

VIRGIN ISALNDS
TRUSTEE (AMENDMENT) ACT, 1993

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Amendment of section 2 of Cap. 303.
3. Repeal and replacement of section 3 of the principal Act.
4. Amendment of section 4 of the principal Act.
5. Amendment of section 26 of the principal Act.
6. Amendment of section 36 of the principal Act.
7. Amendment of section 37 of the principal Act.
8. Amendment of section 38 of the principal Act.
9. Amendment of section 40 of the principal Act.
10. Addition of new Part VII, Part VII and Part IX to the principal Act.
11. Commencement.

I Assent
Peter A. Penfold
Governor
7th October, 1993

VIRGIN ISLANDS

No. 7 of 1993

An Act to amend the Trustee Ordinance, Cap. 303.

[Gazetted 28th October, 1993]

ENACTED by the Legislature of the Virgin Islands as follows-

1. This Act may be cited as the Trustee (Amendment) Act, 1993. Short title.

2. Section 2 of the Trustee Ordinance, in this Act referred to as the principal Act, is amended - Amendment of section 2 of Cap. 303.

(a) by deleting the definitions "trust" and "trust corporation" appearing therein;

(b) by inserting therein in the appropriate alphabetical order the following new definitions -

" "person resident in the Territory" means a person who ordinarily resides within the Territory or carries on business from an office or other fixed place of business within the Territory but does not include a company incorporated under the International Business Companies Act;" Cap. 291.

“ “settlor” includes a person who transfers property by way of gift or who makes a testamentary disposition on trust or to a trust;"

(c) by renumbering the existing section as subsection (1) of the section; and

(d) by inserting immediately after subsection (1) as renumbered the following new subsections as subsections (2), (3), (4) and (5) –

"(2) For the purposes of this Act the term "trust" refers to the legal relationship created,

either inter vivos or on death, by a settlor when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a special purpose.

(3) A trust has the following characteristics -

- (a) the assets constitute a separate fund and are not part of the trustee's own estate;
- (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee; and
- (c) the trustee has the power and the duty in respect of which he is accountable to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed on him by law.

(4) The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

(5) A trust does not include the duties incident to an estate conveyed by way of mortgage but it does extend to

- (a) implied trusts;
- (b) constructive trusts; and
- (c) the duties incident to the office of a personal representative."

Repeal and replacement of section 3 of the principal Act.

3. Section 3 of the principal Act is repealed and the following is substituted therefore -

"Authorized investments.

3. Subject to any provision contained in the instrument creating the trust, a trustee may at any time invest any portion of the trust funds in any kind of investment -

- (a) wherever the investment is situate; and

- (b) whether or not at the time the funds are already in a state of investment,

and he may vary the investment or retain it in its original state as long as he exercises the diligence and prudence that a reasonable person would be expected to exercise in making an investment as if it were his own money."

4. Section 4 of the principal Act is amended by deleting subsection (1) thereof and the proviso thereto and substituting therefor the following as subsections (1) and (1A) -

Amendment of section 4 of the principal Act.

"(1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer, which, if not so payable, would have been an authorized investment, except that securities to bearer retained or taken as an investment by a trustee shall, until sold, be retained in safe custody.

(1A) A direction that investments be retained or made in the name of a trustee shall not, for the purposes of subsection (1), be deemed to be an express prohibition."

5. Section 26 of the principal Act is amended by -

Amendment of section 26 of the principal Act.

- (a) deleting subsection (1) thereof and the provision thereto and substituting therefor the following new subsection as subsection (1) -

"(1) A trustee may, notwithstanding any rule of law or equity to the contrary, by power of attorney delegate to any person the execution or exercise of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person."; and

- (b) deleting subsection (3) thereof.

6. Section 36 of the principal Act is amended in subsection (5) thereof by deleting the words -

Amendment of section 36 of the principal Act.

- (a) ", other than a trust corporation," appearing in the first line thereof; and
- (b) "(none of them being a trust corporation)" appearing in the fourth line thereof.

Amendment of section 37 of the principal Act.

7. Section 37 of the principal Act is amended in subsection (1) thereof by deleting the words "a trust corporation or" appearing in the ninth and tenth lines thereof.

Amendment of section 38 of the principal Act.

8. Section 38 of the principal Act is amended in paragraph (c) thereof by -

- (a) deleting the last three lines thereof; and
- (b) deleting the comma after the word "appointed" in the fourth line thereof and substituting therefor a semi-colon.

Amendment of section 40 of the principal Act.

9. Section 40 of the principal Act is amended in subsection (1) thereof by deleting the words "and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust," in the second to fourth lines thereof.

Addition of new Part VII, Part VIII and Part IX to the principal Act.

10. The principal Act is amended by adding immediately after Part VI the following new Parts as Part VII, Part VIII and Part IX -

PART VII

Perpetuities and Accumulations

Power to specify perpetuity period.

68. (1) Subject to subsection (2) and subsection (3) of section 76, where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, shall be of a duration equal to such number of years not exceeding 100 as is specified in that behalf in the instrument.

(2) Subsection (1) shall not have effect where the disposition is made in exercise of a special power of appointment, but where a period is specified under that subsection in the instrument creating such a power the period shall apply in relation to any disposition under the power as it applies in relation to the power itself.

Presumptions and evidence as to future parenthood.

69. (1) Where in any proceedings there arises on the rule against perpetuities a question which turns on the ability of a person to have a child at some future time, then, subject to subsection (2), it shall be presumed

that a male can have a child at the age of 14 years or over, but not under that age, and that a female can have a child at the age of 12 years or over, but not under that age or over the age of 55 years.

(2) In the case of a living person evidence may be given to show that he or she will or will not be able to have a child at the time in question.

(3) Where any such question is decided by treating a person as unable to have a child at a particular time, and he or she does so, the court may make such order as it thinks fit for placing the persons interested in the property comprised in the disposition, so far as may be just, in the position they would have held if the question had not been so decided.

(4) Subject to subsection (3) above, where any such question is decided in relation to a disposition by treating a person as able or unable to have a child at a particular time, then he or she shall be so treated for the purpose of any question which may arise on the rule against perpetuities in relation to the same disposition in any subsequent proceedings.

(5) In the foregoing provisions of this section references to having a child are references to begetting or giving birth to a child, but those provisions, except subsection (2), shall apply in relation to the possibility that a person will at any time have a child by adoption, legitimation or other means as they apply to his or her ability at that time to beget or give birth to a child.

Uncertainty as to remoteness.

70. (1) Where, apart from the provisions of this section and sections 71 and 72 ("the said provisions") a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time, the disposition shall be treated, until such time, if any, as it becomes established that the vesting must occur, if at all, after the end of the perpetuity period, as if the disposition were not subject to the rule against per-

petuities; and its becoming so established shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

(2) Where, apart from the said provisions, a disposition consisting of the conferring of a general power of appointment would be void on the ground that the power might not become exercisable until too remote a time, the disposition shall be treated, until such time, if any, as it becomes established that the power will not be exercisable within the perpetuity period, as if the disposition were not subject to the rule against perpetuities.

(3) Where, apart from the said provisions, a disposition consisting of the conferring of any power, option or other right would be void on the ground that the right might be exercised at too remote a time, the disposition shall be treated as regards any exercise of the right within the perpetuity period as if it were not subject to the rule against perpetuities and, subject to the said provisions, shall be treated as void for remoteness only if, and so far as, the right is not fully exercised within that period.

(4) Where this section applies to a disposition and the duration of the perpetuity period is not determined by virtue of section 68 or subsection (3) of section 76, it shall be determined as follows -

- (a) where any persons falling within subsection (5) are individuals in being and ascertainable at the commencement of perpetuity period the duration of the period shall be determined by reference to their lives and no others, but so that the lives of any description of persons falling within paragraph (b) or (c) of that subsection shall be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor; and

- (b) where there are no lives in being within the meaning of paragraph (a) the period shall be 21 years.

(5) The said persons are as follows -

- (a) the person by whom the disposition was made;
- (b) a person to whom or in whose favour the disposition was made, that is to say -
 - (i) in the case of a disposition to a class of persons, any member or potential member of the class;
 - (ii) in the case of an individual disposition to a person taking only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;
 - (iii) in the case of a special power of appointment exercisable in favour of members of a class, any member or potential member of the class;
 - (iv) in the case of a special power of appointment exercisable in favour of one person only, that person or, where the object of the power is ascertainable only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;
 - (v) in the case of any power, option or other right, the person on whom the right is conferred;
- (c) a person having a child or grandchild within subparagraphs (i) to (iv) of paragraph (b), or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within those subparagraphs; and

- (d) any person on the failure or determination of whose prior interest the disposition is limited to take effect.

(6) The provisions of this section shall be deemed to apply to any trust created on or after 16th July, 1964 with an express perpetuity period not exceeding 80 years, and where a disposition made on or after 16th July, 1964 would have been void ab initio but for this provision the disposition shall be deemed to be valid if the trustees of the trust declare in writing that the provisions of this subsection shall apply to the disposition.

Reduction of age and exclusion of class members to avoid remoteness.

71. (1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding 21 years, and it is apparent at the time the disposition is made or becomes apparent at a subsequent time that the disposition would, apart from this section, be void for remoteness, but that it would not be so void if the specified age had been 21 years, the disposition shall be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to that age which would, if specified instead, have prevented the disposition from being so void.

(2) Where in the case of any disposition different ages exceeding 21 years are specified in relation to different persons -

- (a) the reference in subsection (1) to the specified age shall be construed as a reference to all the specified ages; and
- (b) subsection (1) shall operate to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

(3) Where the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents the foregoing provisions of this section from operating to save a disposition from being void for remoteness, those persons shall

thenceforth be deemed for all the purposes of the disposition to be excluded from the class, and the said provisions shall thereupon have effect accordingly.

(4) Where, in the case of a disposition to which subsection (3) does not apply, it is apparent at the time the disposition is made or becomes apparent at a subsequent time that, apart from this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, would cause the disposition to be treated as void for remoteness, those persons shall, unless their exclusion would exhaust the class, thenceforth be deemed for all the purposes of the disposition to be excluded from the class.

(5) Where this section has effect in relation to a disposition to which section 70 above applies, the operation of this section shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

Condition relating to death of surviving spouse.

72. Where a disposition is limited by reference to the time of death of the survivor of a person in being at the commencement of the perpetuity period and any spouse of that person, and that time has not arrived at the end of the perpetuity period, the disposition shall be treated for all purposes, where to do so would save it from being void for remoteness, as if it had instead been limited by reference to the time immediately before the end of that period.

Saving and acceleration of expectant interests.

73. A disposition shall not be treated as void for remoteness by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so void, and the vesting of an interest shall not be prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remoteness.

Powers of appointment.

74. For the purposes of the rule against perpetuities, a power of appointment shall be treated as a special power unless -

- (a) in the instrument creating the power it is expressed to be exercisable by one person only; and
- (b) it could, at all times during its currency when that person is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power,

except that for the purpose of determining whether a disposition made under a power of appointment exercisable by will only is void for remoteness, the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed.

Administrative powers of trustees.

75. (1) The rule against perpetuities shall not operate to invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property for full consideration, or to do any other act in the administration (as opposed to the distribution) of any property, and shall not prevent the payment to trustees or other persons of reasonable remuneration for their services.

(2) Subsection (1) shall apply for the purpose of enabling a power to be exercised at any time after the commencement of this Part notwithstanding that the power is conferred by an instrument which took effect before that commencement.

Options relating to land.

76. (1) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reversionary, whether directly or indirectly, on the term of a lease if-

- (a) the option is exercisable only by the lessee or his successors in title; and
- (b) it ceases to be exercisable at or before the expiration of one year following the determination of the lease.

(2) Subsection (1) shall apply in relation to an agreement for a lease as it applies in relation to a lease, and "lessee" shall be construed accordingly.

(3) Except, as provided in subsection (1), in the case of a disposition consisting of the conferring of an option to acquire for valuable consideration any interest in land, the perpetuity period under the rule against perpetuities shall be 21 years, and section 68 shall not apply.

(4) Subsection (3) shall not apply to a right of pre-emption conferred on any governmental or public authority in respect of land used or to be used for religious purposes where the right becomes exercisable only if the land ceases to be used for such purposes.

Possibilities of reverter, conditions subsequent, exceptions and reservations.

77. (1) In the case of

- (a) a possibility of reverter on the determination of a determinable fee simple; or
- (b) a possibility of a resulting trust on the determination of any other determinable interest in property,

the rule against perpetuities shall apply in relation to the provision causing the interest to be determinable as it would apply if that provision were expressed in the form of a condition subsequent giving rise, on breach thereof, to a right of re-entry or an equivalent right in the case of property other than land, and where the provision falls to be treated as void for remoteness the determinable interest shall become an absolute interest.

Accumulation of income.

78. Subject to any term of a trust prohibiting the accumulation of income or directing or authorizing the accumulation of income

for a period shorter than the period of the trust, income may be accumulated for the duration of the period of the trust.

Interpretation and
extent of Part
VII.

79. (1) In this Part

- (a) "disposition" includes the conferring of a power of appointment and any other disposition of an interest in or right over property, and references to the interest disposed of shall be construed accordingly;
- (b) "in being" means living or en ventre sa mere;
- (c) "power of appointment" includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration; and
- (d) "will" includes a codicil.

(2) For the purposes of this Part a disposition contained in a will shall be deemed to be made at the death of the testator.

(3) For the purposes of this Part a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

(4) Nothing in this Part shall affect the operation of the rule of law rendering void for remoteness certain dispositions under which property is limited to be applied for purposes other than the benefit of any person or class of persons in cases where the property may be so applied after the end of the perpetuity period.

(5) This Part shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when

the disposition was made.

(6) This Part shall apply, except as provided in subsection (6) of section 70, and subsection (2) of section 75, only in relation to instruments taking effect after the commencement of this Part, and in the case of an instrument made in the exercise of a special power of appointment shall apply only where the instrument creating the power takes effect after that commencement except that section 74 shall apply in all cases for construing the foregoing reference to a special power of appointment.

PART VIII

Special Provisions

Determination of
proper law of trust.

80. (1) The proper law of a trust or a particular aspect of a trust is -

- (a) the law of the jurisdiction expressly designated by the terms of the trust as being the law that is to govern the trust or the particular aspect of the trust, as the case may be;
- (b) if the terms of the trust do not expressly designate the governing law for the trust or the particular aspect of the trust, then the law of the jurisdiction that may reasonably be inferred from the terms of the trust as being the law that is to govern the trust or the particular aspect of the trust, as the case may be; or
- (c) if the terms of the trust do not expressly designate the governing law for the trust or the particular aspect of the trust and no reasonable inference may be drawn from the terms of the trust as to the governing law, then the law of the jurisdiction with which the trust at the time it was created had the closest connection.

(2) For the purposes of paragraph (c) of subsection (1) in ascertaining the law with which a trust is most closely connected at the

time it was created reference shall be made in particular to -

- (a) the place of administration of the trust designated by the settlor;
- (b) the situs of the assets of the trust;
- (c) the place of residence or business of the trustee; and
- (d) the objects of the trust and the places where they are to be fulfilled.

Change of proper law.

81. (1) If the terms of the instrument creating a trust so provide, the proper law of the trust may be changed from the law of the Territory to the law of another jurisdiction, or from the law of another jurisdiction to the law of the Territory, provided that in the case of a change from the law of the Territory the new proper law would recognize the validity of the trust and the respective interests of the beneficiaries.

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

(3) Without limiting or affecting subsection (2), the instrument creating a trust may provide that -

- (a) the proper law be changed to that of any other jurisdiction specified in the trust; or
- (b) the trust assets be transferred to a trustee in that other jurisdiction,

upon the occurrence of an event specified in the trust instrument.

Jurisdiction of court.

82. The court has jurisdiction where -

- (a) the proper law of a trust or a particular aspect of a trust is the law of the Territory;
- (b) the trustee of any trust is resident in the Territory;

- (c) in the case of a corporate trustee of any trust, it is incorporated or registered to do business in the Territory;
- (d) any trust property is situate in the Territory but only in respect of property so situate;
- (e) the administration of any trust is carried on in the Territory; or
- (f) the court thinks it appropriate.

Proper law to determine disposition of personal property.

83. (1) If a person transfers or disposes of personal property to the trustee of 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 of the law of his domicile shall affect any such transfer or disposition or otherwise affect the validity of such trust.

(2) For the avoidance of doubt it is declared that the provisions of this section shall apply notwithstanding any other provisions of this Part and shall apply only to transfers or dispositions of property made to a trustee of a trust after the commencement of this Part, but this declaration shall be without prejudice to the validity or otherwise of transfers or dispositions made before that time.

Purpose trusts.

84. (1) For the purpose of this section -

- (a) "designated person" means -
 - (i) a barrister or solicitor practising in the Territory,
 - (ii) an accountant practising in the Territory who qualifies as an "auditor" for the purposes of the Banks and Trust Companies Act, 1990,

Banks and Trust Companies Act (No. 9 of 1990)

- (iii) a licensee under the Banks and Trust Companies Act, 1990, or
 - (iv) such other person as the Minister of Finance may by order designate; and
- (b) "trust for any purpose" means a trust other than a trust -
- (i) that is for the benefit of particular persons whether or not immediately ascertainable, or
 - (ii) that is for the benefit of some aggregate of persons ascertained by reference to some personal relationship.

(2) A person may create a valid trust for any purpose, whether charitable or not, if-

- (a) the purpose is specific, reasonable and possible;
- (b) the purpose is not immoral, contrary to public policy or unlawful;
- (c) at least one trustee of the trust is a designated person;
- (d) the trust instrument appoints a person, who may be a protector, to enforce the trust and provides for the appointment of a successor to such person;
- (e) the person appointed to enforce the trust is a party to the trust instrument or consents in writing, addressed to the trustee who is a designated person, to enforce the trust; and
- (f) the trust instrument specifies the event upon the happening of which the trust terminates and provides for the disposition of surplus assets of the trust upon its termination.

(3) The rule against perpetuities and

remoteness of vesting shall not apply to a trust to which subsection (2) applies.

(4) Nothing in this section shall affect the existing law with respect to trusts established for charitable purposes.

(5) Where a trustee who is a designated person has reason to believe that a person who is appointed to enforce the trust is dead, is unwilling, refuses or is unfit to act or is incapable of acting, then that trustee shall as soon as practicable inform the Attorney General in writing of the fact and send him a copy of the instrument creating the trust, together with all relevant documents attesting to the inability of the designated person to act.

(6) The Attorney General on being informed under subsection (5) may within 90 days apply to a Judge in Chambers for the appointment of a person to enforce the trust and the court may, unless it feels that the person is not fit, by order declare that person to be the person to enforce the trust.

(7) The order of the court under subsection (6) is conclusive evidence of the appointment of the person to enforce the trust and the appointment takes effect as from the date of the order.

(8) Where any costs are incurred by the Attorney General in connection with any application under subsection (6), the court may make such order as it considers just as to the payment of those costs out of the assets of the trust.

(9) Where a designated person fails to comply with subsection (5), then, subject to subsection (10), the designated person is guilty of an offence and is liable on summary conviction to a fine of not more than \$5,000.

(10) It shall be a defence to a charge of committing an offence under subsection (9) to prove that the designated person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(11) The person appointed pursuant to paragraph (d) of subsection (1) shall be entitled, in addition to any documents, information or other rights specifically provided for in the trust instrument, to -

- (a) annual accounts of the trust;
- (b) copies of the trust instrument and deeds and other written instruments executed pursuant to the trust instrument; and
- (c) counsels' opinions and legal advice received by the trustees.

Trustees to act by majority.

85. (1) Subject to any provision contained in the instrument creating the trust -

- (a) every decision made, resolution passed or power or discretion exercised by trustees is valid if made, passed or exercised by a majority of the trustees if there are more than 2 of them; and
- (b) any deed or other instrument executed pursuant to such a decision, resolution or exercise of power or discretion is likewise valid as if it had been executed by all the trustees.

(2) This section shall not apply to trusts in existence at the time the section comes into effect.

Protector of trusts.

86. (1) An instrument creating a trust may contain provisions by virtue of which the exercise by the trustees of any of their powers and discretions shall be subject to the previous consent of the settlor or some other person, whether named as protector, nominator, committee or any other name; and if so provided in the instrument creating the trust the trustees shall not be liable for any loss caused by their actions if the previous consent was given.

(2) There may be conferred on the settlor or some other person, whether named as protector, nominator, committee or by any

other name, by the instrument creating the trust, any powers, and without limitation to the foregoing power may be conferred on that person to do any one or more of the following -

- (a) determine the law of which jurisdiction shall be the proper law of the trust;
- (b) change the forum of administration of the trust;
- (c) remove trustees;
- (d) appoint new or additional trustees;
- (e) exclude any beneficiary as a beneficiary of the trust;
- (f) include any person as a beneficiary of the trust in substitution for or in addition to any existing beneficiary of the trust; and
- (g) without consent from specified actions of the trustees either conditionally or unconditionally.

(3) A person exercising any of the powers set forth in paragraphs (a) to (d) and (g) of subsection (2) shall not by virtue only of the exercise of the power be deemed to be a trustee; and unless otherwise provided in the instrument creating the trust, is not liable to the beneficiaries for the bona fide exercise of the power.

Managing trustee.

87. A trust instrument may contain provisions by virtue of which the exercise of any of the trustee's powers may be reserved to a managing trustee, and no other trustee is liable for any of the decisions, acts or transactions of the managing trustee in so far as they amount to exercise of powers reserved by the trust instrument to the managing trustee.

Successor trustee.

88. In the absence of any contrary provisions in the trust instrument, a successor trustee may exercise all powers and discretions granted to the original trustee including, without limitation, any power to select

from a class of beneficiaries those persons entitled to income or principal of the trust fund.

Power to revoke or amend trust.

89. A trust may be revoked or amended only to the extent and in the manner expressly stated in the trust instrument or as provided by section 58.

Exemption from income tax, etc. Cap. 206.

90. (1) Notwithstanding any provisions of the Income Tax Act, the income of any trust in the hands of a trustee is exempt from income tax and the beneficiaries of any trust who are not persons resident in the Territory shall likewise be exempt from payment of income tax in respect of any moneys received by them from the trustee of any trust.

(2) No estate tax, inheritance tax, succession tax, gift tax, rate, duty, levy or other charge is payable by beneficiaries who are not resident in the Territory in respect of any distribution to them by the trustee of any trust.

Cap. 212.

(3) Notwithstanding any provision of the Stamp Act, any trust that does not have as beneficiaries persons resident in the Territory shall be exempt from the payment of stamp duty with respect to -

- (a) the deed or other written instrument creating the trust;
- (b) all deeds and other written instruments of appointment made pursuant to the trust;
- (c) all deeds and other instruments by which assets are transferred to or from the trustee of a trust; and
- (d) all instruments relating to the transfer of beneficial interests in a trust.

(4) The exemptions in this section do not apply to any trust which -

- (a) has as an underlying asset land in the Territory; or

(b) carries on a business or trade in the Territory.

(5) The provisions of this section apply to all trusts in existence at the time of the coming into operation of this Act.

Exemption from registration.

91. (1) Notwithstanding any provisions of the Registration and Records Act -

Cap. 67.

- (a) any deed creating a trust;
- (b) all deeds of appointment made pursuant to the terms of a trust; and
- (c) all other deeds executed by the trustees, settlors, beneficiaries or protectors of a trust pursuant to the powers and discretions specified in the instrument creating the trust,

are exempt from registration under the provisions of the Registration and Records Act.

(2) The exemption granted by subsection (1) applies to all deeds referred to therein executed prior to the time when this provision becomes effective.

Trust duty.

92. (1) Every trust instrument of which the proper law is the law of the Virgin Islands and which does not create a bare trust shall be liable to a duty called "the trust duty" in the sum of \$50.00.

(2) The payment of the trust duty shall be denoted or expressed by the affixing of a revenue stamp to the trust instrument.

(3) A trust instrument shall be deemed to be duly stamped only when the person executing the trust instrument cancels the revenue stamp by writing on or across the stamp the name or initials of the trustee or the person acting on behalf of a corporation trustee, as well as the date on which the name or initials of the person is affixed.

(4) A trust instrument not cancelled in accordance with the provisions of subsection (3) above shall not be admissible in civil

proceedings, provided that a trust instrument may in the discretion of the Court be admissible in processing on proof of the payment in the manner prescribed by the Governor in Council of the trust duty together with a penalty in the sum of \$100.00 for each calendar year from the execution of the trust instrument.

(5) The provisions of this section shall apply only to trusts created after the coming into effect of this section.

(6) Any trust instrument that is liable to trust duty shall not be produced to the Treasury, Post Office or any other public body for purposes of payment of trust duty.

(7) No trust instrument of which the proper law is the law of the Territory and of which a designated person is a trustee shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful or available in law or equity, unless it is duly stamped with trust duty in accordance with the law in force at the time when it was first executed.

(8) Any unstamped or insufficiently stamped trust instrument that is liable to be stamped pursuant to the provisions of this section may be pleaded or given in evidence or admitted to be good, useful or available in law or equity upon payment of the trust duty together with a penalty in the sum of \$100.00 for each complete calendar year from execution of the instrument.

(9) The penalty referred to in subsection (8) shall be paid in such manner as the Governor in Council may by order direct.

(10) This section applies only to trust instruments created after the section comes into effect.

(11) This section comes into operation on such date as the Governor may appoint by proclamation published in the Gazette.

PART IX

Incorporation of Administrative Powers by Reference

Incorporation by
reference.
Schedule.

93. (1) Any instrument creating any trust may incorporate by reference any of the provisions set out in the Schedule, in which case the following expressions appearing in the provisions have, unless a contrary intention appears, the meanings respectively assigned to them -

"the Trustees" means the trustees for the time being of the Trust;

"the Trust Fund" means -

- (a) the property in respect of which trusts are declared;
- (b) all property paid or transferred to or otherwise vested in and accepted by the Trustees;
- (c) all income which, in accordance with the provisions of the trust, is accumulated by the Trustees and added to the capital thereof; and
- (d) all money, investments and other property from time to time representing all property and income mentioned in paragraphs (a), (b) and (c) and any part of the said property or income.

(2) A memorandum signed by the Trustees as to property paid or transferred to or otherwise vested in or accepted by the Trustees is conclusive evidence of the payment, transfer or other vesting.

SCHEDULE

SECTION 83

Trust for
Sale.

1. (1) The Trustees shall stand possessed of any real property from time to time comprised in the Trust Fund Upon Trust to sell the same with power to postpone the sale thereof or of any part thereof for such period as they shall in their absolute discretion think fit and shall stand possessed of all other investments comprised in the Trust Fund Upon Trust at such discretion either to retain the same in the existing state thereof for such period as they shall think fit or at any time or times to sell the same or any part thereof.

(2) The Trustees shall hold the net proceeds of any sale of investments comprised in the Trust Fund and all other monies held or received by them as capital monies Upon Trust to invest the same at their discretion in or upon any of the investments by this instrument authorised with power to vary or transpose such investments for or into any others of a like nature.

Powers of
Investment.

2. Trust moneys to be invested under the trusts of this instrument may be applied or invested in any currency and in any part of the world in the purchase of or upon the security of such common or preferred stocks shares mutual fund shares unit trust units or other securities or commodities (including precious metals) bonds notes debentures certificates of deposit or time deposits land or other investments or property of whatever nature (and whether or not income producing or paying dividends or interest) and whether involving liabilities or not or upon such personal credit with or without security as the Trustees in their absolute discretion think fit without being restricted to trustee investments prescribed under the proper law governing this instrument and to the intent that the Trustees shall have the same powers in all respects as if they were absolute owners beneficially entitled and in addition (but without prejudice to the generality of the foregoing) the Trustees may invest the Trust Fund in the shares or debentures of any company whatsoever and wheresoever incorporated without the need for diversification and without being liable for any loss occasioned thereby.

3. Any power by this instrument or by law conferred on the Trustees to pay transfer appropriate or apply the Trust Fund or any income thereof for the benefit of any beneficiary may at the discretion of the Trustees be validly exercised (without prejudice to the generality of such power or to any other mode of application) -

Power with regard to mode of application of capital and income.

- (a) by paying or transferring the same to the Trustees of any settlement (whether or not such Trustees are resident in the British Virgin Islands and whether or not the proper law of such settlement is the law of the British Virgin Islands) the provisions of which are in the opinion of the Trustees for the benefit of such beneficiary notwithstanding that such settlement may also contain trusts powers or provisions (discretionary or otherwise) in favour of other persons or objects provided however that no such payment or transfer shall be made so as to infringe the rule against perpetuities as applicable to the trusts created by this instrument; or
- (b) (in the case of any such person who is a minor) by paying or transferring the same to such minor's parent or guardian or some other person for the time being having the care or custody of such minor upon the recipient undertaking to apply the same for the benefit of the minor;

And the Trustees shall not thereafter be under any obligation to see to the further application of the capital or income so paid or transferred and the receipt of such trustees parent guardian or other person shall be a full sufficient and complete discharge to the Trustees.

4. The Trustees shall have the following powers in addition to those conferred by law-

Additional Powers.

- (a) power to receive any property from any person as an addition to the Trust Fund either by gift inter vivos or by will or under the provisions of any other settlement or trust or otherwise;
- (b) power to borrow on the security of the Trust Fund and for such purpose to make any out-

lay out of the Trust Fund or the income thereof and to enter into such contracts mortgages charges or undertakings relating thereto as the Trustees may in their absolute discretion think fit;

- (c) power to lend any part of the Trust Fund to any person (whether or not a beneficiary) upon such terms (if any) as to security repayment rate of interest and otherwise as the Trustee in their absolute discretion may determine;
- (d) with respect to any property comprised in the Trust Fund power to exercise all powers relating thereto as if beneficially entitled thereto and without being restricted in any way by the office of trustee including (without prejudice to the generality of the foregoing power) -
 - (i) power to vote upon or in respect of any shares securities bonds notes or other evidence of interest in or obligations of any corporation trust association or concern whether or not the exercise of such power affects the security or the apparent security of the Trust Fund or the purchase or sale or lease of the assets of any such corporation trust association or concern,
 - (ii) power to deposit any such shares securities or property in any voting trust or with any depository designated thereby,
 - (iii) power to give proxies or powers of attorney with or without power of substitution for voting or acting on behalf of the Trustees as the owners of any such property, and
 - (iv) power to omit to register bonds or securities;
- (e) power (at the expense of the Trust Fund) to incorporate or register or to procure the incorporation or registration of any company (with limited or unlimited liability) in any part of the world for any purpose including the acquisition of the Trust Fund or any part thereof and so that (if thought fit) the consideration

on the sale of the Trust Fund to any such company may consist wholly or partly of fully paid shares debentures debenture stock or other securities of the company credited as fully paid which shall be allotted to or otherwise vested in the Trustees and be capital moneys in the Trustees' hands;

- (f) power at any time to apply any part of the Trust Fund of the income thereof in effecting or joining in effecting or otherwise acquiring any policy or assurance on the life of any beneficiary or of any other person or any endowment or other policy and to maintain surrender exchange exercise any option thereunder or otherwise deal with such policies as if the Trustees were absolutely entitled thereto;
- (g) power to pay out at any time any part of the Trust Fund in purchasing or acquiring or making improvements in or repairs to or on any land or building (whether freehold leasehold or of any other tenure or interest and of whatsoever description and situate in any part of the world) in the occupation of or intended for occupation by any beneficiary and power to permit any beneficiary to occupy until sale any land or building purchased or acquired as aforesaid or otherwise comprised in the Trust Fund upon such terms (as to payment or non-payment of rent outgoings repairs or otherwise) as the Trustees may think fit;
- (h) power at any time or times to lay out any part of the Trust Fund in the purchase or other acquisition of any yachts boats motor vehicles works of art household furniture plate linen china cutlery other articles of household use ornament or equipment and other chattels for the use of any beneficiary whether occupying a building purchased or acquired as aforesaid or otherwise and power to hand over to any such beneficiary for his use any property so purchased or acquired by the Trustees as aforesaid or otherwise forming part of the Trust Fund upon and subject to such terms and conditions (if any) as the insurance preservation maintaining inventories and otherwise as the Trustees think fit;

- (i) power to grant options for such consideration and exercisable at such time or times or within such period as the Trustees think fit for the purchase of any property subject to the trusts of this instrument or the acquisition of any interest therein;
- (j) power to keep the Trust Fund either in or out of the British Virgin Islands and if the Trustees think fit to hold in any part of the world all or any securities or other property in bearer form or registered in the name of the Trustees or nominees without disclosing the fiduciary relationship;
- (k) in the event of any duties fees or taxes whatsoever becoming payable in any part of the world in respect of the Trust Fund or any part thereof in any circumstances whatsoever power to pay all such duties fees or taxes out of the Trust Fund or the income thereof with discretion as to the time and manner in which the said duties fees or taxes shall be paid and the Trustees may pay such duties fees or taxes notwithstanding that the same shall not be recoverable from the Trustees or from any persons interested under the trusts of this instrument or that the payment shall not be to the advantage of such persons;
- (l) power to make such reserves out of the Trust Fund or the income thereof as the Trustees deem proper for expenses taxes and other liabilities and to pay from capital or income or to apportion between capital and income any expenses of making or changing investments and selling exchanging or leasing (including brokers commissions and charges) and generally to determine what part of the expenses of administering the trusts of this instrument shall be charged to capital and what part to income;
- (m) power to make execute and deliver deeds assignments transfers leases mortgages instruments of pledge creating liens contracts and other instruments sealed and unsealed;
- (n) power to institute prosecute and defend any suits or actions or other proceedings affecting the Trustees or the Trust Fund and to com-

promise any matter of difference or to submit such matter or arbitration and to compromise or compound any debt owing to the Trustees or any other claims and to adjust any disputes in relation to debts or claims against them as trustees upon evidence that the Trustees shall deem sufficient and to make partition upon such terms (including if thought fit the payment or receipt of equality money) as the Trustees shall deem desirable with co-owners or joint tenants besides the Trustees having any interest in any property in which the Trustees are interested and to make partition either by sale or by set-off or by agreement or otherwise;

- (o) power to make any distribution of the Trust Fund pursuant to the trusts of this instrument in cash or in kind or partly in cash and partly in kind and in the case of a distribution to more than one person not strictly rateably but on the basis of equal or other proportionate value (as the case may require) according to the judgment of the Trustees which shall be binding on all persons interested under this instrument;
- (p) power to take at the expense of the Trust Fund or the income thereof the opinion of legal counsel concerning any question arising under this instrument or on any matter in any way relating to the Trust Fund or the duties of the Trustees in connection with this instrument and the Trustees shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the opinion or advice of such counsel;
- (q) power -
 - (i) to engage the services of such investment counsel, adviser or manager ("the Investment Adviser") as the Trustees may from time to time think fit (including the settlor or any trustee of this instrument or any corporate trustee or any parent subsidiary or affiliate of such corporate trustee) in order to obtain advice on the investment and reinvestment of the Trust Fund and to delegate to the Investment Adviser

without being liable for any consequential loss discretion to manage the portfolio or any part thereof within the limits and for the period stipulated by the Trustees and the Trustees -

- (aa) shall settle the terms and conditions for the remuneration of the Investment Adviser and the reimbursement of the Investment Adviser's expenses as in their uncontrolled discretion they deem proper and such remuneration and expenses may be paid by the Trustees from and out of the Trust Fund, and
- (bb) shall not be liable for any action taken in good faith pursuant to or otherwise in accordance with the advice of the Investment Adviser,
- (ii) to employ and pay at the expense of the capital or income of the Trust Fund any agent or agents in any part of the world whether solicitors bankers accountants stockbrokers managers or other persons (including the settlor or any trustee of this instrument or any corporate trustee or any parent subsidiary or affiliate of such corporate trustee) to transact any business or to do any act requiring to be transacted or done in execution of the trusts of this instrument including the receipt and payment of money and the execution of documents and in any such event the trustee, the corporate trustee or the parent subsidiary or the affiliate of such corporate trustee is entitled to charge and be paid and to retain for his or its own account all usual professional and other fees and commissions normally paid for such services including fees and commissions shared with other agents;

(r) power for all or any of the Trustees -

- (i) to exercise or join or concur in exercising all or any of the powers and discretions by this instrument or by law given

to the Trustees notwithstanding that such trustee may have a personal interest in the mode or result of exercising any such power or discretion or may be interested therein in some other fiduciary capacity but any trustee may abstain from acting except as a merely formal party in any matter in which he may be so interested as aforesaid and may allow his co-trustees to act alone in the exercise of such powers and discretions in relation to such matter, and

- (ii) to purchase or sell any property notwithstanding that the vendor or purchaser is the same as or includes the Trustees or any of them provided that the price payable on any such purchase or sale is certified as fair and reasonable by an independent valuer employed for the purpose by the Trustees;
- (s) power to effect any transaction concerning or affecting the Trust Fund or any other property whatsoever and to do all other acts and things which the Trustees may in their absolute discretion think expedient in the interests of the Trust Fund or any beneficiary and for the purpose of this sub-paragraph "transaction" includes any sale exchange assurance conveyance grant lease surrender reconveyance release reservation or other disposition and any purchase or other acquisition and any convenient contract licence option right or pre-emption and any compromise or partition and any company reconstruction or amalgamation and any other dealing or arrangement and "effect" has the meaning appropriate to the particular transaction and references to property include references to restrictions and burdens affecting the property;
- (t) all the powers of sale (by public auction or private contract) exchange mortgaging leasing or other disposition management repair building and improvement and all other powers of an absolute beneficial owner in respect of any property for the time being comprised in the Trust Fund including (without prejudice to the generality of the foregoing) the power of

borrowing on the security of the Trust Fund and for such purpose to make any outlay out of the income or capital of the Trust Fund and to make such contracts and to enter into such undertakings relating thereto as the Trustees in their absolute discretion shall think fit;

- (u) power at any time in the Trustees' discretion and on such terms as they deem fit to appropriate or to apply the capital or income of the Trust Fund or any part thereof in order to secure the payment of money owed by any beneficiary and to give any guarantee or to become surety for any beneficiary and for such purposes to mortgage or charge any investments or property for the time being forming part of the Trust Fund or to deposit or transfer any such investments or property with or to any person by way of security; and
- (v) power from time to time by deed revocable or irrevocable wholly or partially to release extinguish or restrict any power by this instrument or by law conferred on the Trustees notwithstanding the fiduciary nature of any such power (but not so as to invalidate any prior exercise thereof).

Exclusion of appointments.

5. Unless the Trustees in their absolute discretion shall otherwise determine all dividends and other income received shall be treated for all purposes as income accruing at the due date of payment whether or not such dividends or income may have been earned and accrued wholly or partially in respect of a period prior to such date.

Protection of third parties in dealings with trustees.

6. (1) No person or corporation dealing with the Trustees and no purchaser on any sale made by the Trustees shall be concerned to enquire into the propriety or validity of any act of the Trustees or to see to the application of any money paid or property transferred to or upon the order of the Trustees.

(2) No firm association or corporation any of whose securities are comprised in the Trust Fund and no purchaser or person dealing with any trustee purporting to act under any delegation of authority from any other trustee shall be required to ascertain or enquire whether a case exists in which such delegation is permitted or whether such delegated authority is still subsisting.

(3) When anything is dependent upon the value of any property or the existence of any fact a certificate of the Trustees as to such value or fact shall be conclusive in favour of anyone thereon in good faith.

7. Any trustee of this instrument and director officer or employee of a corporate trustee or of a parent subsidiary or affiliate of such corporate trustee may act as a director officer manager or employee of any company whose shares or debentures may be comprised in the Trust Fund or as a director officer manager or employee of any subsidiary or holding company of any such company and may retain for himself or itself any remuneration which he or it may receive as such director officer manager or employee notwithstanding that any votes or other rights attaching to such shares or debentures may have been instrumental either alone or in conjunction with other matters or by reason of their non-exercise in procuring or continuing for him or it his or its position as such director officer manager or employee or that his or its qualifications for any such position may be constituted in part or in whole by any such shares or debenture.

Power in relation to underlying company.

8. The Trustees shall not be bound or required to interfere in the management or conduct of the affairs or business of any company in which the Trust Fund may be invested (and whether or not the Trustees have the control of such company) and so long as no trustee of this instrument has notice of any wilful negligence wilful default or fraud or dishonesty on the part of the directors having the management of such company they may leave the same (including the payment or non-payment of dividends) wholly to such directors and to beneficiary is entitled as such beneficiary in any way to compel control or forbid the exercise (including in any particular manner) of any voting or other rights at any time vested in the Trustees with regard to such company including without prejudice to the generality of the foregoing any powers the Trustees may have (even if also directors of such company) of compelling such company to distribute any dividend."

Trustees not bound to interfere with company management.

11. This Act comes into operation on such day as the Governor appoints by proclamation published in the Gazette.

Commencement.

Passed the Legislative Council this 27th day of September, 1993.

K.L. FLAX,
Speaker.

HUGH A. HODGE,
Clerk of the Legislative Council.

