order or action intended to recognise, protect enforce or give effect to any such rights, claims or interests;

(c) the international trust creates rights in property that are contrary to other laws relating to the personal or proprietary effects of marriage or the succession rights testate and intestate, of any person;

(d) the law in force in Saint Lucia or the provisions of this Act are inconsistent with a law of a foreign jurisdiction.

PART XI

Powers of the Court, Proceedings and Limitations

Jurisdiction of the Court

35.— (1) The Court has jurisdiction in respect of any matter concerning the international trust.

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

(a) make an order in respect of —

- (i) the execution, administration or enforcement of an international trust;
- (ii) a trustee, including an order as to the exercise of any power by a trustee, the appointment, remuneration or conduct of a trustee, the keeping or submission of accounts, the making of payments, whether into Court or otherwise;
- (iii) a protector, including an order appointing a protector;
- (iv) a beneficiary, or any person connected with an international trust;
- (v) any trust property, including an order as to the vesting, preservation, application, surrender or recovery thereof;

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

(c) direct the trustee to distribute, or not to distribute the trust property;

(d) make such order in respect of the termination of the international trust and the distribution of the property as it thinks fit;

(e) rescind or vary an order or declaration under this Act, or make a new or further order or declaration.

(3) Where the Court appoints or removes a registered trustee under this section —

(a) it may impose such requirements and conditions as it thinks fit, including provisions as to remuneration and requirements or conditions as to the vesting of trust property;

(b) subject to the Court's order, a trustee appointed by the Court has the same functions and may act in all respects, as if he or she had been originally appointed a trustee.

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

Court's determination of validity

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

(a) the international trust was established under duress or undue influence, or by mistake or misrepresentation;

(b) subject to section 25, the terms of the international trust are so uncertain that performance of such terms is rendered impossible or impractical; or

(c) subject to section 32, the settlor was, at the time of the disposition leading to the creation of the international trust, incapable under the law in force in Saint Lucia of creating an international trust.

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

(a) if those purposes cannot be separated, or the terms cannot be separated, the international trust is invalid; or

(b) if those purposes or terms can be separated, the Court may declare that the international trust is valid as to the terms which are valid and the purposes which are lawful.

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

(4) Property that is transferred by a settlor to an international trust which is invalid, shall, subject to any order of the Court, be held by the trustee in trust for the settlor absolutely or, if the settlor is dead, as if the property had formed part of the settlor's estate at death.

(5) Notwithstanding section 32, in determining the existence and validity of an international trust registered under this Act, the Court shall apply —

(a) the provisions of this Act;

(b) any other law in force in Saint Lucia; and

(c) any other law which may be applied if to do so would validate the trust as an international trust.

Saving of certain rights

37.— In the event that an international trust might be declared invalid pursuant to this Act, if the Court is satisfied that a beneficiary has not acted in bad faith —

(a) the beneficiary shall have a first and paramount charge over the trust property in an amount equal to the entire costs properly incurred by the beneficiary in the defense of this action or proceedings and not merely such costs as might otherwise be allowed by the Court; and

(b) the international trust shall be declared invalid subject to the payment of proper fees, costs, pre-existing rights, claims and interests of such beneficiary.

Extent of invalidity for creditors

38.— If an international trust or disposition thereto is declared invalid under the provisions of this Part or Part XII, the international trust or the disposition shall be invalid only to the extent necessary to satisfy the obligations of the creditor at whose instance the international trust or disposition was declared invalid together with such costs as the Court may allow pursuant to the relevant Part.

Foreign judgments not enforceable

39.— Notwithstanding the provision of any treaty, convention, statute, or rule of law or equity to the contrary, a proceeding for or in relation to the enforcement or recognition of a judgment or order obtained in a jurisdiction other than Saint Lucia against —

(a) an international trust;

(b) a settlor, trustee, protector or beneficiary of an international trust;

(c) a person appointed or instructed in accordance with the express or implied provisions of an instrument or disposition to exercise a function, or undertake an act, matter or thing in connection with an international trust on the property of the international trust; or

(d) the property of an international trust, a trustee, a protector or a beneficiary of the international trust;

shall not be entertained by any court if that judgment or order is based in whole or in part, upon the application of any law or interpretation of law that is inconsistent with the provisions of this Act or relates to a matter that is governed by the law in force in Saint Lucia;

Application for directions

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

Payment of costs

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

Limitation on commencement of proceedings

42.— (1) An action or proceeding —

(a) to set aside the creation or settlement of an international trust;

(b) to set aside any disposition to or by any international trust

shall not be commenced unless the action or proceeding is commenced in the Court before the expiration of two years from the date of the creation of the international trust which is sought to be set aside or the date of the disposition to or by the international trust that is sought to be set aside.

(2) An action or proceedings shall not be commenced by any person claiming to have or to have had an interest in property before that property was settled upon or disposed to or by an international trust and seeking to derive a legal or equitable interest in that property unless —

(a) the person can establish the nature and extent of the interest and that the interest existed at the time of the relevant disposition or of the creation of the international trust; and

(b) the action or proceeding is commenced in the Court before the expiration of two years from the date that the property was settled upon or disposed to or by the international trust.

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

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

- (b) where the action or proceeding shall allege fraud or be founded upon some other action or proceeding alleging fraud, that the determination or order sought would not be contrary to the provisions of Part XII of this Act; and
- (c) that the requirements of section 43 have been fulfilled.
- (4) An affidavit required to be filed pursuant to subsection (3) shall be made by the person on whose behalf the action or proceeding is brought or, in the case of a body corporate, an officer thereof, and the person or officer shall depose as to —
- (a) the circumstances of the cause of action in respect of which the action or proceedings are brought;
- (b) the date upon which the cause of action shall have accrued;
- (c) the date upon which the property, in respect of which the action or proceeding is brought, was settled on, or disposed of by, the international trust; and
- (d) whether an action or proceeding has been commenced in any jurisdiction in respect of the cause of action or the international trust generally, and, if so, the date upon which that action or proceeding was commenced, the nature of the proceeding and in which jurisdiction it is pending.
- (5) This section shall apply to every international trust expressed to be governed by the law in force in Saint Lucia and, in the event that a trust shall be registered as an international trust and shall change the law by which it shall be governed to that of Saint Lucia then every proceeding after that date of registration by a person claiming to be interested in, or to be prejudiced by, the settlement of property upon the trust, or disposition of property to the 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 an international trust governed by the law in force in Saint Lucia.

Security for costs

- 43.— A creditor before bringing any action or proceeding against an international trust or trust property or with respect or within respect to any disposition by or to an international trust or any other matter governed by this Act shall first deposit with the Court a cash sum of twenty-five thousand United States dollars, or such greater amount as may be ordered by the Court, securing the payment of all costs as may become payable by the creditor in the event of the creditor not succeeding in the action or proceeding against the trust property or the international trust or in respect of the relevant disposition.

PART XII
Disposition to or by an International trust

Scope

44.— This part applies to an action or proceeding relating to a disposition to or by an international trust, or to or by an entity owned or controlled by an international trust, whether the property has or had as its situs within or outside Saint Lucia, at the time of the disposition or of the commencement of such proceedings.

Avoidance of fraud

45.— (1) Where it is proven by a creditor in proceedings that are final and not subject to further appeal that —

- (a) (i) an international trust was settled or established; or
 - (ii) a disposition was made to or by an international trust, and the property after the disposition constituted trust property; and
- (b) the international trust was settled, created, migrated, continued, established or property was disposed by or on behalf of the settlor or the settlor's nominee with the intent being to defraud the creditor of the settlor;
- (c) the disposition did, at the time the settlement, creation, migration, continuation, establishment, or disposition took place, render the settlor insolvent;

the settlement, creation, migration, continuation, establishment, or disposition shall not be void or voidable, but the international trust shall be liable to satisfy the creditor's claim out of property of the international trust and the amount of the liability shall only be to the extent of the interest that the settlor had in the property disposed to the international trust prior to its settlement, creation, migration, continuation, establishment, or disposition, and to any accumulation to that property subsequent thereto.

(2) Unless it is proven, in accordance with the provisions of subsection (1), that an international trust was settled or created, or a disposition was made to or by an international trust, with the intent being to defraud the creditor and with the result of the settlement, establishment or disposition being the insolvency of the settlor, the Court shall not find that the international trust is liable to satisfy the creditor's claim out of trust property or that any disposition to the international trust is void or voidable.

(3) In determining whether the creation of an international trust, or a disposition to or by an international trust has rendered the settlor insolvent, regard shall be had to the fair market value of the settlor's property, not being property of or relating to the international trust, at the time immediately after the settlement, establishment or disposition and in the event that the fair market value of the property exceeded the value of the creditor's claim at the time, then the international trust so settled or established or the disposition made shall, for the purposes of the Act, be deemed and presumed not have been settled or established or the property disposed of with intent to

defraud the creditor.

(4) Where an international 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 bonafide purchaser for value, then the disposition shall be void.

(5) For the purposes of this section, the onus of proof of the settlor's intent to defraud the creditor lies on the creditor, and the required standard of proof is to demonstrate the settlor's intent beyond a reasonable doubt.

Limitations

46.— (1) An international trust settled, created, migrated, continued or established or a disposition to or by the international trust shall not be fraudulent as against, or void or voidable by, a creditor of a settlor if —

(a) the settlement, creation, migration, continuation or establishment of the trust or the disposition takes place after the expiration of two years from the date that such creditor's cause of action accrued;

(b) the creditor fails to commence an action before the expiration of one year from the date such settlement, creation, migration, continuation, establishment or disposition took place; or

(c) the settlement, creation, migration, continuation, establishment or disposition took place before the creditor's cause of action against the settlor accrued.

(2) A settlor shall not have imputed to him or her an intent to defraud a creditor solely by reason that the settlor —

(a) settled, created, migrated, continued or established an international trust, or disposed of property to the international trust within two years from the date that the creditor's cause of action accrued;

(b) retained, possesses or acquires any of the powers or benefits referred to in section 18;

(c) is a beneficiary or a trustee of the international trust.

(3) For the purpose of this Part —

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

(b) in the case of an action upon judgment, the date the cause of action accrued shall be the date of the act or omission upon which the judgment was based and, where there is more than one act or omission or the same is or was continuing, the date of the first act or the date the omission first occurred shall be the date the cause of action accrued.

Application

47.— (1) The provisions of this Part shall apply to any proceeding by a creditor alleging fraud or a cause of action founded in fraud against a settlor, an international trust or an entity owned by an international trust, or against any person who shall settle property upon, dispose of property to, or establish an international trust on behalf of a settlor, to the exclusion of any other remedy, principle or any rule of law whether provided for by an enactment or founded in equity or common law.

(2) In this Part the term “creditor” includes any person who alleges a cause of action on behalf of or in the name of a creditor.

Certain rights

48.— (1) Where a disposition to an international trust is set aside by a Court, then if the Court is satisfied that the beneficiary of the disposed property has not acted in bad faith—

(a) the beneficiary having first and paramount charge over the disposed property in an amount equal to the entire costs properly incurred by the beneficiary 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

(b) the payment by the creditor of the proper fees, costs, pre-existing rights, claims and interest of the beneficiary and of any predecessor beneficiary who has not acted in bad faith; or

(c) the right of such beneficiary to retain any distribution made consequent upon the prior exercise of an international trust, power or discretion vested in the trustee of such international trust or any other person and otherwise properly exercised.

Extent of avoidance of relevant dispositions

49.— A disposition shall be set aside pursuant to this Part 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.

Statute of Elizabeth not applicable

50.— The Fraudulent Conveyance Act, 13 Elizabeth 1 Chapter 5 (1571), shall not apply to an international trust or to disposition by an international trust.

**PART XIII
Tax Exemption****Exemptions of international trusts and Saint Lucia trusts from income tax**

51.— (1) Notwithstanding any provision to the contrary contained in the Income Tax Act, 1989, No.1 an international trust shall be exempt from —

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

provided that where the income of the trust, other than interest from regular bank accounts or portfolio investments of securities held by the international trust in Saint Lucia, either accrues or is derived inside Saint Lucia that income shall be subject to tax.

(2) Notwithstanding any provision to the contrary contained in the Income Tax Act 1989, a beneficiary of an international trust shall be exempt from all taxes except where the beneficiary is a resident of St. Lucia, any distribution to that beneficiary will form part of his or her assessable income.

(3) For the purposes of the following subsections—

- (a) a qualifying trustee is a company incorporated under the International Business Companies Act or a registered trustee licensed under the Registered Agent and Trustee Licensing Act.
- (b) A Saint Lucia trust is a trust expressed to be subject to the Laws of Saint Lucia whether or not under this Act.

(4) For the purposes of the following subsections—

- (a) shares in an international business company;

- (b) dividends, distributions, payments or other transfers from an international business company;
- (c) rights or property of an international business company; or
- (d) property transferred from another Saint Lucia trust;

shall not be considered to be property situate in or be income or gains which have arisen in or been derived in Saint Lucia.

(5) Where a qualifying trustee is a trustee of Saint Lucia trust wherever resident, the provisions of the Income Tax Act 1989 shall not apply to any property which is the subject of the Saint Lucia trust, or to the settlors or beneficiaries thereof who are non resident except—

- (i) income or gains arising or derived from Saint Lucia;
- (ii) property situate in Saint Lucia.

PART XIV **Miscellaneous**

Records and accounts

52.— (1) The registered trustee of an international trust shall keep as confidential information —

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

(b) a file in which the following information is set out-

- (i) the name of the settlor;
- (ii) if a purpose or charitable trust, a summary of the purposes of the trust and the name of the protector or protectors of the international trust; and

(c) such documents as are necessary to show the true financial position of the international trust.

(2) The instrument, file and documents referred to in subsection (1) shall not be available to the public but the registered trustee shall allow the protector to inspect the instrument, register and the documents described, but no others.

(3) Except where allowed or required by applicable law, a registered trustee of an international trust shall not —

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

(b) refuse to allow the protector to inspect the instrument, file or documents referred to in subsection (1); or

(c) make or authorise the making in any instrument, file or document referred to in subsection (2) any settlement that the registered trustee knows to be false or does not believe to be true;

(4) A registered trustee who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and in addition to such fine the Court may order the trustee to cease to be a trustee of the international trust for four years or the suspension of the trustee's licence to serve as such.

Confidentiality

53.— (1) Without affecting the rights of protectors under Part VII, but subject to the terms of the instrument creating an international trust and subsection (2), a trustee, protector, or other person shall not disclose to any person not legally entitled thereto, any information or documents respecting an international trust, including without limitation —

(a) the name of the settlor or any beneficiary;

(b) the trustee's 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 was 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 information relating to or forming part of the accounts of an international trust; or

(e) any other matter or thing in respect of an international trust.

(2) Notwithstanding subsection (1) but subject to any other more specific terms of the trust instrument, the registered trustee shall, at the written request of a beneficiary named in the international trust, disclose any document or information relating to or forming part of the accounts of the international trust as described in subsection (1) (d) to that beneficiary or the advisor of the beneficiary provided that the beneficiary or the advisor —

(a) shall be bound by the restrictions on disclosure of such information provided for in this section and;

(b) shall not be entitled to any other documents relating to the international trust listed or described in the foregoing paragraph, including without limitation, letters of wishes or like expressions of the settlor's intent.

Investments

54.— Subject to the limitations in the trust instrument the trustees of an international trust may invest any trust property of the international trust as they see fit.

Bankruptcy

55.— Notwithstanding any provisions of the law of the settlor's domicile or place of ordinary residence or the residence or the settlor's current place of incorporation and notwithstanding that the creation of an international trust is voluntary and without valuable contribution being given for the same, an international trust shall not be void or voidable in the event of the settlor's bankruptcy, insolvency, or liquidation but shall remain valid and subsisting and take effect according to its tenor subject to the provisions of this Act.

Regulations

56.— (1) The Minister may make Regulations for purposes of this Act.

(2) without prejudice to the generality of subsection (1) the Regulations may —

- (a) provide the procedure for appeals under section 14;
- (b) establish the information to be included in the register; or
- (c) prescribe the fees for registration of international trusts.

Repeal

57.— The International trusts Act 1999, No.39 is repealed.

Transitional

58.— International trusts registered pursuant to the repealed Act are deemed to have been registered pursuant to the Act.

Passed in the House of Assembly this 11th day of June, 2002.
MATTHEW ROBERTS,
Speaker of the House of Assembly.

Passed in the Senate this 6th day of August, 2002.
HILFORD DETERVILLE,
President of the Senate.