

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

INTERNATIONAL TRUSTS ORDER, 2000

ARRANGEMENT OF SECTIONS

Section

PART I
PRELIMINARY

1. Citation, commencement and long title.
2. Interpretation.
3. Application and restrictions.
4. Retention of rights by settlor.

PART II
INVESTMENTS

5. Powers of investment.
6. Exercise of powers of investment.
7. Investment advice.
8. Power to retain investments which have ceased to be authorised.
9. Loans and investments by trustees not chargeable as breaches of trust.
10. Powers concerning securities in companies.
11. Power to pay calls on shares or satisfy guarantees.
12. Power to deposit money in bank.

13. Application of Part II.

PART III

GENERAL POWERS OF TRUSTEES

14. Powers regarding property.
15. Powers of trustees to sell by auction or private contract.
16. Power to sell parts.
17. Trust for sale of mortgaged property where right of redemption is barred.
18. Power of trustees to give receipts.
19. Power to compound liabilities.
20. Power to raise money by sale, mortgage or otherwise.
21. Protection of purchasers and mortgagees dealing with trustees.
22. Power to insure.
23. Application of insurance money where policy kept up under trust, power or obligation.
24. Deposit of documents and chattels for safe custody.
25. Reversionary interests, valuation and audit.
26. Obtaining valuation.
27. Accounts, Audit.
28. Power to concur with others.
29. Power to employ agents.
30. Power to delegate trusts.
31. Devolution of powers of trustees.
32. Application of Part III.

PART IV

PROTECTIONS AND INDEMNITIES OF TRUSTEES

33. Protection in respect of property not vested in trustees and other property.
34. Obligation of trustees not relieved.
35. Protection in regard to notice.

36. Exoneration of trustees in respect of certain powers of attorney.
37. Indemnity of trustees.

PART V
MAINTENANCE, ADVANCEMENT AND PROTECTIVE AND
SPENDTHRIFT TRUSTS

38. Maintenance, accumulation and advancement.
39. Protective trusts.
40. Restrictions on alienation.

PART VI
APPOINTMENT AND DISCHARGE OF TRUSTEES

41. Appointing new trustees.
42. Supplemental provisions as to appointment of trustees.
43. Retirement of trustee without new appointment.
44. Vesting of trust property in new or continuing trustees.
45. Application of Part VI.

PART VII
POWERS OF THE COURT

46. Power of Court to appoint new trustees.
47. Powers of new trustee appointed by the Court.
48. Power to authorise remuneration.
49. Vesting orders as to securities and things in action.
50. Vesting orders of charity property.
51. Persons entitled to apply for orders.
52. Power to apply to Court.

53. Hearing of application.
54. Vesting orders in relation to minor's beneficial interests.
55. Powers concerning costs.
56. Power to make an order in a cause.
57. Medical evidence concerning a person's state of mind.
58. Action may be directed.
59. Power to vary trusts.
60. Power to authorise dealings with trust property.
61. Power to give judgment in absence of trustee.
62. Power to relieve trustee from personal liability.
63. Power to make beneficiary indemnify for breach of trust.
64. Payment into Court by trustees.
65. Orders in respect of funds in Court.
66. Power to give advice or directions.
67. Court may make rules.

PART VIII
AUTHORISED PURPOSE TRUSTS

68. Meaning of "purpose trust".
69. Authorised purpose trusts.
70. Time provisions.
71. Allocations to purposes and methods of execution.
72. Applications to the Court for enforcement.
73. Rights to information in connection with applications.
74. Termination.

PART IX
SPECIAL TRUSTS

75. Special trusts.

76. Application of Part IX.
77. Objects of a special trust or power.
78. General law to apply.
79. Standing to enforce a special trust.
80. Appointment of enforcers.
81. Duties of an enforcer.
82. Rights of an enforcer.
83. Uncertainty.
84. Reformation and termination.
85. Trusteeship.
86. Theft.
87. Information to settlors.

PART X
ADDITIONAL PROVISIONS

88. Protector of trusts.
89. Managing and custodian trustees.
90. Disclosure.
91. Validation of appointments where objects are excluded or take illusory shares.
92. Validation of powers and discretionary trusts.
93. Power to continue to accumulate income.
94. Termination and modification by beneficiaries.
95. Distribution of shares.
96. Apportionment between capital and income.
97. Incorporation by reference.
98. Memorandum of trust property.
99. Perpetuities and accumulations.
100. Charitable trusts.
101. Fraudulent dispositions.
102. Trust law.

PART XI
GOVERNING LAW

- 103. Change of governing law.
- 104. Ascertainment of governing law.
- 105. Matters determined by governing law.
- 106. Exclusion of foreign laws.
- 107. Recognition of foreign laws.
- 108. Heirship rights.
- 109. Foreign judgments.

FIRST SCHEDULE	—	FORM OF POWER OF ATTORNEY
SECOND SCHEDULE	—	PROVISIONS WHICH MAY BE INCORPORATED
		1. Interpretation.
		2. Trust for sale and investment.
		3. Exercise of powers.
		4. Restriction by trustees of their powers.
		5. General powers.
		6. Supplemental provisions relating to investment by the trustees.
		7. Special provisions concerning investment directors.
		8. Powers in relation to land.
		9. Powers in relation to companies and trading.
		10. Powers to purchase properties and chattels.
		11. Power to effect life assurance policies and to sell and surrender such policies.
		12. Power to make loans to beneficiaries.
		13. Power to give guarantees.
		14. Power to give indemnities and enter into other commitments.

15. Power to borrow money and to charge the trust fund.
16. Protection for trustees in relation to underlying companies.
17. Receipts.
18. Additional powers.
19. Power to exclude unborn beneficiaries.
20. Power to add beneficiaries.
21. Power to remove beneficiaries.
22. Appointment of protectors.
23. Other provisions relating to the protector.
24. Trustees' remuneration.
25. Relaxation of other equitable rules.
26. Protection of the Trustees in respect of distributions.
27. Trustee exoneration.
28. Restriction of beneficiaries' rights.
29. Apportionment.
30. Power to change the proper law of the trust.
31. Power to vary administrative provisions.

THIRD SCHEDULE

— **STATUTORY PROVISIONS OF THE UNITED KINGDOM THAT DO NOT APPLY TO INTERNATIONAL TRUSTS**

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

INTERNATIONAL TRUSTS ORDER, 2000

In exercise of the power conferred by section 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

PART I
PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the International Trusts Order, 2000 and shall commence on a day to be appointed by the Authority, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notice in the *Gazette*.

[S 103/2010]

(2) The long title of this Order is “An Order for the creation of international trusts, and matters connected therewith and incidental thereto”.

Interpretation.

2. In this Order, unless the context otherwise requires –

“authorised investments” means investments authorised by the trust instrument or by law;

“authorised purpose trust” has the meaning assigned by section 69(3);

“Authority” means the Autoriti Monetari Brunei Darussalam established by the Autoriti Monetari Brunei Darussalam Order, 2010;

[S 103/2010]

BLUV as at 16th December 2010

“Court” means the High Court or a Judge of that Court;

“immovables in Brunei Darussalam” means any land or other immovable property in Brunei Darussalam and securities not quoted or dealt in on any stock exchange outside Brunei Darussalam of corporations that own any such property either –

- (i) directly; or
- (ii) indirectly through holdings of securities in other corporations;

“income” includes rents and profits;

“instrument” includes a written law and an instrument made under such law;

“international trust” shall be construed in accordance with section 3;

“land” includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in, to, over, or issuing out of, or derived from, land and any mines, minerals and mineral-like substances in or under land and rights of working and mining them and any parts or shares of land whether divided vertically or horizontally or in any other way, and includes undivided shares in any of the foregoing;

“Minister” means the Minister of Finance;

“mortgage” includes every kind of security for money charged on any kind of property and includes an agreement to mortgage; and “mortgage” and “mortgaging” have corresponding meanings and “mortgagee” includes every person deriving title under the original mortgagee;

“ordinary trust” means an international trust that is neither a purpose trust nor a special trust;

“pay” and “payment” as applied in relation to stocks and securities and in connection with the expression “into Court” include the deposit or transfer of the same in or into Court;

“person” includes a natural person, any company or association or body of persons, corporate or incorporated, including a partnership whether limited, unlimited or an international limited partnership created under the International Partnerships Order, 2000;

“personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person;

“possession” includes receipt of rents and profits or the right to receive the same, if any;

“property” includes –

- (a) money, goods, choses in action, land and every descriptions of property, whether movable or immovable; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of, or incident to, any property as defined in paragraph (a);

“protector” means any person appointed as such pursuant to the terms of the trust instrument and includes any duly appointed successor to an initial protector;

“rights” include estates and interests;

“sale” includes an exchange;

“securities” includes stock, funds debt obligations, options, warrants, rights to acquire debt obligations and shares and so far as relates to payments into court has the same meaning as in the written laws relating to funds in the Court; and “securities payable to the bearer” include securities transferable by delivery or by delivery and endorsement;

“settlor” includes the testator where trusts are declared by will or codicil;

“shares” means share in the capital of a company and (where the context so admits) include stock, units, options, warrants depository receipts and rights to acquire shares and in Part XIIA, includes dedicated shares;

“special trust” or “special power” means a trust or power that under section 76 is subject to Part IX of this Order;

“stock” includes fully paid up shares and, so far as relates to vesting orders made by the Court under this Order, includes any fund, annuity or security transferable in books kept by any company or society or by instruments of transfer either alone or accompanied by other formalities and any share or interest therein;

“transfer” in relation to stock or securities includes the execution of every deed or other instrument of transfer or power of attorney and the performance or intended performance of every act or thing on the part of the transferor to effect and complete the title in the transferee;

“trust” means an international trust except where the context otherwise requires;

“trust corporation” means a person licensed to conduct international trust business under the Registered Agents and Trustees Licensing Order, 2000 and, where the context so admits, includes a wholly-owned subsidiary of a trust corporation authorised under section 3(3) of that Order;

“trust instrument” means the written testamentary or other instrument if any by which, or on the terms of which, the trust is created (including any subsequent instruments affecting the terms or administration of the trust) or where the trust was not created by, or on the terms of, any written instrument refers to any trust instrument evidencing an oral declaration creating the trust.

Application and restrictions.

3. (1) This Order applies to a trust only if it is an international trust and all the provisions of this Order shall be read and understood and take effect accordingly.

(2) For the purposes of this Order, a trust is an international trust except where the context otherwise requires if it is created in writing whether by deed, unilateral declaration will or other testamentary document or otherwise and at least one of the trustees is a trust corporation or a wholly-owned subsidiary of a trust corporation authorised under section 3(3) of the Registered Agents and Trustees Licensing Order, 2000; and

- (a) if it is an authorised purpose trust or a special trust; or
- (b) if it is an ordinary trust, and
 - (i) at the creation of the trust or (if later) when it first becomes subject to the law of Brunei Darussalam the settlor does not reside in Brunei Darussalam; and
 - (ii) the trust instrument (or an instrument under which the trust becomes subject to the law of Brunei Darussalam) provides or implies that the trust is to be an international trust for the purposes of this Order.

(3) For the purposes of subsection (2)(b)(ii) –

- (a) if a trust is created by will or codicil then the testator is its settlor and the time of the testator's death shall be considered to be the time when the trust was created;
- (b) each person who donates or contributes property to a trust shall be considered a settlor;
- (c) if a settlor makes such a donation or contribution after the original creation of the trust then as regards that settlor and the property so donated the time of the donation or contribution shall be considered to be the time when the trustee became entitled to hold the donation or contribution on the trusts created and if the donation is made by will or codicil then the time of the testator's death shall be considered to be the time of the donation.

(4) No capital or income subject to an international trust shall be paid or applied (otherwise than in the execution of a charitable purpose) in any way which might confer any direct or indirect benefit on any person who is residing in Brunei Darussalam at the time of the payment or application.

(5) Subsection (4) does not prevent –

- (a) the payment of any indemnity, expenses or remuneration to trustees or former trustees, protectors or former protectors; or
- (b) any payment for goods or services provided to any trustees or former trustees, protectors or former protectors.

(6) Except with the prior consent of the Authority upon such terms as he may consider appropriate no money or other property subject to an international trust shall be invested in or upon the security of any immovables in Brunei Darussalam.

[S 103/2010]

Retention of rights by settlor.

4. (1) The express or implied retention, possession acquisition or exercise by a settlor of any one or more of the powers, functions or interests referred to in subsection (2) shall not invalidate a trust or the trust instrument or cause a trust created inter vivos to be a testamentary trust or disposition or the trust instrument creating it to be a testamentary document, provided that in the absence of express provision in that behalf nothing in this section shall operate to imply any such powers, functions and interests to be included in the terms of the trust or the trust instrument.

(2) The powers, functions and interests referred to in subsection (1) are –

- (a) any powers to revoke the trust or the trust instrument or any trusts or powers granted thereby, or to withdraw property from the trust;
- (b) any powers of appointment or disposition over any of the trust property;
- (c) any powers to amend the trust or the trust instrument;
- (d) any powers to appoint, add or remove any trustees, protectors or beneficiaries;

- (e) any powers to give directions to trustees in connection with the exercise of any of their powers or discretions;
- (f) any provisions requiring the consent of the settlor to any act or abstention of trustees;
- (g) any such other powers as are referred to in section 88;
- (h) the appointment of the settlor as a protector of the trust;
- (i) any beneficial interests of the settlor (including absolute beneficial interests) in the capital or income of the trust property or in both such capital and income; and
- (j) any interests of the settlor in any companies or assets underlying the trust property and any control of the settlor over such companies or assets.

(3) Subsections (1) and (2) do not prejudice any question as to the effect of a settlor retaining, possessing or acquiring any other powers, functions or interests.

(4) Subject to its other terms, a trust instrument may contain a power for the settlor to amend, alter or vary a trust, but such powers shall not, in the absence of express provision to the contrary include a power to add as beneficiaries any persons whatever (including the settlor and any private or charitable trusts or foundations) or to remove any beneficiaries.

PART II

INVESTMENTS

Powers of investment.

5. (1) Subject as provided in subsection 3(6) –
- (a) trustees shall have the full powers of investment and of changing investments of individual beneficial owners absolutely entitled including (without prejudice to the foregoing) –
 - (i) investing through nominees; and
 - (ii) investing in or upon the security of property of any kind in any part of the world, whether or not yielding any income or involving any liability;

- (b) the powers conferred by this section –
 - (i) shall be exercisable in the discretion of the trustees; and
 - (ii) shall be in addition to those conferred by the trust instrument or by law.

(2) The powers conferred by this section apply to a trust if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

(3) The powers conferred by this section shall be subject to any consent or direction required by the trust instrument with respect to the investment of trust property.

Exercise of powers of investment.

6. (1) Without limiting the powers of investment conferred under section 5 and subject to the terms of the trust instrument trustees may make, retain and change investments having regard to the purposes, distribution requirements and other circumstances of the trust (including, without limitation, the circumstance that a trust is an international trust any may ipso facto, but subject to its terms, be administered and discharged according to differing investment policies than a trust which is not an international trust) and of the beneficiaries.

(2) Notwithstanding subsection (1), trustees who are named or appointed as trustees in reliance upon their representation that they have special skills or expertise, have a duty to the beneficiaries to use such special skills or expertise.

(3) This section shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

Investment advice.

7. (1) Before exercising any powers of investment, trustees may but shall not be bound to obtain and consider proper advice on the question of suitability to the trust of any proposed investment.

(2) Trustees retaining any investment may but shall not be bound to obtain and consider, at such intervals as they consider appropriate having regard to the nature of the investment and other circumstances, proper advice on the suitability of continuing to retain the investment or disposing of it.

(3) For the purposes of this section, proper advice is the written advice of any investment adviser named in the trust instrument or duly appointed pursuant to its terms, or of any person including a settlor, enforcer or protector who is reasonably believed by the trustees to be qualified to give the advice as a result of that person's ability in and practical experience of matters relevant to investment decisions, and notwithstanding that it may be given in the course of that person's employment as an officer or servant of a company or other institution.

(4) Notwithstanding the provisions of section 6, trustees shall not be liable for any loss which may result from their having made, changed, retained or disposed of any investment pursuant to proper advice.

(5) The powers and immunities conferred by this section are in addition to those conferred by the trust instrument and by law including this Order.

Power to retain investments which have ceased to be authorised.

8. Trustees shall not be liable for breach of trust by reason only of their continuing to hold investments which have ceased to be authorised investments.

Loans and investments by trustees not chargeable as breaches of trust.

9. Trustees lending money on the security of any property shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made.

Powers concerning securities in companies.

10. (1) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement –

(a) for the reorganisation or reconstruction of the company;

- (b) for the sale of all or any part of the property and undertaking of the company to another company;
- (c) for the acquisition of the securities of the company, or of control of it, by another company;
- (d) for the merger, amalgamation or consolidation of the company with another company; or
- (e) for the release, modification or variation of any rights privileges or liabilities attached to the securities or any of them,

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new or surviving or consolidated company in lieu of or in exchange for all or any of the first mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

Power to pay calls on shares or satisfy guarantees.

11. Without limitation, trustees may apply capital money subject to a trust in payment of calls on any securities or in satisfaction of a liability to contribute capital to a company limited by guarantee, in either case where the securities or the liability relate to the same trust as the source of the capital.

Power to deposit money in bank.

12. (1) Trustees may, pending the negotiation and preparation of any mortgage or charge or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account.

(2) Securities payable to the bearer which are trust property may, until sold, be deposited with a bank for safe custody and collection of interest, and any expenses of any such deposit and of collection shall be paid out of capital or income of the trust property, or partly in one way and partly in the other, as the trustees in their discretion think fit.

Application of Part II.

13. The powers and immunities conferred upon Trustees by this Part shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of that instrument.

PART III GENERAL POWERS OF TRUSTEES

Powers regarding property.

- 14.** (1) Trustees shall have the full individual beneficial owners absolutely entitled –
- (a) to effect in any lawful manner any transactions or dealings regarding property including (without prejudice to the generality of the foregoing) any sales, leases, surrenders and mortgages and the grant of any easements, servitudes or rights in, to, over, or issuing out of, land, or derived from land;
 - (b) to contract to effect any such transactions;
 - (c) to execute all instruments necessary or desirable in order to effect such transactions; and
 - (d) to manage, repair, maintain, build on and otherwise improve land whether for the occupation of beneficiaries or otherwise.

(2) The power of mortgaging conferred by subsection (1) shall be exercisable for the purpose of borrowing money in order to invest it unless this is prohibited by the trust instrument.

Powers of trustees to sell by auction or private contract.

15. Where a trust for sale or a power of sale of property is vested in trustees, they may have the full powers of beneficial owners absolutely entitled to effect such a sale, including full power to postpone sale of any part for so long as they shall think fit, and including, without limitation, power to sell or concur with any other persons in selling all or any part of the property, either subject to prior charges or not and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or

other matters as the trustees think fit with power to vary any contract for sale, and to buy in at any auction or to rescind any contract for sale and to resell, without being answerable for any loss.

Power to sell parts.

16. A trust or power to sell or dispose of property includes a trust or power to sell or dispose of any part or parts of it, whether a division is horizontal, vertical segmented into constituent parts or made in any other way.

Trust for sale of mortgaged property where right of redemption is barred.

17. (1) Where any property vested in trustees by way of security becomes, by virtue of any law relating to the limitation of actions or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust for sale with full power of postponement.

(2) The net proceeds of sale after payment of costs and expenses shall be applied in like manner as the mortgage debt, if received, would have been applicable and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable; but this subsection operates without prejudice to the rule of law relating to the apportionment of such proceeds between income and capital beneficiaries sometimes referred to as the rule in *Re Atkinson*.

(3) This section shall not affect the right of any person to require that instead of a sale the property shall be conveyed to him or in accordance with his directions.

Power of trustees to give receipts.

18. (1) The receipt in writing of trustees for any money, securities or other personal property or effects payable, transferable or deliverable to them under any trust or power shall be a sufficient discharge to the person paying, transferring or delivering the same and shall effectually exonerate that person from seeing to its application or being answerable for any loss or misapplication of it.

(2) This section shall apply notwithstanding anything to the contrary in the trust instrument.

Power to compound liabilities.

19. Trustees may if and as they think fit –

- (a) accept any property before the time at which it is made transferable or payable;
or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that they think sufficient; or
- (d) accept any composition or any security for any debt or for any property claimed;
or
- (e) allow any time for payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust,

and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

Power to raise money by sale, mortgage or otherwise.

20. (1) Where trustees are authorised by the trust instrument or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have power to raise the money required by sale, conversion, calling in, or mortgage or charge of all or any part of the trust property for the time being in possession.

(2) The power to mortgage or charge conferred by subsection (1) shall be exercisable for the purpose of borrowing money in order to invest it unless this is expressly, generally, implicitly or specifically negated by the trust instrument.

Protection of purchasers and mortgagees dealing with trustees.

21. Notwithstanding anything to the contrary in the trust instrument, no purchaser or mortgagee paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is needed or that no more than is needed is raised or otherwise as to its application.

Power to insure.

22. (1) Trustees may insure against any risk in respect of any trust property as and for any interest if they were the absolute beneficial owners thereof and may pay the premium for such insurance at the discretion of the trustees out of income or out of capital.

(2) Without prejudice to the requirements relating to insurance applicable in respect of trust corporations to person licensed under the Registered Agents and Trustees Licensing Order, 2000, trustees may insure against personal liabilities (otherwise than for breach of trust) which they may incur in the execution of their trusts and may effect fidelity insurance for employees whom they employ in their capacity as trustees. The premiums for any such insurances may be paid out of the capital or income of the trust property at the discretion of the trustees.

Application of insurance money where policy kept up under trust, power or obligation.

23. Money receivable by trustees or any beneficiary under a policy of insurance shall, where the policy has been kept up under any trust in that behalf or under any power statutory or other or in performance of any covenant or of any obligation statutory or other, be capital money for the purposes of the trust unless and to the extent that the money received makes good any loss suffered having the characteristics of income.

Deposit of documents and chattels for safe custody.

24. (1) Trustees may deposit any document held by them relating to the trust or to trust property, and any other chattel which is trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents or property.

(2) Any sum payable in respect of such a deposit shall be paid out of the trust property or of other property held on the same trusts.

Reversionary interests, valuation and audit.

25. Where trust property includes any share or interest in property not vested in the trustees or the proceeds of the sale of any such property, or any other thing in action, the trustees on the

same falling into possession or becoming payable or transferable, may do any of the following –

- (a) agree or ascertain the value of it or any part of it in such manner as they may think fit;
- (b) accept in or toward satisfaction of it, at the market or current value or upon any valuation or estimate of value which they may think fit, any authorised investments;
- (c) allow any deductions for taxes, duties, costs, charges and expenses which they think proper or reasonable;
- (d) execute any release in respect of the property so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release,

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

Obtaining valuation.

26. Trustees may, for the purpose of giving effect to the trust or any of the provisions of the trust instrument or of any written law, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper and any valuation so made in good faith shall be binding upon all persons interested under the trust.

Accounts, Audit.

27. Trustees may in their absolute discretion from time to time cause the accounts of the trust to be examined or audited by an independent accountant and shall, for that purpose, produce such vouchers and give such information to such accountant as he may require; and the costs of such examination or audit including the fee of the auditor shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other as the trustees in their absolute discretion think fit but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

Power to concur with others.

28. Where an undivided share in land or in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, the trustees may (without prejudice to any trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the person entitled to or having power in that behalf over the other share or shares and notwithstanding that any one or more of the trustees may be entitled to or interested in any such other share either in his or their own right or in a fiduciary capacity.

Power to employ agents.

29. (1) Trustees may, instead of acting personally, employ and pay an agent, whether an advocate, foreign lawyer, banker, stockbroker, investment adviser, investment manager or other person, to give advice, transact any business or do any act required to be transacted or done in the execution of the trust including the receipt and payment of money.

(2) Trustees may appoint and pay any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in and executing and perfecting assurances of, or managing or cultivating or otherwise administering, any property subject to the trust in any place inside or outside Brunei Darussalam, or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes.

(3) Trustees shall be allowed and paid all charges and expenses incurred under this section out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees in their absolute discretion think fit.

(4) Trustees who make reasonable efforts to satisfy themselves that an agent has appropriate knowledge, experience and integrity shall not be chargeable with breach of trust or be responsible for any loss arising out of their having appointed the agent or joined or concurred in that appointment.

(5) Trustees who have made reasonable efforts to keep themselves informed concerning the performance of an agent shall not be liable or responsible for any default or wrongful act of the agent which occurs at a time when the agent appeared to the trustees to be performing honestly and competently.

(6) Subsections (4) and (5) shall apply to agents appointed under the powers conferred by this Order or under any power in the trust instrument.

Power to delegate trusts.

30. (1) A trustee may, where it is necessary for the proper administration of the trust notwithstanding any rule of law or equity to the contrary, by power of attorney or any other written instrument delegate to any person outside Brunei Darussalam or to any person in Brunei Darussalam while any trustee other than a trust corporation is absent from Brunei Darussalam 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.

(2) Section 3 of the Powers of Attorney Act (Chapter 13) shall not apply to a power of attorney executed pursuant to subsection (1).

(3) The power of attorney may be in the form of the power of attorney in the First Schedule with such alterations (if any) as may be appropriate or in any other appropriate form.

(4) A delegate appointed under this section shall be considered an agent of the trustee for the purposes of sections 29(5) and (6).

(5) In favour of any person dealing with the delegate, any act done or instrument executed by the delegate shall, notwithstanding that the power has been revoked by the act of the trustee or by his death or otherwise, be as valid and effectual as if the trustee were alive and of full capacity and had himself done such act or executed such instrument, unless such person had actual notice of the revocation of the power before such act was done or instrument executed and provided that such person, having knowledge that he is dealing with a delegate has obtained from the delegate a written declaration that the delegate has received no notice of revocation howsoever arising of his power.

(6) For the purpose of exercising the powers delegated to him, the delegate may exercise any of the powers of executing the trusts conferred on the trustee as trustee by law or by the trust instrument, including power for the purpose of the transfer of securities himself to delegate to an attorney a power of transfer but not including the power of delegation conferred by this section.

(7) The fact that it appears from any power given under this section or otherwise that in dealing with any securities the delegate of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the securities are inscribed or registered with any notice of the trust.

Devolution of powers of trustees.

31. (1) Where there are more than two trustees and where a power or trust is given to or imposed upon two or more trustees jointly, a decision of the majority of trustees shall be binding on all, and such a power or trust may be exercised or performed by the survivors or survivor of them (being a trust corporation) for the time being. Subject to the terms of the trust instrument where there is an equality of trustees only, then the trust corporation which is one of the trustees shall have a casting vote.

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or the other trustees or trustee for the time being of the trust.

(3) In this section, “personal representative” shall not include an executor who has renounced or has not proved.

Application of Part III.

32. Save as expressly provided, the powers and provisions contained in this Part shall apply notwithstanding the provisions of the trust instrument.

PART IV
PROTECTIONS AND INDEMNITIES OF TRUSTEES

Protection in respect of property not vested in trustees and other property.

33. Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of sale of such property, or any other thing in action, the trustees shall not be under any obligation, and shall not be chargeable with any breach of trust, by reason of any omission –

- (a) to place any distringas or stop notice or apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default or neglect on the part of the persons in whom such securities or other property or any of them or any part of any of them are for the time being, or had at any time been, vested, unless or until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken.

Obligation of trustees not relieved.

34. Nothing in section 33 shall relieve the trustees of the obligation to get in and obtain payment or transfer of such or interest or other thing in action on the same falling into possession.

Protection in regard to notice.

35. A trustee acting for the purposes of more than one trust or as trustee and in other fiduciary capacities shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust if he has obtained notice of it merely by reason of his acting or having acted for the purposes of another trust or in another fiduciary capacity.

Exoneration of trustees in respect of certain powers of attorney.

36. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or was bankrupt or was dead or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Provided that –

- (a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Indemnity of trustees.

37. (1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults and not for those of any other trustee nor for any banker, broker or other person with whom any trust money or securities may be deposited nor for any other loss, unless such loss happens through his own individual act or omission.

(2) A trustee may reimburse himself or pay or discharge out of the trust property all his proper charges and expenses incurred in or about the execution of the trusts or powers.

(3) Subsection (2) applies to a trustee who has acted in good faith after making reasonable inquiries as to the validity and propriety of the creation of the trust notwithstanding that it may subsequently have been set aside or found to have been invalid or ineffective.

(4) If the trust instrument so provides, a trustee may upon resignation, retirement, removal or otherwise ceasing to be trustee of a trust require from any continuing or new trustee (in the event of the trustee's resignation, retirement or removal), from the settlor (in the event of the trust's revocation) or from any beneficiary (in the event of a final distribution to such beneficiary) a release and indemnity holding harmless the outgoing trustee, and the servants and agents of the outgoing trustee and (if it is a body corporate) its directors and officers from

and against any and all claims, demands, actions, proceedings, damages, costs, charges and expenses whatsoever for, or arising out of, or in relation to, any act or omission of the outgoing trustee or of any such directors, officers, servants or agents in respect of the administration of the trust by the outgoing trustee.

(5) The release and indemnity under subsection (4) do not extend to any liabilities for breach of trust or in respect of which the outgoing trustee would otherwise not have been entitled to an indemnity out of the trust property had the outgoing trustee remained a trustee; and the indemnity given by any continuing or new trustees shall be limited to the trust property in their possession or under their control from time to time.

(6) A trustee who has acted in good faith after making reasonable inquiries as to the validity and propriety of the creation of a trust shall have a first and paramount charge over the trust property of an amount equal to the entire costs including its own fees and expenses and those of any agent, attorney or any other person properly incurred by the trustee or any such person in defending the trust with the sanction of the Court in any proceedings in which its validity is in issue, and not merely such costs as might be allowed by the Court in the absence of this subsection.

(7) A trustee which is a trust corporation or company authorised to undertake trust business shall be entitled to remuneration in accordance with its published terms for trust business in force from time to time and, in the absence of published terms, in accordance with such terms as may from time to time be agreed between the trustee and the Settlor or, if the Settlor is unfit, unable or unwilling to act, the person or persons by whom the power of appointing new trustees is exercisable.

(8) A trustee, whether acting as a person engaged in a profession or business or in a personal capacity, shall be entitled to all normal professional or other fees for business done, services rendered or time spent by such trustee personally or by such trustee's firm or company in the administration of these trusts, including acts which a trustee not engaged in any profession or business could have done personally.

(9) A trustee shall be entitled to retain any commission which may be received personally or by such trustee's firm in respect of any transaction carried out on behalf of this Trust for which such trustee or trustee's firm is, in the normal course of business, allowed commission, notwithstanding that the receipt of such commission was procured by an exercise by such trustee or the trustees of powers over the Trust Fund.

PART V
MAINTENANCE, ADVANCEMENT AND PROTECTIVE AND
SPENDTHRIFT TRUSTS

Maintenance, accumulation and advancement.

38. (1) Subject to the terms of the trust, and subject to any prior interest or charges affecting the trust property, where a beneficiary is a minor and whether or not his interest is a vested interest or an interest which will become vested on attaining the age of majority or a later age or upon the happening of any event, the trustee may –

- (a) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority of such later age or the happening of such an event;
- (b) pay to the parent or guardian or otherwise apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary; or
- (c) advance or appropriate to or for the benefit of any such beneficiary such income or part of such income.

(2) The receipt given by a parent or the lawful guardian of a beneficiary who is a minor shall be sufficient discharge to the trustee for a payment made under subsection (1).

(3) Subject to the terms of the trust and to any prior interest or charges affecting the trust property, the trustee at its discretion may advance or apply for the benefit of a beneficiary any part or (subject to subsections (5) and (6)) all of the trust property prior to the date of the happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.

(4) Subject to the terms of the trust, a trustee may appropriate at its discretion trust property in or towards the satisfaction of the interest of a beneficiary in such manner and in accordance with such valuation as the trustee may think fit.

(5) Subject to the terms of the trust, any part of the trust property advanced, applied or appropriated under this section shall be brought into account in determining from time to time the share of the beneficiary in the trust property.

(6) No part of the trust property advanced, applied or appropriated as provided in this section shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

(7) No trustee shall be compelled, in any manner, to exercise any discretionary power of maintenance or advancement.

Protective trusts.

39. (1) Where any income including an annuity or other periodical income payment is directed to be held on protective trusts for the benefit of any person (in this section called “the principal beneficiary”) for the period of his life or for any less period, then during that period (in this section called the “trust period”) the said income shall, without prejudice to any prior interest, be held on the following trusts, namely –

(a) upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing or until any event happens other than an advance under any statutory or express power whereby if the said income were payable during the trust period to the principal beneficiary absolutely during that period he would be deprived of the right to receive the same or any part thereof, in any of which cases as well as on the termination of the trust period whichever first happens the trust of the said income shall fail or determine;

(b) if the trust aforesaid fails or determines during the subsistence of the trust period, then during the residue of that period the said income shall be held upon trust for the application thereof for the maintenance or

support or otherwise for the benefit of all or any one or more exclusively of the other or others of the following persons (that is to say) –

- (i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or
- (ii) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would if he were actually dead be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be,

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion think fit.

(2) This section has effect subject to any variation of the implied trusts aforesaid contained in the trust instrument.

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

Restrictions on alienation.

40. (1) Notwithstanding any rule of law or equity to the contrary, it shall be lawful for a trust instrument to provide that any estate or interest in any property given or to be given to any individual as a beneficiary shall not during the life of that beneficiary, or such lesser period as may be specified in the trust instrument, be alienated or pass by bankruptcy, insolvency or liquidation or be liable to be seized, sold, attached, or taken in execution by process of law and where so provided such provisions shall take effect accordingly.

(2) Where property is given subject to any of the restrictions contained in subsection (1), the right to derive income from such property by a beneficiary and any income derived therefrom shall not pass by bankruptcy, insolvency or liquidation or be liable to be seized, attached or taken in execution by process of law.

(3) Where property is given subject to a restriction against alienation then the right to derive income from that property shall not be alienable for as long as that restriction remains in force.

(4) A restriction imposed pursuant to this section may at any time be removed in accordance with any provisions for such removal in the trust instrument and in the manner specified therein.

(5) No settlor may benefit from the provisions of this section.

PART VI

APPOINTMENT AND DISCHARGE OF TRUSTEES

Appointing new trustees.

41. (1) Where a trustee either original or substituted and whether appointed by the Court or otherwise is dead or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him or refuses or is unfit to act therein or is incapable of acting therein or is a minor, then –

(a) the person or persons nominated for the purpose of appointing new trustees by the trust instrument; or

(b) if there is no such person or no such person able and willing to act, then the surviving or continuing trustee or trustees for the time being or the personal representatives of the last surviving or continuing trustee,

may, by writing, appoint one or more other persons (whether or not residing in Brunei Darussalam and whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, desiring to be discharged, refusing, or being unfit or being incapable, or being a minor, as aforesaid.

(2) Where a trustee has been removed under a power contained in the trust instrument, a new trustee or new trustees may be appointed in the place of the trustee who is removed as if he were dead or in the case of a corporation as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly.

(3) Where a corporation being a trustee is in liquidation or has been dissolved or has been removed from the register of companies or has otherwise ceased to have a corporate existence, then for the purposes of this section the corporation shall be deemed to be, and to have been from the date of the liquidation, dissolution, removal or ceasing to have a corporate existence, incapable of acting in the trusts or powers reposed in or conferred on the corporation.

(4) The power of appointment given by subsection (1) to the personal representatives of a last surviving or continuing trustee shall be exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) At last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have power, at any time before renouncing probate, to exercise the power of appointment given by this section if willing to act for that purpose and without thereby accepting office as an executor.

(6) Whenever they in their discretion consider it to be for the benefit of the beneficiaries –

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,

may, by writing, appoint another person or other persons (whether or not residing in Brunei Darussalam and whether or not being the persons exercising the power) to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee unless the trust instrument provides to the contrary.

(7) Every new trustee appointed under this section as well before as after all the trust property becomes by law or by assurance or otherwise vested in him shall have the same powers (including discretionary powers), authorities and discretions, and may in all respects act, as if he had been originally appointed a trustee by the trust instrument.

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the provisions of this section.

(9) Where a person of unsound mind being a trustee is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee under this section unless leave has been given by the Court to make the appointment.

Supplemental provisions as to appointment of trustees.

- 42.** On the appointment of a trustee for the whole or any part of the trust property –
- (a) the number of trustees may be increased;
 - (b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustee or trustees is or are to be appointed for other parts of the trust property and any existing trustee may be appointed or remain one of such separate set of trustees or, if only one trustee was originally appointed, then save as hereinafter provided one separate trustee may be so appointed;
 - (c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed; and
 - (d) any assurance or thing requisite for vesting the trust property or any part thereof in a sole trustee or jointly in the persons who are the trustees shall be executed or done.

Retirement of trustee without new appointment.

43. (1) Where a trustee wishes to be discharged from the trust and after his discharge there will be a trust corporation to act as trustee to perform the trust then, if such trustee as aforesaid declares in writing that he wishes to be discharged from the trust and if his co-trustees and such other person, if any, as is empowered to appoint trustees consent in writing to the discharge of the trustee and to the vesting in the co-trustees alone of the trust property, the

trustee wishing to be discharged shall be deemed to have retired from the trust and shall thereby be discharged under this Order without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

Vesting of trust property in new or continuing trustees.

44. (1) Where a new trustee is appointed in writing under section 41 or 42 to perform any trust, then –

- (a) if the appointment contains a declaration by the appointor to the effect that any property or interest in any chattel subject to the trust or the right to recover or receive any debt or other thing in action so subject shall vest in the persons who by virtue of the appointment become or are the trustees for performing the trust, the appointment shall operate without any conveyance or assignment to vest in those persons as joint tenants and for the purposes of the trust the property, interest or right to which the declaration relates; and
- (b) if the appointment does not contain such a declaration, the appointment shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the property, interests and rights with respect to which a declaration could have been made.

(2) Where a retiring trustee is discharged in writing under section 43 without a new trustee being appointed, then –

- (a) if the discharge contains such a declaration as aforesaid by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants and for the purposes of the trust, the property, interests or rights to which the declaration relates; and
- (b) if the discharge does not contain such a declaration, it shall, subject to any express provision to the contrary therein contained, operate as if it

had contained such a declaration by such persons as aforesaid extending to all the property, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration shall, notwithstanding that the property, interest and right to be vested is not expressly referred to and provided that any other statutory requirements are complied with, operate (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such property, interests and rights as are capable of being and ought to be vested in those persons.

(4) Subsections (1) to (3) do not extend to any securities, stock, annuity or property which is only transferable in books kept by a company or other body or in manner directed by or under any written law.

Application of Part VI.

45. (1) The powers and provisions contained in this Part shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to the terms of the trust instrument concerning the appointment and discharge of trustees.

(2) The provisions of section 44 concerning the vesting of trust property in new or continuing trustees by vesting declaration shall be capable of applying only in relation to appointments or discharges of trustees under sections 41 to 43, or under those sections as restricted by the terms of the trust instrument.

PART VII POWERS OF THE COURT

Power of Court to appoint new trustees.

46. (1) The Court may, whenever it is necessary to appoint a new trustee or new trustees and it is found inexpedient, difficult or impracticable so to do without the assistance of the

Court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees or although there is no existing trustee.

(2) In particular and without prejudice to the generality of subsection (1) the Court may make an order appointing a new trustee in substitution for a trustee who is convicted of an offence punishable with imprisonment for not less than two years, a fine of not less than two hundred thousand dollars, or both, or is a person of unsound mind or is a bankrupt or is a corporation which is in liquidation or has been dissolved or has been removed from the register of companies or has otherwise ceased to have corporate existence or where a trustee appears to the Court for any other reason whatever to be undesirable as a trustee.

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

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

Powers of new trustee appointed by the Court.

47. Every trustee appointed by the Court shall, as well before as after the trust property becomes by law or by assurance or otherwise vested in him, have the same powers (including discretionary powers), authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the trust instrument.

Power to authorise remuneration.

48. If satisfied that the circumstances justify the order the Court may authorise a trustee (whether or not appointed by the Court) to charge such remuneration for the services of the trustee as the Court may think fit.

Vesting orders as to securities and things in action.

49. (1) In any of the following cases, namely –
(a) where the Court appoints or has appointed a trustee or where a trustee has been appointed out of court under any statutory or express power;

- (b) where a trustee who is entitled whether by way of mortgage or otherwise alone or jointly with another person to securities or to a thing in action –
 - (i) is under a disability;
 - (ii) is out of the jurisdiction of the Court;
 - (iii) cannot be found or being a corporation has been dissolved or has been removed from the register of companies or has otherwise ceased to have a corporate existence;
 - (iv) neglects or refuses to transfer securities or receive the dividends or income from them or to sue for or recover a thing in action according to the direction of the person absolutely entitled thereto for twenty-eight days following the service of a request in writing on him; or
 - (v) neglects or refuses to transfer securities or receive the dividends or income from them or to sue for or recover a thing in action for twenty-eight days following the service of an order of the Court for that purpose on him;
- (c) where it is uncertain whether a trustee who is entitled alone or jointly with another person to securities or to a thing in action is alive or dead;
- (d) where securities are standing in the name of a deceased trustee whose personal representative is under a disability;
- (e) where securities or a thing in action are vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient,

the Court may make an order vesting the right to transfer or call for a transfer of the securities or to receive the dividends or income from them or to sue for or recover the thing in action in any such person as the Court may appoint:

Provided that –

- (a) where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who on the appointment are the trustees; and
- (b) where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in the last-

mentioned person either alone or jointly with any other person whom the Court may appoint.

(2) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3) The person in whom the right to transfer or call for the transfer of any securities is vested by an order of the Court under this Order may transfer the securities to himself or any other person according to the order and all companies shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section, it shall not be lawful for any company to transfer any securities to which the order relates or to pay any dividends from them except in accordance with the order.

(5) The Court may make declarations and give directions concerning the manner in which the right to transfer any securities or thing in action vested under the provisions of this Order is to be exercised.

(6) The provisions of this Order as to vesting orders shall apply to shares in ships registered under any written law relating to merchant shipping as if they were securities.

Vesting orders of charity property.

50. The powers conferred by this Order as to vesting orders may be exercised for vesting any securities or thing in action or any interest in any securities or thing in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.

Persons entitled to apply for orders.

51. An order under this Order for the appointment of a new trustee or concerning securities or a thing in action or any interest in securities or any thing in action subject to a trust may be made on the application of any person beneficially interested in the securities or thing in action

whether under a disability or not or on the application of any person duly appointed as trustee thereof.

Power to apply to the Court.

52. Any person entitled under section 51 to apply for an order may apply to the Court by summons for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such summons, and may serve such summons on such persons as he may consider appropriate.

Hearing of application.

53. Upon the hearing of any such application the Court may, if it thinks necessary, direct a reference to the Chief Registrar of the Court, to enquire into any facts which require such investigation, or the Court may direct such application to stand over to enable the plaintiffs to adduce evidence or further evidence before the Court, or to enable the summons to be served on any person.

Vesting orders in relation to minor's beneficial interests.

54. Where a minor is beneficially entitled to any property the Court may, with a view to the application of the capital or income of the property for the maintenance, education or benefit of the minor, make an order –

- (a) appointing a person to convey or otherwise assure the property; or
- (b) in the case of securities or a thing in action, vesting the right in any person to call for a transfer of such securities, or to receive the dividends or income of them, or to sue for and recover such thing in action, upon such terms as the Court may think fit.

Powers concerning costs.

55. The Court may order the costs and expenses of and incidental to any application for an order under this Order or for any order or declaration in respect of any property subject to a trust, or of and incidental to any such order or declaration, or any document executed or act performed in pursuance of it, to be raised and paid out of the property in respect of which it is made and performed, or out of the income of that property, or to be borne and paid in such manner by such persons as to the Court may seem just.

Power to make an order in a cause.

56. Where in any cause or matter, either by evidence adduced or by the admission of the parties or by a report of the Registrar of the Court, the facts necessary for an order under this Order appear to the Court to be sufficiently proved the Court may, either upon the hearing of the cause or of any proceedings in the cause or matter, make such order under this Order.

Medical evidence concerning a person's state of mind.

57. Upon any application being made under this Order to the Court concerning a person of unsound mind the Court may, if it thinks fit, direct that medical evidence be presented to it concerning such person and postpone the making of an order upon such application until such evidence has been presented.

Action may be directed.

58. Upon any summons under this Order being made to the Court, it may postpone making any order upon the summons until the right of the applicant is declared in an action commenced for the purpose.

Power to vary trusts.

59. (1) Where property whether real or personal, movable or immovable, is held on an ordinary trust arising under any will, settlement or other disposition, the Court may if it thinks fit by order approve on behalf of –

(a) any person having directly or indirectly an interest whether vested or contingent under the trusts who by reason of being a minor or other incapacity is incapable of assenting;

(b) any person (whether ascertained or not) who may become entitled directly or indirectly to an interest under the trusts (whether discretionary or otherwise) as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so however that this paragraph shall not include any person of full age and capacity who would be of that description or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the Court;

- (c) any unborn person; or
- (d) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined,

any arrangement (by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trusts or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts:

Provided that except by virtue of paragraph (d) the Court shall not approve an arrangement under this subsection on behalf of any person unless either –

- (i) carrying it out would benefit that person; or
- (ii) carrying it out would not prejudice that person and the Court considers that its approval is appropriate in view of benefits or potential benefits to other persons.

(2) In subsection (1), “protective trusts” means the trusts specified in sections 39(1)(a) and (b) or any like trusts; “the principal beneficiary” has the same meaning as in section 40(1); and “discretionary interest” means an interest arising under the trusts specified in section 39(1)(a) or any like trusts.

(3) Where capital or income of trust property is or may be applicable for a charitable purpose or an authorised purpose the Court may if it thinks fit by order sanction in respect of that purpose the carrying out of any arrangement (by whomsoever proposed, including any such person as is described in section 72(2), and whether or not there is any person beneficially interested capable of assenting thereto) varying or revoking all or any of the trusts or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts:

Provided that the Court shall not sanction the carrying out of any arrangement under this subsection if it would be detrimental to the purpose in respect of which such sanction is sought.

(4) In subsection (3), “charitable purpose” means an exclusively charitable purpose but does not include an independent charitable company, association or other separate entity or organisation and “an authorised purpose” means a purpose of an authorised purpose trust.

(5) Neither section 93(1)(b) nor section 94 shall apply to an application under this section 59, but in deciding whether to approve an application under this section the Court may have regard to any material wishes or intentions of the settlor as established by evidence adduced on the application or ascertained (directly or by inference) from the trust instrument.

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

Power to authorise dealings with trust property.

60. (1) Where in the management or administration of any property vested in trustees any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument or by law, the Court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose on such terms and subject to such provisions and conditions, if any, as the Court may think fit and may direct in what manner any money authorised to be expended and the costs of any transaction are to be paid or borne as between capital and income.

(2) The Court may, from time to time, rescind or vary any order made under this section or may make any new or further order.

(3) An application to the Court under this section may be made by the trustees or by any of them or by any person beneficially interested under the trust or (in the case of an authorised purpose trust) by any such person as is described in section 73(2).

Power to give judgment in absence of a trustee.

61. Where in any proceedings the Court is satisfied that diligent search has been made for any person who is made a defendant in the character of trustee with a view to serving him with

a process of the Court but that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served or had entered an appearance in the proceedings and had also appeared by his advocate at the hearing, but without prejudice to any interest he may have in the matters in question in the proceedings in any other character.

Power to relieve trustee from personal liability.

62. If it appears to the Court that a trustee or a director, officer, employee, servant or agent of a corporate trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same, whether or not he has acted with the requisite degree of prudence, diligence and skill.

Power to make beneficiary indemnify for breach of trust.

63. Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary the Court may, if it thinks fit, make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust property by way of indemnity to the trustee or persons claiming through him.

Payment into Court by trustees.

64. (1) Trustees or the majority of trustees having in their hands or under their control money or securities belonging or alleged by such trustees to belong to a trust may pay the same into Court and the same shall, subject to rules of court, be dealt with according to the orders of the Court.

(2) The receipt or certificate of the proper officer of the Court shall be sufficient discharge to the trustees for the money or securities so paid into Court.

(3) Where money or securities are vested in any persons as trustees and the majority are desirous of paying the same into Court but the concurrence of the other or others cannot be obtained, the Court may order the payment into Court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker or other depository, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into Court.

(5) Every transfer, payment and delivery made in pursuance of any such order of the Court shall be valid and shall take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

Orders in respect of funds in Court.

65. (1) Such orders as shall seem fit shall from time to time be made by the Court in respect of the trust money, securities or other instruments so paid in or deposited as aforesaid or for the investment and payment of any such money or of any dividends or interest on any such money, securities or other instruments and for the transfer and delivery out of such money, securities and other instruments and for the administration of any such trusts generally upon a summons to be presented in a summary way to the Court by such party or parties as to the Court appear to be competent and necessary in that behalf.

(2) Service of a summons referred to in subsection (1) shall be made upon such person or persons as the Court shall determine and direct.

(3) Every order made upon any such summons shall have the same authority and effect and shall be enforced and subject to rehearing and appeal in the same manner as if the same had been made in an action regularly commenced in the Court.

(4) Where it appears that any such trust money, securities or other instruments cannot be safely distributed without the commencement of an action, the Court may direct such action to be commenced.

Power to give advice or directions.

66. (1) A trustee may without commencing an action apply upon a written statement for the opinion, advice or direction of the Court on any question respecting the management or administration of the trust property or the assets of any testator or intestate.

(2) Such application shall be served upon and the hearing attended by all persons interested in such application or such of them as the Court thinks expedient.

(3) A trustee acting upon the opinion, advice or direction given by the Court shall be deemed so far as regards his own responsibility to have discharged his duty as such trustee in the subject matter of the said application.

(4) Subsection (3) shall not indemnify any trustee in respect of any act done in accordance with such opinion, advice or direction if he is guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

(5) The costs of such application shall be in the discretion of the Court.

(6) Where any trustee applies for the opinion, advice or direction of the Court under this section, the written statement shall be signed by an advocate and the Court may require the applicant to attend by his advocate either in Chambers or in open Court where the Court deems it necessary to have the assistance of an advocate.

Court may make rules.

67. The Chief Justice may make such rules of court as from time to time shall seem necessary to give effect to the provisions of this Part.

**PART VIII
AUTHORISED PURPOSE TRUSTS**

Meaning of “purpose trust”.

68. In this Part “a purpose trust” means a trust of capital or income or both which –

- (a) is for some abstract and impersonal purpose or purposes (whether general or specific) other than an exclusively charitable purpose or exclusively charitable purposes;
 - (b) other than may be necessary to satisfy the provisions of section 69(1)(d)(ii) is not for the direct or indirect benefit of any particular ascertainable persons or class of persons (whether or not immediately ascertainable); and
 - (c) does not confer on any person an interest such as would enable that person to enforce the trust otherwise than under section 69(3) or section 72,
- and so that, without prejudice to the generality of the foregoing, a trust for the purpose of holding securities in a company or any other assets constituting the trust property shall be deemed a purpose trust;

“enforce” in relation to a trust means to require or compel trustees to execute carry out and perform their duties under the trust instrument and to bring and prosecute proceedings to enforce the terms of the trust;

“enforcer” means a person who has a duty or power to enforce a purpose trust.

Authorised purpose trusts.

69. (1) A trust instrument, whether or not it is a testamentary instrument, may declare a purpose trust if –

- (a) the purpose is reasonable and practicable;
- (b) the purpose is not immoral or otherwise contrary to public policy or unlawful;
- (c) at the creation of the trust or (if later) when it first becomes subject to the law of Brunei Darussalam the settlor does not reside in Brunei Darussalam; and
- (d) the trust instrument (or an instrument under which the trust first becomes subject to the law of Brunei Darussalam) –
 - (i) provides that the trust is to be an authorised purpose trust for the purposes of this Order; and
 - (ii) makes provision for the disposition of surplus assets of the trust upon its termination;

(iii) appoints or makes provision for the appointment of an enforcer to enforce the trust.

(2) For the purposes of subsection (1)(c) –

(a) if a trust is created by will or codicil then the testator is its settlor and the time of the testator's death shall be considered to be the time when the trust was created;

(b) each person who donates property to a trust shall be considered a settlor;

(c) if a settlor makes such a donation after the original creation of the trust then as regards that settlor and the property so donated the time of the donation shall be considered to be the time when the trust was created and if the donation is made by will or codicil then the time of the testator's death shall be considered to be the time of the donation.

(3) In this Order, a purpose trust created in accordance with subsections (1) and (2) is referred to as “an authorised purpose trust”.

(4) Nothing in this Order shall prejudice directly or by implication any validity which might be enjoyed by any purpose trust that is not an authorised purpose trust.

Time provisions.

70. (1) A trust instrument may declare an authorised purpose trust of capital or income to take effect in possession before or after trusts affecting the same property, including trusts for persons or exclusively charitable purposes or other purpose trusts so far as valid.

(2) A trust instrument may provide for an authorised purpose trust to vest in interest or in possession either immediately or at a future time or on a future event or contingency.

(3) A trust instrument may provide for an authorised purpose trust to continue either until a specified time or event (contingent or other) or indefinitely.

Allocations to purposes and methods of execution.

71. (1) If and so far as a contrary intention is not expressed in the trust instrument, and subject to the terms of that instrument, the trustees of an authorised purpose trust shall have power at their absolute discretion –

- (a) to allocate capital and income among different purposes of the trust; and
- (b) to devise and determine the methods to be used to carry out the purposes of the trust.

(2) If the trust instrument of an authorised purpose trust does not allocate capital or income among different purposes of the trust, or if the trustees fail to exercise a power to do so, the Court may make such an allocation as in its opinion best fulfils the intent of the settlor.

(3) If the trust instrument of an authorised purpose trust does not state any specific, precise and certain method of carrying out any stated purpose, or if the trustees fail to exercise a power to devise and determine such methods trustees may use, or the Court may order the use of the method or methods that, in their or its opinion, best fulfil the intent of the settlor.

Applications to the Court for enforcement.

72. (1) The Court may make such orders as it considers just and appropriate for the appointment of an enforcer or the enforcement of an authorised purpose trust.

- (2) Such orders may be made on the application of –
 - (a) any person appointed by or under the trust instrument to enforce the trust;
 - (b) the settlor, unless the trust instrument provides otherwise;
 - (c) a trustee of the trust;
 - (d) a protector of the trust; or
 - (e) the Attorney General.

(3) Where any costs are incurred by an applicant in connection with any application under subsection (2), the Court may make such order as it considers just as to the payment of those costs out of the assets of the trust.

(4) At any time after the commencement of any such application the Court may make such pre-emptive orders as it thinks fit for the applicant to be indemnified out of the trust assets against any costs and expenses of or incidental to the application that the applicant may thereafter incur or be ordered to pay to other parties.

Rights to information in connection with applications.

73. (1) Subject as provided in subsection (2), a person appointed under section 69(1)(d)(iii) or making an application under section 72 shall be entitled, in addition to any documents, information or other rights specifically provided for in the trust instrument, to inspect and take copies of –

- (a) the financial records of the trust;
- (b) the trust instrument and written instruments executed pursuant to the trust instrument;
- (c) opinions and legal advice of advocates and foreign lawyers received by the trustees,

and to have all other information and access to documents to which the applicant would be entitled under section 90 if the applicant were entitled to a vested interest under the trust.

(2) Subsection (1) shall not extend to any documents brought into being for the purpose or in contemplation of the proceedings.

Termination.

74. If the purposes of an authorised purpose trust become satisfied or become impossible or impracticable to carry out or unlawful or contrary to public policy, then the trustees may determine or the Court may declare that the trust has terminated and upon such declaration –

- (a) if the trust instrument provides for further trusts to take effect subject to, or on the termination of, the authorised purpose trust then such further trusts shall take effect accordingly; or
- (b) otherwise the trust property and its income shall be dealt with in accordance with the provisions of the trust instrument regarding surplus assets.

PART IX
SPECIAL TRUSTS

Special trusts.

75. (1) In this Part, unless the context otherwise requires –

“beneficiary” means a person who will or may derive any benefit or advantage, directly or indirectly, from the execution of a special trust;

“enforce” in relation to a trust means to require or compel trustees to execute carry out and perform their duties under the trust instrument and to bring and prosecute proceedings to enforce the proper execution of the trust;

“enforcer” means a person who has a duty or power to enforce a special trust;

“power” includes an administrative power as well as a dispositive power;

“trust” include a trust of a power, as well as a trust of property; and

“trustee” has a correspondingly extended meaning.

(2) In this Part, a power is said to be held on trust if granted or reserved subject to any duty, expressed or implied, qualified or unqualified, to exercise the power or to consider its exercise.

Application of Part IX.

76. (1) A trust or power is subject to this Part and is described as a special trust, if –
(a) at the creation of the trust or (if later) when it first becomes subject to the law of Brunei Darussalam the settlor does not reside in Brunei Darussalam; and

(b) the trust instrument (or an instrument under which the trust first becomes subject to the law of Brunei Darussalam) provides that that the trust is to be a special trust for the purposes of this Order.

(2) Paragraphs (a), (b) and (c) of section 69(2) apply for the purposes of paragraph (b) of subsection (1).

(3) If a trust or power is created by a written instrument in exercise of a special power, and the instrument contains no declaration as to the application of this Part, this Part shall, subject to evidence of a contrary intention, be deemed to be intended to apply; and for the purposes of subsection (1) the instrument shall be deemed to contain a declaration to that effect.

(4) A trust or power that does not meet the requirements of subsections (1) and (2), and is not deemed to do so by virtue subsection (3), is not a special trust or power and is not subject to this Part.

Objects of a special trust or power.

77. (1) The objects of a special trust or power may be persons or purposes or both.

(2) The persons may be of any number.

(3) The purposes may be of any number or kind, charitable or non-charitable, provided that they are lawful and not contrary to public policy.

General law to apply.

78. The law relating to special trusts and powers is the same in every respect as the law relating to ordinary trusts and powers, save as otherwise provided in this Part.

Standing to enforce a special trust.

79. (1) A beneficiary of a special trust does not as such have standing to enforce the trust, or an enforceable right against the trustee or an enforcer, or an enforceable right to the trust property.

(2) The only persons who have standing to enforce a special trust are such persons, whether or not beneficiaries or settlors, as are appointed to be its enforcers –

- (a) by the trust instrument; or
- (b) under provisions of the trust instrument for appointing new enforcers; or
- (c) by the Court under section 80.

(3) The trust instrument of a special trust may either confer a power or impose a duty on an enforcer to enforce the trust.

(4) If the trust instrument does not provide that an enforcer is to have only a power to enforce the trust then the enforcer has a duty to do so.

(5) A power or duty to enforce a trust is presumed, subject to evidence of a contrary intention, to extend to every trust which is created by or on the terms of the same instrument, or pursuant to a power so created.

(6) This section does not affect –

- (a) the enforcement, by a trustee, an enforcer or any other person involved in the administration of a trust, of a right to remuneration, indemnity or the payment of expenses out of trust property; or
- (b) the enforcement of a trustee's duties by a co-trustee or a successor trustee.

Appointment of enforcers.

80. (1) The Court may, on the application of a trustee, an enforcer or a beneficiary, appoint an enforcer –

- (a) if the terms of the trust require the appointment of an enforcer, but –
 - (i) it is impossible to make the appointment without the Court's assistance; or
 - (ii) it is difficult or inexpedient to make the appointment without the Court's assistance;
- (b) if an enforcer is unable, unwilling or unfit to carry out the enforcer's duties; or

- (c) if there is no enforcer of full capacity willing to carry out the enforcer's duties.

(2) In the circumstances described in subsection (1)(c), the trustees shall within thirty days after becoming aware that such circumstances exist apply to the Court for the appointment of an enforcer, or for the administration of the special trust under the direction of the Court, or for such other order as the Court shall think fit and a trustee who knowingly fails to do so shall be guilty of an offence and liable on conviction to a fine not exceeding twenty thousand dollars.

Duties of an enforcer.

81. (1) An enforcer with a duty to enforce a special trust has a duty to act responsibly with a view to enforcing the proper execution of the trust.

(2) An enforcer with a power to enforce a special trust has a duty to consider responsibly at such intervals as the enforcer reasonably considers appropriate whether and how to exercise the power and then to act accordingly.

(3) A trustee or another enforcer, or any person expressly authorised by the trust instrument, has standing to bring and prosecute an action against an enforcer to compel him to perform his duties.

Rights of an enforcer.

82. (1) Subject to the provisions of subsection (2), an enforcer is entitled, in addition to any documents, information or other rights specifically provided for in the trust instrument, to examine and take copies of –

- (a) the financial records of the trust;
- (b) the trust instrument and deeds and other written instruments executed pursuant to the trust instrument;
- (c) opinions and legal advice of advocates and foreign lawyers received by the trustees,

and to have all other information and access to documents to which a person with a vested interest under an ordinary trust is entitled under section 90.

(2) Subsection (1) shall not extend to any documents brought into being for the purposes or in contemplation of any legal proceedings brought by the enforcer.

(3) An enforcer has the same rights as a person with a beneficial interest under an ordinary trust to bring administration and other actions for the good of the trust and to make for the good of the trust any applications to the Court for an opinion, advice or direction or otherwise.

(4) An enforcer has the rights of a trustee of an ordinary trust to protection, indemnity and payment of expenses out of trust property, and to make applications to the Court under section 51.

(5) An enforcer has, on behalf of the trust, the same personal and proprietary remedies for breach of trust against a trustee and against third parties as a beneficiary of an ordinary trust.

Uncertainty.

83. (1) Subject to subsection (4)(b), a special trust is not rendered void by uncertainty as to its objects or mode of execution.

(2) The terms of a special trust may give to the trustee or any other person power to resolve any uncertainty as to its objects or mode of execution.

(3) If a special trust has two or more objects and the trust instrument does not allocate the trust property among them, then if and so far as a contrary intention is not expressed in the trust instrument, and subject to the terms of that instrument, the trustees of the trust have power in their absolute discretion to allocate capital and income among the different purposes of the trust.

(4) If any uncertainty as to the objects or mode of execution of a special trust or as to the allocation of trust property among its objects cannot be resolved, or has not been resolved pursuant to the terms of the trust, the Court –

- (a) may resolve the uncertainty –
 - (i) by reforming the trust; or
 - (ii) by settling a plan for its administration; or
 - (iii) in any other way which the Court considers appropriate; or
- (b) insofar as the objects of the trust are uncertain and the general intent of the trust cannot be found from the admissible evidence as a matter of probability, may declare the trust void.

(5) This section applies to powers as to trusts.

Reformation and termination.

84. If the execution of a special trust in accordance with its terms is or becomes in whole or in part –

- (a) impossible or impracticable; or
- (b) unlawful or contrary to public policy; or
- (c) obsolete in that, by reason of changed circumstances it fails to achieve the general intent of the special trust,

the trustee shall, unless the trust is reformed pursuant to its own terms, apply to the Court to reform the trust cy-près or, if or insofar as the Court finds that it cannot be reformed consistently with the general intent of the trust, the trustee shall dispose of the trust property as though the trust or the relevant part of it has failed.

Trusteeship.

85. (1) Except as authorised by an order of the Court, or permitted by or pursuant to this section the trustees shall keep in Brunei Darussalam at the office of the trust corporation a documentary record of –

- (a) the terms of the special trust;
- (b) the identity of the trustee and the enforcers;
- (c) all settlements of the property upon the special trust and the identity of the settlors;
- (d) the property subject to the special trust at the end of each of its accounting years; and
- (e) all distributions or applications of the trust property.

(2) The Court may authorise non-compliance with subsection (1) on such terms as it thinks fit if it is satisfied that the execution of the trust will not be prejudiced.

(3) A person who, in Brunei Darussalam or elsewhere, knowingly administers a special trust while there is a breach of subsection (1)(a), apart from –

(a) actions intended to bring the trust into compliance with subsection (1)(a); and

(b) actions intended to preserve the trust property pending compliance with subsection (1)(a),

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred thousand dollars or both.

(4) A trustee who knowingly fails to comply with subsection (1)(b) shall be guilty of an offence and liable on conviction to a fine not exceeding twenty thousand dollars.

(5) This section does not apply to the holder of a power which is granted or reserved by the terms of a special trust to a person other than the trustees of the special trust, even though the power is held in trust.

(6) This section does not apply (except as regards any antecedent offence) if the governing law of the trust has been changed from the law of Brunei Darussalam.

(7) The Authority, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may make regulations restricting the application of subsection (1).

[S 103/2010]

Theft.

86. (1) Section 378 of the Penal Code (Chapter 22) does not apply in relation to special trusts.

(2) For the purposes of the Penal Code, property held upon a special trust shall be regarded, as against the trustee of the property or of any power in relation to the trust, and against any enforcer of the trust, as belonging to others (except to the extent of the beneficial interest, if any, of the trustee or enforcer under the terms of the trust), and an intention on the part of any such trustee or enforcer to defeat the trust shall be regarded accordingly as an intention to deprive others of their property.

Information to settlors.

87. A person who, as trustee, accepts a settlement of property upon a special trust without taking steps to ensure that the settlor, or the person making the settlement on his behalf, understands who will have standing to enforce the trust shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years, a fine not exceeding two hundred thousand dollars or both.

PART X
ADDITIONAL PROVISIONS

Protector of trusts.

88. (1) A trust instrument 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 of some other person as protector, and if so provided in the trust instrument the trustees shall not be liable for any loss caused by their actions if the previous consent was given and they acted in good faith.

(2) A person may charge reasonable remuneration for his services as protector unless otherwise provided by the trust instrument.

Managing and custodian trustees.

89. (1) 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 shall be 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.

(2) A trust instrument may appoint a person to be custodian trustee of any trust in any case where such person could be appointed to be trustee, in the same manner as it could be so appointed.

(3) Subject to the provisions of the trust instrument where a custodian trustee is appointed of any trust –

- (a) trust property may be vested in the custodian trustee;
- (b) the management of the trust property and the exercise of all powers and discretions exercisable by the trustee under the trust shall remain vested in the managing trustees;
- (c) the sole function of the custodian trustee shall be to get in and hold the trust property, and invest its funds, and dispose of the assets, as a majority of the managing trustees in writing direct;
- (d) the custodian trustee shall not be liable for acting on any such direction;
- (e) the custodian trustee shall not be liable for any act or default on the part of any of the managing trustees;
- (f) all actions and proceedings touching or concerning the trust property shall be brought or defended in the name of the custodian trustee at the written direction of the managing trustees, and the custodian trustee shall not be liable for the costs thereof apart from the trust property;
- (g) no person dealing with the custodian trustee shall be concerned to inquire as to the concurrence or otherwise of the managing trustees, or be affected by notice of the fact that the managing trustees have not concurred;
- (h) the power of appointing new trustees, when exercisable by the trustee, shall be exercisable by the managing trustees alone, but the custodian

trustee shall have the same power as any other trustee of applying to the Court for the appointment of a new trustee.

(4) Subject to the provisions of the trust instrument and to any order made by the Court, in any case where remuneration or commission is payable to the trustee of any trust property, remuneration may be paid to both the custodian trustee and the managing trustees.

Disclosure.

90. (1) Subject to the terms of the trust instrument and subsection (2) –

(a) trustees of trusts declared inter vivos or otherwise shall be under a legal obligation to take reasonable steps to inform each beneficiary who has, but may not be aware of having, a vested interest under the trusts (whether or not in possession and whether or not subject to defeasance) of the existence of the trusts and of the general nature of that interest; and

(b) at any time when there are no beneficiaries with such vested interests, trustees of trusts declared inter vivos or otherwise shall be under a legal obligation to take reasonable steps to ensure that at least one person who is capable of enforcing the trusts (whether as a beneficiary with a contingent interest, or as the object of a discretionary power, or otherwise howsoever) is aware of the existence of the trusts and of the general nature of the interest entitling him to enforce them.

(2) When a beneficiary entitled to information under subsection (1)(a) is a minor or is determined by the trustees acting in good faith to be of unsound mind –

(a) the trustees shall give information under subsection (1), not to the beneficiary, but to the parents or duly appointed legal guardians of the minor beneficiary, or (as the case may be) the duly appointed receivers, conservators, curators or other legal representatives of the beneficiary determined by the trustees to be of unsound mind; and

(b) notwithstanding the foregoing provisions of this section, no information shall be given if the trustees in their absolute discretion consider that it would not be in the best interest of the beneficiary to give it.

(3) Save as provided by subsection (1)(b), and unless a person vested by the trust instrument with power to request or approve disclosure requests or approves such disclosure, trustees shall be under no legal obligation to disclose the existence of their trusts to –

- (a) any beneficiaries who are interested only contingently on their surviving other beneficiaries or the settlor, or on the occurrence of other events; or
- (b) any persons who are only objects of discretionary powers; or
- (c) any other persons whomsoever, whether beneficiaries or not, who are not entitled to vested interests (whether or not in possession and whether or not subject to defeasance) under the trusts.

(4) Subject to the provisions of subsection (9), trustees may nonetheless in their absolute discretion without any such request or approval disclose the existence of their trusts to such persons as are mentioned in subsection (3)(a), (b) or (c) if such disclosure is necessary or convenient in connection with distributions to such persons, or if the trustees in their absolute discretion consider such disclosure to be in the interest of the trust as a whole.

(5) The following provisions shall have effect with respect to the disclosure of documents –

- (a) unless a person vested by the trust instrument with power to request or approve disclosure requests or approves such disclosure, trustees shall be under no legal obligation to disclose to any such persons as are described in subsection (3)(a), (b) or (c) the documents described in subsection (6) or any other documents or information;
- (b) subject to the provisions of subsection (9), trustees may nonetheless in their absolute discretion, without any such request or approval, disclose the documents described in subsection (6) and any other information about their trusts to any such persons as are described in subsection (3)(a), (b) and (c) at the expense of those persons;
- (c) subject to the provisions of subsection (5)(d), trustees shall be under a legal obligation at the request and expense of any beneficiaries having vested interests under the trusts (whether or not in possession and whether or not subject to defeasance) to disclose to such beneficiaries the documents described in subsection (6);

- (d) in the case of minor beneficiaries and those determined by the trustees to be of unsound mind, the provisions of subsection (2) shall have effect in relation to the disclosure of documents under subsection (5)(c) as they do in relation to the giving of information under subsection (2);
- (e) subject to the provisions of subsection (9), trustees may in their absolute discretion disclose to any beneficiaries having such vested interests as are described in paragraph (c) any other information about the trust property and its administration.

(6) The documents referred to in subsection (5) are –

- (a) the trust instrument and all other documents in which the terms of the trust or any exercise of any trust, power or discretion are to be found;
- (b) all financial statements of the trust; and
- (c) all financial statements of companies wholly owned by the trustees as trustees of the trust.

(7) When disclosing any documents or information to any beneficiary or other person the trustees shall, if other beneficiaries have requested confidentiality or if the trustees in their absolute discretion determine confidentiality to be in the best interest of such other beneficiaries, take all reasonable steps to secure the right to confidentiality of the other beneficiaries by providing such beneficiary or other person only with such documents or information as enable that beneficiary's own true entitlement and actual interest or benefits under the trust to be determined; such documents and information may include copies or certified extracts of the trust instrument or other documents and copies of advices or statements from which the names and interests of other beneficiaries have been edited or deleted in order to preserve the confidentiality to which such other beneficiaries are entitled.

(8) Notwithstanding anything to the contrary in this section, trustees shall not be bound or compelled by any process of discovery or inspection or under any equitable rule or principle to disclose or produce to any beneficiary or other person any of the following documents, that is to say –

- (a) any memorandum or letter of wishes issued by the settlor or any other person to the trustees, or any other document recording any wishes of the settlor; or
- (b) any document disclosing any deliberations of the trustees as to the manner in which the trustees should exercise any discretion of theirs or disclosing the reasons for any particular exercise of any such discretion or the material upon which such reasons were or might have been based; or
- (c) any other document relating to the exercise or proposed exercise of any discretion of the trustees, including legal advice obtained by them in connection with the exercise by them of any discretion.

(9) Without prejudice to the provisions of subsection (10), no disclosure of the kind otherwise required or permitted by subsections (4), (5)(b) or (5)(e) shall be made by trustees in breach of any prohibition or restriction of such disclosure contained in the trust instrument.

(10) No such prohibition or restriction, and nothing in this section, shall prejudice the validity of any trusts or the entitlement of any beneficiaries who have in any manner become aware of any trusts to obtain orders of the Court for administration or accounts, or for the execution of the trusts, or any other order of the Court not being an order for the discovery, inspection, disclosure or production of such documents as are described in subsection (8), or for any information or disclosure which by subsections (2)(b), (3), (5)(a) or (9) trustees are under no legal obligation to make.

Validation of appointments where objects are excluded or take illusory shares.

91. (1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that –

- (a) an unsubstantial, illusory or nominal share only is appointed to, or left unappointed to devolve upon, any one or more of the objects of the power; or
- (b) any object of the power is thereby altogether excluded,

but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

(2) This section does not affect any provision in the instrument creating the power that declares the amount of any share from which any object of the power is not to be excluded.

Validation of powers and discretionary trusts.

92. (1) Neither powers for trustees, settlors, protectors or others to add to the beneficiaries of a trust, or to appoint trust property among a class of persons, nor any discretionary trusts, shall be invalid on the ground that it is not possible to ascertain with certainty all the potential beneficiaries of the power or trust, or on the ground that the class of potential beneficiaries is unlimited, or limited only by the exclusion of specified persons.

(2) The validity of a trust shall not be prejudiced by the inclusion of any power or discretion whose validity is preserved by subsection (1).

Power to continue to accumulate income.

93. (1) When a trust instrument expressly directs the accumulation of income –

- (a) the trustees may in their absolute discretion give effect to that direction notwithstanding any demand for the distribution of income or accumulations of income by any beneficiary or beneficiaries entitled to give a valid receipt for them and entitled (apart from this section) to put an end to the accumulation of income; and
- (b) notwithstanding anything contained in any written law to the contrary or any rule of law or equity, but subject to section 59(5), the beneficiaries shall not be entitled to vary the trusts so as to modify or remove the discretion conferred on the trustees by this section.

(2) This section shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subjects to the terms of that instrument.

Termination and modification by beneficiaries.

94. (1) Notwithstanding any rule of equity or practice of the Court to the contrary, but subject to section 59(5), neither a beneficiary who is solely interested in the trust property, nor all the beneficiaries who together are all the persons interested in it, shall be entitled, though in

existence and ascertained and of full capacity, to terminate or modify the trusts affecting the property, if this would either be contrary to the terms of the trust instrument or would defeat a material purpose of the settlor in creating the trust, unless the settlor is living and also consents.

(2) The material purposes of the settlor for the purpose of subsection (1) may be ascertained from the trust instrument (directly or by inference) or by collateral evidence.

Distribution of shares.

95. Beneficiaries entitled to a share of trust property, whether real or personal, movable or immovable, and whether or not readily divisible, shall not be entitled to demand the distribution of that share if its distribution would prejudice the value of any other share of the trust property which is not yet distributable.

Apportionment between capital and income.

96. (1) The rules of equitable apportionment known as the Rule in *Howe v. Earl of Dartmouth*, the Rule in *Re Earl of Chesterfield's Trusts* and the Rule in *Allhusen v. Whittell* shall not (in any of their branches) apply to an international trust.

(2) Whenever trustees of an international trust in their discretion determine that property held by them for successive interests is not (when considered as a whole) so invested as to maintain a fair balance between beneficiaries interested in current income and other beneficiaries, or that a particular receipt disturbs that balance, the trustees may apportion income receipts to capital of the trust property or apportion capital receipts to income of the trust property so far (if at all) as they in their discretion consider necessary in order to restore such balance.

(3) On the application of a beneficiary (whether or not under a disability) aggrieved by any act or failure to act by trustees under subsection (2) the Court may give such directions as the Court may think fit for the purpose of redressing such grievance.

(4) A trustee who has acted in good faith shall not be personally liable for the costs of any other party to any such application and the costs of such a trustee of such an application shall be provided for out of the trust property or its income.

(5) Subsections (2), (3) and (4) shall apply if and so far only as a contrary intention is not expressed in the trust instrument and shall have effect subject to that instrument.

Incorporation by reference.

97. (1) A trust instrument may incorporate or exclude by reference any of the provisions set out in the Second Schedule, with or without any modifications.

(2) In any such provisions so incorporated, unless a contrary intention appears –

(a) “Beneficiaries” means persons who are entitled to benefit under the Trust or in whose favour a discretion to distribute capital or income of the Trust Fund may be exercised and “Beneficiary” has a corresponding meaning;

(b) “the Order” means this Order or any modification or re-enactment of it;

(c) “the Trust” means the trust governed by the trust instrument;

(d) “the Trust Fund” means the property of all kinds subject to the trusts of the trust instrument for the time being;

(e) “the Trustees” means the trustees or trustee of the Trust for the time being and “Trustee” has a corresponding meaning; and

(f) expressions defined in section 2 have the meanings given to them by that section.

(3) Powers conferred on the trustees by any provisions incorporated as above shall be in addition and without prejudice to other powers conferred on the trustees by law or by the trust instrument.

Memorandum of trust property.

98. A memorandum signed by the trustees as to property paid or transferred to or otherwise vested in or accepted by the trustees is in the absence of fraud conclusive evidence of the payment, transfer or other vesting.

Perpetuities and accumulations.

99. International trusts shall not be subject to the following enactments or rules of law in so far as they apply in and are in force in Brunei Darussalam –

- (a) any rule against or limiting accumulation of trust funds under sections 164, 165 or 166 of the Law of Property Act, 1925 of the United Kingdom; or
- (b) the rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or issue of an unborn person; or
- (c) any rule against perpetuities or against perpetual trusts, to the intent that an international trust may continue in perpetuity.

Charitable trusts.

100. (1) For the purposes of international trusts –

- (a) the protection of the environment including without limitation fauna flora historic or environmentally significant sites and buildings is a charitable purpose;
- (b) the advancement of human and animal rights and fundamental freedoms are charitable purposes whether or not advanced by political means; and
- (c) the provision of facilities for recreation and assistance in providing such facilities are charitable purposes if the facilities are provided in the interests of social welfare:

Provided that to be charitable an international trust must be for the public benefit or for the benefit of an ascertainable section of the public.

(2) The requirement of subsection (1)(a) that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless –

- (a) the facilities are provided with the object of improving the conditions of life for the persons or other objects for whom the facilities are primarily intended; and
- (b) either –
 - (i) those persons have need of the facilities by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or

- (ii) the facilities are to be available to the members, or the male or female members, of the public at large.

(3) Subject to the said requirement, subsection (1)(a) applies in particular to the provision of facilities at village halls, community centres and men's, women's and mixed social clubs and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.

(4) An international trust shall not fail to qualify as a trust for charitable purposes only on the ground that its purposes may benefit the public or a section of the public outside Brunei Darussalam either partially or exclusively.

Fraudulent dispositions.

101. (1) Subject to the provisions of this section, every disposition of property to or in favour of the trustees of an international trust as such trustees or to or in favour of any beneficiaries of an international trust as such beneficiaries shall, if made with an intent to defraud and at an undervalue, be voidable at the instance of a creditor thereby prejudiced.

(2) In subsection (1) –

- (a) “an intent to defraud” means an intention on the part of the person making the disposition, or directly or indirectly causing it to be made, willfully to defeat an obligation or liability (including a contingent liability) which is owed to the creditor on the date of the disposition and of which the person making the disposition then has actual notice; and
- (b) “at an undervalue” means for no consideration or for a consideration that is of substantially less value in money or money's worth than the property disposed of.

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

(4) No action or proceedings pursuant to this section shall be entertained unless commenced within six years after the relevant disposition.

(5) If a disposition is set aside under this section then –

(a) unless the Court is satisfied that the trustees have acted in bad faith –

(i) the trustees shall have a first and paramount charge over the property, the subject of the disposition, and any property representing that property, of an amount equal to the entire costs and expenses properly incurred by the trustees in the defence of the action or proceedings to set the disposition aside (and not merely such costs and expenses as might otherwise be allowed by the Court); and

(ii) the disposition shall be set aside subject to the proper fees, costs, expenses, pre-existing rights, claims and interests of the trustees and of any predecessor trustees who have not acted in bad faith; and

(b) unless the Court is satisfied that a beneficiary of the trust has acted in bad faith the disposition shall only be set aside subject to the right of each beneficiary to retain any distribution made consequent upon the prior execution or exercise of a trust, or exercise of a power or discretion vested in the trustee of the trust or any other person, and otherwise properly executed or exercised.

(6) The burden of proving that a trustee or beneficiary has acted in bad faith shall be upon the person making the allegation.

(7) A disposition shall be set aside pursuant to this section only to the extent necessary to satisfy the debt or liability to the creditor at whose instance the disposition had been set aside together with such costs as the Court may allow.

(8) Nothing in this section –

- (a) shall validate any disposition of property which is neither owned by the transferor nor the subject of a power in that behalf vested in the transferor;
- (b) shall affect the recognition of a foreign law in determining whether the transferor is the owner of such property or the holder of such power.

(9) Nothing in this section shall create or enable to be enforced any right claim or interest avoided or defeated by section 108.

(10) Neither section 172 of the Law of Property Act, 1925 (in so far as it applies in and is in force in Brunei Darussalam) nor any rule of law or equity other than this section concerning settlements or other dispositions for no or for inadequate consideration or concerning dispositions defeating or delaying creditors shall apply to any disposition of property to or in favour of the trustees of an international trust as such trustees or to or in favour of any beneficiaries of such a trust as such beneficiaries.

(11) This section shall apply to a disposition wherever the property is situated at the time of the disposition and even though the disposition is not (apart from this section) governed by the law of Brunei Darussalam; and this section shall so apply to the exclusion of any foreign law.

Trust law.

102. (1) The governing law of an international trust shall be the law of Brunei Darussalam.

(2) Subject to the provisions of this Order, in the application of the law of Brunei Darussalam to an international trust, the law of trusts shall be taken to be the same as the law applicable to trusts in England on 1st. January, 2000, with the exception of the statutory provisions of the United Kingdom specified in the Third Schedule.

(3) The exclusion of those provisions does not imply that any earlier statutory provisions repealed by those provisions are to apply.

PART XI GOVERNING LAW

Change of governing law.

103. (1) Where a term of a trust so provides, the governing law may be changed to or from the law of Brunei Darussalam if –

- (a) in the case of a change to the law of Brunei Darussalam, such change is recognised by the governing law previously in effect; and
- (b) in the case of a change from the law of Brunei Darussalam, the new governing law recognises the validity of the trust and the respective interests of the beneficiaries.

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

(3) For the avoidance of doubt, a change in the governing law of a trust shall not –

- (a) cause a new trust to be created; or
- (b) prejudice or affect the continuity of the trust.

Ascertainment of governing law.

104. In identifying the governing law previously in effect for the purposes of section 103(1)(a), consideration should first be given to the terms of the trust instrument and to any evidence therein as to the intention of the parties; and the other circumstances of the trust shall be considered only if the terms of the trust instrument fail to provide such evidence as to the intention of the parties.

Matters determined by governing law.

105. Subject to section 107, all questions arising in regard to an international trust or in regard to any disposition of property upon the trusts thereof including, without prejudice to the generality of the foregoing, questions as to –

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

shall be determined in accordance with the law of Brunei Darussalam, without reference to the laws of any other jurisdictions with which the trust or disposition may be connected.

Exclusion of foreign laws.

106. (1) Without limiting the generality of section 105 but subject to section 107, it is hereby expressly declared that no international trust governed by the law of Brunei Darussalam and no disposition of property to be held on trust that is otherwise valid under the law of Brunei Darussalam is void, voidable, liable to be set aside or defective in any manner by reference to a foreign law, nor is the capacity of any settlor to be questioned, by reason that –

- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust or forbid trusts; or
- (b) the trust or disposition avoids or defeats rights, claims or interests conferred by any foreign law (or by the law of Brunei Darussalam unless the settlor died domiciled there), upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any foreign, judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests.

(2) In subsection (1) –

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

“personal relationship” includes every form of relationship by blood or marriage, including former marriage and in particular a personal relationship between two persons which exists if –

- (i) one is the child or remoter descendant of the other, natural or through adoption (whether or not the adoption is recognised by law) legitimate or illegitimate; or
- (ii) one is married to the other, whether or not the marriage is recognised by law; or
- (iii) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parent and child or remoter descendant or husband and wife; or
- (iv) personal relationships exist between each of them and a third person,

and so that no change in circumstances shall be treated for the purposes of this definition as causing a personal relationship once established to terminate.

Recognition of foreign laws.

107. (1) Sections 105 and 106 –

(a) shall not validate –

- (i) any disposition of property which is neither owned by the settlor nor the subject of a power in that behalf vested in the settlor; or
- (ii) any trust or disposition of immovable property in a jurisdiction other than Brunei Darussalam in which such trust or disposition is invalid according to the law of such jurisdiction; or

- (iii) any testamentary trust or disposition of movables which is invalid according to the laws of the testator's last domicile;
- (b) shall not affect the recognition of foreign laws in determining whether the settlor was the owner of the settled property or was the holder of a power to dispose of such property generally;
- (c) shall take effect subject to any express term of a trust or disposition to the contrary;
- (d) as regards the capacity of a corporation shall not affect the recognition of the laws of its place of incorporation; and
- (e) shall not affect the recognition of foreign laws prescribing generally, without reference to the existence or terms of the trust, the formalities for the disposition of property.

(2) In subsection (1)(e), "formalities" means any documentary or other actions required generally by the laws of a relevant jurisdiction for all dispositions of like form concerning property of like nature, without regard to –

- (a) the fact that the particular disposition is made in trust; or
- (b) the terms of the trust; or
- (c) the circumstances of the parties to the disposition; or
- (d) any other particular circumstances,

but includes any special formalities required by reason that the party effecting the disposition is not full age, is subject to a mental or bodily infirmity, or is a corporation.

Heirship rights.

108. An heirship right conferred by a foreign law in relation to the property of a living person shall not be recognized as –

- (a) affecting movable property in any part of the world for the purpose of section 106(1)(a) or any other purpose; or
- (b) constituting or creating an obligation or liability for the purpose of section 101(2) or any other purpose.

Foreign judgments.

109. A foreign judgment shall not be recognized or enforced to give rise to any estoppel so far as it is inconsistent with sections 106, 107 or 108.

FIRST SCHEDULE

Section 30(3)

Form of power of attorney

(a) For an individual trustee

THIS POWER OF ATTORNEY given on 20[] by me [*name of individual trustee donor*] of [*address of donor*] **WITNESSES** as follows:

[1 Appointment]

I appoint [*name of attorney*] of [*address of attorney*] to be my attorney for the purpose of section 30 of the International Trusts Order, 2000, with authority to execute or exercise on my behalf all the trusts, powers and discretions vested in me as trustee of a trust instrument dated [*date of instrument*] made between [*name of settlor*] (1) and [*name of original trustee(s)*] (2) [of a trust known as [*common name of trust, if any*]].

[*if for a limited period of time*]

2 Duration

This power of attorney shall continue until [*date*].

Signed sealed and delivered)
by [*name of donor*])
in the presence of:-)

L.S.

[*name address and occupation
of witness*]

(b) For a corporate trustee

THIS POWER OF ATTORNEY given on 20[] by [*name of corporate trustee donor*] of [*address of donor*] (“the Donor”) **WITNESSES** as follows:

[1 Appointment]

The Donor appoints [*name of attorney*] of [*address of attorney*] to be its attorney for the purpose of section 30 of the International Trusts Order, 2000, with authority to execute or exercise on its behalf all the trusts, powers and discretions vested in it as trustee of a trust instrument dated [*date of instrument*] made between [*name of settlor*] (1) and [*name of original trustee(s)*] (2) [of a trust known as [*common name of trust, if any*]].

[if for a limited period of time

2 Duration

This power of attorney shall continue until [*date*].

The common seal of [*name of corporate donor*] was hereunto affixed in the presence of:—

L.S.

.....
Authorised signatory

.....
Authorised signatory

SECOND SCHEDULE

Section 97

Provisions which may be incorporated

1. Interpretation.

Section 97(2) of the Order governs the interpretation of these provisions.

2. Trust for sale and investment.

The Trustees shall stand possessed of the Trust Fund upon trust either to permit so much of it as shall not already consist of money to remain as invested for so long as the Trustees shall think fit or at their discretion to sell call in or convert into money all or any part of it and at their discretion to invest the proceeds of such sale calling in and conversion and any money received in respect of the premises in any of the investments authorised by the trust instrument with power from time to time at the like discretion to vary or transpose the same for or into any investments so authorised.

3. Exercise of powers.

3.1 The Trustees shall exercise the powers and discretions vested in them as they shall think most expedient for the benefit of all or any of the persons actually or prospectively interested under the Trust, and may exercise (or refrain from exercising) any power or discretion for the benefit of any one or more of them without being obliged to consider the interests of the others or other.

3.2 Subject to paragraph 3.1 every discretion vested in the Trustees shall be absolute and uncontrolled and every power vested in them shall be exercisable at their absolute and uncontrolled discretion and the Trustees shall have the same discretion in deciding whether or not to exercise any such power.

4. Restriction by trustees of their powers.

The Trustees shall have power at any time or times by instrument or instruments in writing revocable or irrevocable to release or restrict or contract not to exercise any

power conferred on them hereby or by the trust instrument or by law notwithstanding the fiduciary nature of any such power.

5. General powers.

The Trustees shall have all powers of investment, management, sale, exchange, partition, mortgage, leasing, insurance, protection, improvement, equipment, dealing and disposition (and all other powers) of an absolute beneficial owner of the Trust Fund and their powers shall not be restricted by any principle of construction but shall operate according to the widest generality of which the foregoing words are capable notwithstanding that certain powers are more particularly set forth below or in the trust instrument.

6. Supplemental provisions relating to investment by the trustees

6.1 The trustees may retain any money for the time being comprised in the Trust Fund uninvested for so long as they shall think fit whether producing income or not.

6.2 The Trustees may (notwithstanding anything in section 6 of the Order) at their discretion invest the whole or any part of the Trust Fund for the purpose only of capital growth (as opposed to a certain level of income yield or for any other purpose) and in the professed exercise of this power the Trustees shall not be liable for any loss to the Trust premises arising from any investment or purchase made in good faith.

6.3 The Trustees (notwithstanding anything in section 6 of the Order) shall not be under any obligation to diversify the investment of the Trust Fund but may exercise the powers conferred upon them so that the whole or a major part of the Trust Fund is or remains invested in the stock shares or obligations of a single company or in a single parcel of real or leasehold or other immovable property situated in any country other than Brunei Darussalam, or in any investment (whether authorised hereby or by the trust instrument or by law) issued in or in the currency of or situated in a single country.

6.4 The Trustees shall have power to appoint any person body of persons or corporation (“the investment manager”) to advise in respect of the investment of the whole or any part of the Trust Fund or to manage the investment of the

whole or any part of the Trust Fund whether on a discretionary or some other basis upon such terms and conditions as the Trustees shall think fit including terms and conditions –

- (a) providing for the remuneration of the investment manager;
- (b) providing for the protection or indemnity of the investment manager;
- (c) authorising the investment manager to enter into any transaction on behalf of the Trustees in which the investment manager has a personal interest or interest in another fiduciary capacity including a sale of investments by the investment manager to the Trustees or purchase of investments by the investment manager from the Trustees;
- (d) authorising the investment manager to sell investments comprised in the Trust Fund together with investments comprised in other funds under the management or control of the investment manager or to purchase investments on behalf of the Trust Fund together with investments on behalf of such other funds;
- (e) delegating to the investment manager any of the powers of the Trustees relating or incidental to investment of the Trust Fund or the part concerned;
- (f) conferring powers of sub-delegation,

and the Trustees may exercise the power hereby conferred notwithstanding that the investment manager may be associated with the Trustees or any of them without being liable to account for any remuneration or profit of the investment manager, and the Trustees shall not be liable for any loss resulting to the Trust Fund from the appointment of the investment manager or for the acts or defaults of the investment manager.

7. Special provisions concerning investment directors

- 7.1 This paragraph applies where the trust instrument makes provision for there to be an Investment Director.
- 7.2 Where this paragraph applies the person or persons (if any) nominated for the purpose of appointing Investment Directors by the trust instrument shall have power (subject to the other provisions of this paragraph) –

- (a) to appoint one or more Investment Directors in respect of all or any part of the Trust Fund (or any company or other body in which any part of the Trust Fund is invested); and also
 - (b) to remove any Investment Director.
- 7.3 Each Investment Director shall have power to give directions as to the management and investment of any part of the Trust Fund for which that Investment Director is responsible (including the management of any company or other body in which any part of the Trust Fund is invested) and the Trustees shall do all acts and things within their power to comply with such directions. Such directions shall be in writing unless the Investment Director and the Trustees agree otherwise.
- 7.4 Notwithstanding and in priority to anything expressed elsewhere in the trust instrument or implied by law –
- (a) Except in the case of actual fraud or dishonesty on the part of the Trustee sought to be made liable none of the Trustees shall be liable for any loss to the Trust Fund or its income arising out of or in connection with –
 - (i) the appointment or removal of any Investment Director; or
 - (ii) the exercise or the failure by any Investment Director to exercise any of the powers conferred on the Investment Director; or
 - (iii) any act or thing done or omitted to be done in compliance with the directions of any Investment Director.
 - (b) The Trustees shall not be bound to do any of the following –
 - (i) monitor, supervise or control in any way the management and affairs of any company or other body in which any part of the Trust Fund is invested;
 - (ii) seek to procure any income or other distribution from any such company or other body;
 - (iii) take any professional or other advice with regard to any investments, money or other property owned by any company or other body in which any part of the Trust Fund is invested or the management and affairs of any such company or other body;
 - (iv) take any other action in relation to such investments, money or other property or the management and affairs of any such company or other body; or

- (v) take any steps (whether by themselves alone or in combination or concert with any other person or persons) to procure that any such company or other body shall do all or any of the things specified in the above sub-paragraphs of this paragraph 7.4 unless that company or other body is directed to do so by an Investment Director in exercise of the powers hereby conferred on the Investment Director,

notwithstanding that a reasonably prudent man of business might be expected to have done all or any of those things.

- 7.5 Except in the case of actual fraud or dishonesty on the part of the Trustee sought to be made liable, none of the Trustees shall be liable for any loss occasioned by the failure to do any things which they are not bound to do by virtue of paragraph 7.4.

8. Powers in relation to land.

Where the Trust Fund for the time being includes any land or other immovable property in any part of the world outside Brunei Darussalam (in this paragraph referred to as “the property”) –

- 8.1 The Trustees may lease the property or any part of it for any purpose whatsoever and whether involving waste or not and for any term whatsoever and either wholly or partly in consideration of a rent (whether fixed or variable) or fine or premium or the erection improvement or repair or an agreement to erect improve or repair buildings on the property and may accept (with or without consideration) a surrender of any lease of the property or any part of it.

- 8.2 The Trustees may in executing any trust or power of sale sell the property or any part of it either wholly or partly in consideration of an annual sum payable either in perpetuity or for any term (whether definite or indefinite) and being either reserved out of the property sold or secured in such other manner as the Trustees shall think fit.

- 8.3 The Trustees shall not be bound to see nor be liable or accountable for omitting or neglecting to see to the repair or insurance of any buildings on the property or to the payment of any outgoings in respect of it but may repair and insure any such buildings in such manner and to such extent as they shall think fit and pay out of the income of the Trust Fund the costs of all such repairs and of effecting

and keeping up any such insurance and may pay such outgoings as aforesaid in priority to any other trusts affecting the same income.

- 8.4 The Trustees may from time to time expend capital money comprised in the Trust Fund in erecting demolishing and rebuilding and making alterations and improvements to any buildings on the property or any part of it to such extent and in such manner as they shall think fit and any certificate in writing of any architect or surveyor employed by the Trustees to the effect that any work specified in such certificate is or includes any alteration or any improvement to any such building shall be conclusive as between the Trustees and all Beneficiaries that any capital money expended on such work was properly so expended in exercise of this power.

9. Powers in relation to companies and trading.

The Trustees shall have the following powers (in addition to those vested in them by the trust instrument or by law) –

- 9.1 Power to arrange or join or concur in arranging for the incorporation or setting up in any part of the world of any limited or other company, partnership or enterprise to purchase, take on lease, or otherwise acquire or to manage, cultivate or otherwise administer all or any of the property forming part of the Trust Fund or any right of any kind over the same either with or without any other assets, and to accept such consideration for any such purchase lease or other acquisition (whether in the form of cash or rents or options or obligations or securities of the same or of any other company or by way of participation in the profits or assets of any partnership or enterprise or in any other form whatsoever) and to arrange for such company, partnership or enterprise to have all such powers and to pay or allow to any such company, partnership or enterprise such fees or other remuneration for such management, cultivation or other work of administration as the Trustees shall in their discretion think fit.
- 9.2 Power to promote or join with others in promoting and to approve control acquiesce in or agree to and carry into effect any scheme proposal or offer for or leading to or being a step in the reorganisation, reconstruction, merger, consolidation or amalgamation of any company or corporation whose securities form part of the Trust Fund or the alteration of the rights attached to any

property forming part of the Trust Fund or attached to any securities or other assets whatsoever forming part of the Trust Fund.

- 9.3 Power to concur in the winding-up or liquidation of any company in which they are interested as holders of shares or other securities and to accept in satisfaction of all or any of their rights in any such winding-up or liquidation a distribution in specie of the assets of any such company and thereafter to hold or carry on business with such assets either alone or in conjunction with any other person or persons whatsoever and wheresoever.
- 9.4 Power to obtain or join with others in obtaining from any stock exchange a quotation for or permission to deal in any securities which or some of which form part of the Trust Fund and to sell or join with any other person or persons in selling or disposing of any security with a view to creating a market in such securities whether or not a sale or disposition would on any other ground be desirable or expedient.
- 9.5 Power to promote, or join with others in promoting, and to apply all or any part of the capital of the Trust Fund towards the formation and financing of, any company or corporation for the purpose of acquiring or exploiting any property or of carrying on any business if the Trustees think it would be for the benefit either temporary or permanent of the Trust Fund.
- 9.6 Power to carry on whether alone or in partnership or as a joint venture with others any trade or business and to assist or finance to any extent the carrying on of any trade or business by others.
- 9.7 Power to employ servants and independent contractors and to purchase plant and equipment in connection with any trade or business.

10. Power to purchase properties and chattels.

- 10.1 The Trustees shall have power to purchase with or without vacant possession improve or repair any real or leasehold or other immovable property wherever outside Brunei Darussalam it may be situated as, or which is used as, a residence or place of business for any Beneficiary and to permit such Beneficiary to occupy such property upon and subject to such terms and conditions (if any) as to payment of rent rates taxes and other expenses and outgoings and as to insurance repair and decoration and generally as the Trustees think fit.

10.2 The Trustees shall have power to purchase 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 or not occupying land purchased or acquired as aforesaid 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 to insurance preservation maintaining inventories and generally as the Trustees think fit.

11. Power to effect life assurance policies and to sell and surrender such policies.

11.1 The Trustees shall have power to effect, or enable any Beneficiary to effect, any policy of assurance on the life of any person (any such policy to be assigned to the Trustees or their nominees if not effected by them) and to maintain any such policy or any other policy of assurance which has been assigned to them out of the capital of the Trust Fund and so that any moneys received on the maturity or on the surrender or sale of any such policy shall form part of the capital of the Trust Fund.

11.2 Power to sell or surrender or convert any policy effected under the powers conferred by paragraph 11.1 or assigned to the Trustees into a fully paid policy or to reduce the sum assured in consideration of a reduction of future premiums thereunder or otherwise deal with the same with the like full and unrestricted powers as if they were a sole beneficial owner thereof.

12. Power to make loans to beneficiaries.

The Trustees shall have power to lend the whole or any part of the Trust Fund to any Beneficiary upon such terms as to repayment security and interest or interest free as the Trustees may in their discretion think fit and whether or not such a loan would be prudent.

13. Power to give guarantees.

13.1 The Trustees shall have power to guarantee any loan to or other obligation of –
(a) any Beneficiary or any company in which any Beneficiary has an interest;

(b) any company some or all of the securities of which are comprised in the Trust Fund;
on any terms which they think fit.

13.2 The Trustees may mortgage, charge or pledge the Trust Fund or any part of it in support of any guarantee given by the Trustees and may enter into such indemnities as they think fit in connection with any such guarantee.

14. Power to give indemnities and enter into other commitments.

14.1 The Trustees may enter into any indemnity in favour of any former trustees or any other person in respect of any fiscal imposition or other liability of any nature relating to the Trust or to the Trust Fund, any part of it, any assets comprised in it, or its income and may mortgage charge or deposit the whole or any part of the Trust Fund or any assets comprised in it as security for any such indemnity in such manner in all respects as they think fit.

14.2 The Trustees may give any indemnity, warranty, guarantee, undertaking or covenant or enter into any type of agreement that they think fit relating to the transfer or sale of any business or shares in a company owned or held by the Trustees (whether relating to the business or company itself or to the assets liabilities shares or employees or any other aspect of the business or company) in favour of any transferee purchaser or other relevant party and including any limitation or restriction on value or otherwise as the Trustees think fit.

15. Power to borrow money and to charge the trust fund.

15.1 The Trustees may at any time and from time to time borrow money whether or not on the security of the Trust Fund, with power to –

- (a) pay any interest thereon out of the capital or income of the Trust Fund;
and
- (b) charge any part of the capital or income (including any future income) of the Trust Fund with repayment of any money so borrowed or payment of any interest thereon,

and may pay or apply the money so raised in any manner in which money forming part of the capital of the Trust fund may be paid or applied (including for the avoidance of doubt investing money so raised).

15.2 The Trustees may mortgage, charge or pledge the Trust Fund or any part or parts of it as security for any liability properly incurred by them as trustees of the Trust.

16. Protection for trustees in relation to underlying companies.

The Trustees shall not be bound or required to interfere in the management or conduct of the business of any company any shares or securities of which form part of the Trust Fund (whether or not such shares or securities give the Trustees control of such company) but so long as the Trustees shall have no express notice of any act of dishonesty or misappropriation of monies on the part of the directors having the management or such company the Trustees may leave the conduct of its business (including the payment or non-payment of dividends) wholly to such directors and shall not be under obligation to take steps to remove directors who may recommend any retention and the Trustees may cause or permit any company to retain its income undistributed notwithstanding that the effect of such retention may be to benefit those interested in capital at the expense of those interested in income.

17. Receipts.

17.1 The receipt of the treasurer or other proper officer shall be a good discharge to the Trustees for any income or capital payable to any charity or charitable body and the Trustees shall not be concerned further as to its application.

17.2 If any money shall become payable to or for the benefit of any Beneficiary who shall at the time be under the age of eighteen the Trustees may pay the same to his or her parent or guardian whose receipt shall be a good discharge to the Trustees who shall not be concerned further as to its application.

18. Additional powers.

The Trustees shall have the following additional powers namely –

18.1 Power to accept additions.

To accept additions to the Trust Fund and if they think fit to administer them as one fund therewith for all purposes;

18.2 Power to pay duties and taxes.

In the event of any duties, fees or taxes whatsoever becoming payable in any state or territory in any part of the world in respect of the Trust Fund or any part of it or of its income either by the Trustees or any Beneficiaries or in any other circumstances whatsoever, to pay all such duties, fees or taxes out of the Trust Fund or the income thereof and to have entire discretion as to the time and manner in which the said duties fees or taxes shall be paid and so that the Trustees may pay such duties, fees or taxes notwithstanding that the same shall not be recoverable from the Trustees or any Beneficiaries or that the payment shall not be to the advantage of any such person and may be prejudicial to any one or more of the Beneficiaries;

18.3 Power to sell lease and exchange.

To sell, lease and exchange and grant options over any property real or personal, movable or immovable, which may at any time constitute the whole or any part of the Trust Fund (or concur with any other person or persons in so doing) for such consideration and on such terms as the Trustees think fit and whether for the purposes of reinvestment, distribution or division and to make such contracts and enter into such undertakings relating to the Trust Fund or to any part of it as the Trustees in their uncontrolled discretion consider advantageous to the Trust;

18.4 Power to vote and give proxies.

With respect to any property constituting the whole or part of the Trust Fund to exercise all powers which an individual owner might exercise without being restricted in any way by the office of Trustees including (without hereby limiting the foregoing power or any other general power contained in this Schedule or in the trust instrument or conferred by law) voting upon or in respect of any securities of any corporation or giving 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.

18.5 Power to apply for shares and renounce.

At any time or times to accept any offer of and take up –

- (a) any bonus shares or other securities whatsoever proposed to be issued or offered for issue to the Trustees on any capitalisation of profits or reserves; and
- (b) any rights to the allotment or issue of any securities offered to the Trustees as holders of any other securities with full power to subscribe for and pay up all securities issued pursuant thereto and to sell the rights to allotment or issue of such securities.

18.6 Power to appropriate.

To appropriate the Trust Fund or any part of it in such manner and in accordance with such valuation as they think fit and without the consent of any Beneficiary being required for any such appropriation.

18.7 Power to obtain legal opinion.

To take the opinion of an advocate locally or where necessary or appropriate of a foreign lawyer concerning any difference arising under the Trust or any matter in any way relating to the Trustees or to their duties in connection with the trusts created by the trust instrument and in all matter to act in accordance with the opinion of such advocate or foreign lawyer.

18.8 Power to give receipts.

To give receipts for any moneys securities or other property or effects and so that any receipt so given shall be a sufficient discharge to the person paying transferring or delivering the same and shall effectively exonerate him from seeing to the application thereof or being answerable for any loss or misapplication thereof.

18.9 Power to delegate operation of bank accounts.

To delegate to any person the operation of any bank, building society or other account.

19. Power to exclude unborn beneficiaries.

The Trustees shall have power by irrevocable instrument in writing to declare that no person born on or after the date of such instrument or such later date as may be specified therein shall be capable of being beneficially interested under the Trust.

20. Power to add beneficiaries.

20.1 This paragraph applies where the trust instrument provides that further persons or classes of persons or descriptions of persons may be added to the class of Beneficiaries.

20.2 Where this paragraph applies the person or persons nominated for the purpose by the trust instrument shall have power by writing to declare that any person or persons or class or description of persons shall thereafter be included amongst the Beneficiaries and the trust instrument shall thereafter have effect and every power and discretion under it shall be exercisable as if such person or persons had originally been included amongst the Beneficiaries.

21. Power to remove beneficiaries.

21.1 This paragraph applies where the trust instrument provides that persons or classes of persons or descriptions of persons may be removed from the class of Beneficiaries.

21.2 Where this paragraph applies the person or persons nominated for the purpose by the trust instrument shall have power by writing to declare that any person or persons or class or description of persons shall thereafter be excluded from the class of Beneficiaries and the trust instrument shall thereafter have effect and every power and discretion under it shall be exercisable as if such person or persons had originally been excluded from the Beneficiaries but without prejudice to any previous payment of income or capital to any person so excluded or to any appointment previously made provided that this power shall not be exercisable so as to leave no member of the class of Beneficiaries.

22. Appointment of protectors.

This paragraph applies where the trust instrument makes provision for the office of Protector of the Trust.

22.1 Where no Protector is appointed by the trust instrument the first Protector shall be such person (if any) as shall be nominated as such by the person for the time being having power to appoint a new Protector in accordance with the provisions of paragraph 22.2.

22.2 If a Protector, either original or substituted, dies (or being a corporation is dissolved), or wishes to retire, or is removed, or is unable or unwilling to act, then subject to any restrictions imposed by the trust instrument on the number or identity of Protectors –

- (a) the person or persons nominated for the purpose of appointing new Protectors by the trust instrument; or
- (b) if there is no such person or no such person willing and able to act then the surviving or continuing Protector or Protectors; or
- (c) if there is no surviving or continuing Protector willing and able to act then the Trustees,

may by instrument in writing or will or codicil appoint one or more persons to act as the Protector or Protectors in place of the Protector so deceased, dissolved, wishing to retire, or being unable or unwilling to act.

22.3 Where a corporation being a Protector is in liquidation, or has been dissolved, or has been removed from the register of companies, or has otherwise ceased to have a legal corporate existence then for the purposes of this paragraph the corporation shall be deemed to be and to have been from the date of the liquidation, dissolution, removal, or ceasing to have a corporate existence unable to act as a Protector.

22.4 Unless the trust instrument provides that there may not be more than one Protector then –

- (a) the person or persons nominated for the purpose of appointing new Protectors by the trust instrument; or
- (b) if there is no such person or no such person willing and able to act then the Protector or Protectors for the time being,

may by instrument in writing appoint one or more persons to be an additional Protector or additional Protectors but it shall not be obligatory to appoint any additional Protector unless the trust instrument provides to the contrary.

22.5 Where a Protector wishes to retire as Protector then if such Protector declares by instrument in writing that he wishes to be discharged from the office of Protector, and if his co-Protectors and such other person (if any) in whom the power of appointing new Protectors is immediately prior to such retirement vested by instrument in writing consent to the discharge of the Protector the

Protector wishing to be discharged shall be deemed to have retired and shall by the instrument be discharged from that office without any new Protector being appointed in his place.

23. Other provisions relating to the protector.

- 23.1 A separate set of Protectors may be appointed for any part of the Trust Fund which is held on trusts distinct from those relating to any other part or parts of the Trust Fund notwithstanding that no new Protector or Protectors is or are to be appointed for other parts of the Trust Fund and any existing Protector may be appointed or remain one of such separate set of Protectors.
- 23.2 Any Protector being an individual engaged in any profession or business shall be entitled (notwithstanding section 89(4) of the Order) to charge and be paid all usual professional and other charges for business done and time spent and services rendered by him or his firm in connection with the Trust whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of such professional or business person.
- 23.3 A corporation may be appointed as Protector on such terms as to remuneration and otherwise as the person or persons making the appointment may approve or prescribe.
- 23.4 Any power or discretion made subject to the consent or agreement of the Protector shall be exercisable free from that requirement if and so long as there is no Protector.
- 23.5 The Protector may from time to time by written notice to the Trustees declare (either generally or in relation to any particular act or acts and either permanently or for such period as shall be specified in the notice) that any act or acts declared in the trust instrument to require the consent of the Protector shall not require such consent and the said notice shall be effective according to its terms.
- 23.6 It is hereby declared that –
- (a) there may be more than one Protector and so long as there shall be more than one Protector the Protectors shall act jointly and references herein and in the trust instrument to the Protector shall (where the context so admits) be references to the Protectors;

- (b) where the powers of appointing a new or additional Protector or Protectors are vested in the Trustees such powers may only be exercised by them so as to appoint a person or corporation which is independent of the Trustees.

24. Trustees' remuneration.

- 24.1 Any trustee being an individual engaged in any profession or business shall be entitled to charge and be paid all usual professional and other charges for business done and time spent and services rendered by him or his firm in the execution of the trusts and powers of the Trust whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of such professional or business person.
- 24.2 Any trustee being a corporation shall be entitled in addition to reimbursement of its proper expenses to remuneration for its services in accordance with such corporation's published terms and conditions for trust business in force from time to time and in the absence of any such published terms and conditions in accordance with such terms and conditions as may from time to time be agreed between such trustee and the Protector (if any).
- 24.3 No trustee or director or other officer of any corporation which is a trustee shall be liable to account for any remuneration or other profit received by him in consequence of his acting as or being appointed to be a director or other officer or servant of any company even though his appointment was procured by an exercise by him or by the Trustees of voting rights attached to securities in the Trust Fund or by an abstention from exercising such voting rights.
- 24.4 If a trustee being a corporation is a bank or an associated or subsidiary company of a bank then –
 - (a) such trustee; or
 - (b) any associated company; or
 - (c) any person employed by any of the above,
may do any of the following –
 - (i) transact all banking and similar business in connection with the Trust on the same terms as would be usual between such trustee or any such associated company and its customers;

- (ii) undertake the safe custody of documents relating to the Trust on the same terms as are usual between such trustee or such associated company and its customers;
- (iii) acts as investment manager or adviser or in any similar capacity on behalf of the Trust;
- (iv) take part whether as principal banker or agent or as trustee of any other estate or trust fund in any transaction involving the Trust and in particular dispose of or acquire from the Trust Fund any investment or other property;
- (v) act as manager trustee or investment adviser of any unit or investment trust or any similar body whose business is the holding directly or indirectly through any other body of a portfolio of investments any units or shares of which are comprised in the Trust Fund or as the trustee of any security which is comprised in the Trust Fund and shall be entitled to retain any commission or other profit or benefit whatsoever which it he or they may receive in connection with any of the matters referred to in this subparagraph (v) or otherwise by reason of the investment or management of the Trust Fund in any manner authorised by the trust instrument or by law.

25. Relaxation of other equitable rules.

Notwithstanding any rule of equity or law to the contrary –

25.1 The Trustees may enter into any transaction (including a sale purchase or loan) notwithstanding that one or more of their number have some other interest in it whether in a personal or a fiduciary capacity provided that –

- (a) at least one of their number has no such other interest; and
- (b) a duly qualified independent valuer or other adviser has advised that the transaction is a fair and reasonable one for the Trustees to enter into,

and a purchaser shall not be concerned to see that the preceding subparagraph of this proviso has been complied with.

25.2 Any Trustee may act notwithstanding that he or his spouse or a member of his family is beneficially interested under the Trust or may otherwise have a

personal interest in the mode or result of the exercise or non-exercise of any particular power or discretion or in such circumstances the Trustees may refrain from acting otherwise than as a formal party in which event such power or discretion shall be exercisable by his co-Trustee or co-Trustees alone.

26. Protection of the Trustees in respect of distributions.

The Trustees may distribute the capital and income of the Trust Fund without having ascertained that there is no person whose parents were not married to each other at the time of his birth (or who claims through such a person) who is or may be beneficially interested in the Trust Fund and the Trustees shall not be liable to any such person of whose existence they had no actual notice at the time of distribution.

27. Trustee exoneration.

None of the Trustees shall be liable for the consequences of any mistake or forgetfulness whether of law or fact of the Trustees or of their legal or other advisers or of any of them or for any breach of duty or trust whatsoever whether by way of commission or omission unless it shall be proved to have been made given done or omitted by way of willful gross negligence or in personal conscious bad faith by the trustee sought to be made liable.

28. Restriction of beneficiaries' rights.

No Beneficiary shall be entitled –

- 28.1 to compel the sale or other realisation of any property or investments whether or not producing income;
- 28.2 to require the declaration or distribution of any dividend by any company in which the Trust Fund or any part of it may be invested;
- 28.3 to require the Trustees to exercise any powers they may have of compelling such distribution; or
- 28.4 to insist on the investment of any part of the Trust Fund in property or investments which produce income.

29. Apportionment.

- 29.1 Unless the Trustees in their absolute discretion 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 other income may have been earned and accrued wholly or partially in respect of a period prior to such date.
- 29.2 Notwithstanding anything to the contrary in section 97(2) of the Order securities in any corporation distributed in specie to the Trustees as the holders of securities in the same or another corporation shall be capital of the Trust except and so far as the Trustees in their discretion consider that they should be attributed to income in order to avoid injustice to beneficiaries interested in income.

30. Power to change the proper law of the trust.

- 30.1 The Trustees may at any time or times and from time to time declare in writing that the Trust shall from the date of such declaration take effect in accordance with the law of any state or territory in any part of the world there specified and that the forum for the administration of the Trust shall thenceforth be the courts of that state or territory and as from the date on which such declaration has effect the law of the state or territory so named shall be the law applicable to the Trust and the courts of that state or territory shall be the forum for the administration of the Trust but subject always to this power conferred on the Trustees and until any further declaration is made in exercise of this power.
- 30.2 Upon any declaration by the Trustees in exercise of the power conferred on them by paragraph 30.1 the Trustees may at any time or times thereafter in writing make such consequential alterations in or additions to the trusts powers and provisions of the trust instrument as the Trustees may consider necessary or desirable to ensure that so far as may be possible the trusts powers and provisions of the Trust shall be as valid and effective as they are under the law of Brunei Darussalam.

31. Power to vary administrative provisions.

When in the management and administration of the Trust Fund any sale lease mortgage surrender release or other disposition or any purchase investment acquisition expenditure or other transaction is in the opinion of the Trustees expedient but the same cannot be effected by reason of the absence of any power for that purpose conferred on the Trustees by the Trust or by law the Trustees may by instrument in writing confer upon themselves either generally or in any particular instance the necessary power for the purpose and on the execution of such instrument the Trustees shall have such power as if it had been expressly conferred upon them by the trust instrument.

THIRD SCHEDULE

Section 102(2)

Statutory provisions of the United Kingdom that do not apply to international trusts

The Settled Land Act, 1925

The Trustee Act, 1925

The Law of Property Act, 1925, sections 158 and 161 to 166 inclusive

The Charitable Trusts (Validation) Act, 1954

The Variation of Trusts Act, 1958

The Trustee Investments Act, 1961

The Perpetuities and Accumulations Act, 1964

The Recognition of Trusts Act, 1987

The Charities Act, 1993

The Trusts of Land and Appointment of Trustees Act, 1996

Made this 21st. day of Safar, 1421 Hijriah corresponding to the 25th. day of May, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM.**