



**MONTSERRAT**

## **CHAPTER 11.06**

### **TRUST ACT**

#### **Revised Edition**

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

#### **TRUST ACT**

Act 19 of 1998 .. in force 17 January 2000 (S.R.O. 8/2000)

Amended by Acts: 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

13 of 2013 .. in force 25 August 2013

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## **CHAPTER 11.06**

### **TRUST ACT**

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## **CHAPTER 11.06**

### **TRUST ACT**

*(Acts 19 of 1998, 9 of 2011 and 13 of 2013)*

AN ACT TO MAKE PROVISION FOR THE LAW OF TRUSTS AND TRUSTEES AND FOR RELATED MATTERS.

#### **Commencement**

*[17 January 2000]*

#### **Short title**

1. This Act may be cited as the Trust Act.

#### **PART 1**

##### **PRELIMINARY**

#### **Definitions**

2. (1) In this Act—

“**accountant**” has the same meaning as in section 2 of the Company Management Act;

“**beneficiary**” includes—

- (a) a trust company within the meaning of the International Banking and Trust Companies Act;
- (b) an international business company within the meaning of the International Business Companies Act; and
- (c) a charitable institution resident in Montserrat;

“**court**” means the High Court;

“**designated person**” means an accountant, attorney-at-law, a trust corporation, a licensee under the International Banking and Trust Companies Act or such other person as the Governor may designate under subsection (2);

“**exempt trust**” means a trust in respect of which—

- (a) the settlor is resident outside Montserrat at the time of the creation of the trust and at such times as the settlor adds new property to the trust;
- (b) at least one of the trustees is a company licensed to do banking business under the International Banking and Trust Companies Act or a trust corporation;

- (c) no beneficiary, other than a person set out in paragraph (a), (b) or (c) of the definition of that term, is a resident of Montserrat; and
- (d) the trust property does not include any immovable property situate in Montserrat or an interest in any property so situate;

**“trust corporation”** means a company incorporated or registered under the Companies Act for the purpose of managing trusts.

(2) The Governor acting on the advice of Cabinet may designate any person whom he considers suitable to be a trustee of an exempt trust for the purposes of this Act.

*(Amended by Acts 9 of 2011 and 13 of 2013)*

### Trusts described

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

(2) A trust has the following characteristics—

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

## PART 2

### JURISDICTION AND POWERS OF COURT

#### Jurisdiction of court

4. The court has jurisdiction in respect of any matter concerning a trust—

- (a) where the proper law of the trust is the law of Montserrat; or
- (b) where a trustee of the trust is resident in Montserrat; or
- (c) where any property of the trust is situate in Montserrat, but only in respect of the property so situate; or

- (d) where any part of the administration of the trust is carried on in Montserrat.

### **PART 3**

#### **CREATION OF TRUSTS**

##### **Creation of trusts**

**5. (1)** A trust other than an exempt trust may be created by oral declaration or by an instrument in writing (including a will or codicil) by conduct, or operation of law.

**(2)** An exempt trust may only be created by instrument in writing.

**(3)** A trust other than a trust by operation of law respecting land situate in Montserrat is unenforceable unless evidenced in writing.

##### **Validity of trust**

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

**(2)** A trust is invalid and unenforceable—

(a) to the extent that—

- (i) it purports to do anything the doing of which is contrary to the law of Montserrat;
- (ii) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Montserrat;
- (iii) in the case of an exempt trust, it purports to apply directly to immoveable property situate in Montserrat; or

(b) to the extent that the court declares that—

- (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation;
- (ii) the trust is immoral or contrary to public policy; or
- (iii) the terms of the trust are so uncertain that its performance is rendered impossible.

##### **Presumption against avoidance of trust**

**7.** A trust that does not contain a power of revocation is irrevocable by the settlor or his legal personal representative notwithstanding that the trust is voluntary.

### Duration of trust and accumulation of income

8. (1) Subject to subsection (2), a trust terminates on the hundredth anniversary after the date of its creation, if not sooner terminated.

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

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

(4) The terms of a trust may direct or authorise the accumulation of all or part of the income of the trust for a period not exceeding 100 years from the date of the creation of the trust.

### Proper law of trust

9. (1) Subject to subsection 3(2), the proper law of a trust is the law of—

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

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

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

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

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

(5) The terms of a trust may provide—

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

- (b) for the law governing a severable aspect of the trust to be changed from the law of Montserrat to the law of another jurisdiction and vice versa.
- (6) A change in the law governing a trust shall not affect the legality or validity of or render any person liable for anything done before the change.
- (7) Subject to section 5, the proper law of the trust shall govern the validity of the trust, its construction, its effects and its administration.
- (8) When the proper law of a trust or the law governing a severable aspect of a trust is changed from the law of Montserrat to the law of another jurisdiction (herein called “**new law**”) no provision of the law of Montserrat operates to render the trust void, invalid or unlawful or to render void, invalid or unlawful any function conferred on the trustee under the new law.
- (9) Where the proper law of a trust or the law governing the severable aspects of a trust is changed from the law of another jurisdiction (herein called the “**old law**”) to the law of Montserrat no provision of the old law operates to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the law of Montserrat.

## PART 4

### PROTECTORS AND TRUSTEES

#### **Protector**

- 10. (1) The terms of a trust may provide the office of protector of the trust.
- (2) The protector shall have the following powers—
  - (a) (unless the terms of the trust otherwise provides) the power to remove a trustee and to appoint a new or additional trustee;
  - (b) such further powers as are conferred on the protector by the terms of the trust or of this Act.
- (3) The protector of a trust may be a settlor, or a beneficiary of the trust, but may not be a trustee.
- (4) Subject to the terms of the trust, in the exercise of his office a protector owes a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust is created.
- (5) Where there is more than one protector, then subject to the terms of the trust, any functions conferred on the protectors may be exercised if more than one half of the protectors for the time being agree on its exercise.

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

### **Who may be trustee**

11. Any person who has under the law of Montserrat the capacity to own and transfer property may be the trustee of a trust.

### **Court appointed protector**

12. (1) Where a trustee of a trust has reason to believe—

- (a) that there is no other surviving protector of the trust;
- (b) no one has been appointed as successor to the protector referred to in paragraph (a) in accordance with the terms of the trust,

the trustee shall as soon as practicable, apply to the court for the appointment of a protector of the trust.

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

(3) A trustee who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine of \$10,000.

(4) It is a defence to a charge under subsection (3) to prove that the trustee took all reasonable steps and exercised due diligence to comply with subsection (1).

### **Appointment of new or additional trustee**

13. (1) Where the terms of a trust contain no provision for the appointment of a new or additional trustee, then—

- (a) the protector (if any); or
- (b) the trustees for the time being (but so that a trustee shall not be required to join in the appointment of his replacement); or
- (c) the last remaining trustee; or
- (d) the personal representative or liquidator of the last remaining trustee; or
- (e) if there is no such person (or no such person willing to act), the court,

may appoint a new or additional trustee.

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

(3) On the appointment of a new or additional trustee, anything requisite for vesting the trust property in the trustees for the time being of the trust shall be done.

### **Appointment of resident trustee**

14. (1) Where there is no trustee resident in Montserrat a beneficiary may apply to the Court for the appointment of a person resident in Montserrat and nominated in the application, as an additional trustee.

(2) The Court—

- (a) if satisfied that notice of the application has been served on the existing trustee;
- (b) having heard any representations; and
- (c) having ascertained that the person nominated is willing to act,

may appoint that person as an additional trustee.

### **Renunciation of trusteeship**

15. (1) No person is obliged to accept appointment as a trustee, but a person nominated as trustee who knowingly intermeddles with the trust property is deemed to have accepted appointment as a trustee.

(2) A person who has not accepted and is not deemed to have accepted appointment as a trustee of a trust may within a reasonable period of time after becoming aware of his nomination as trustee—

- (a) disclaim his appointment by notice in writing to the other trustees of such trust (if any); or
- (b) if there are no such other trustees or such other trustees cannot be contacted, apply to the Court for relief from his appointment and the Court may make such order as it thinks fit.

(3) A person nominated as a trustee who does not act under sub-section (2) within a reasonable period of becoming aware of his nomination is deemed to have accepted appointment as a trustee.

### **Resignation or removal of trustees**

16. (1) A trustee other than a sole trustee may resign by notice in writing to his co-trustees.

(2) A trustee shall cease to be a trustee immediately upon—

- (a) the delivery of a notice of resignation under sub-section (1);
- (b) his removal from office by the Court;
- (c) his removal from office by the protector of the trust;

(d) the coming into effect of or the exercise of a power under a provision in the terms of the trust under or by which he is removed from, or otherwise ceases to hold, his office.

(3) A person who ceases to be a trustee shall do everything necessary to vest the trust property in the new or continuing trustee.

(4) When a trustee resigns or is removed—

(a) he shall, subject to paragraph (b), duly surrender all trust property held by or vested in him or otherwise under his control;

(b) he may require that he be given reasonable security for liabilities (existing, future, contingent or other) before surrendering the trust property.

(5) A former trustee shall not be liable to any trustee or to any beneficiary or other person interested under the trust for any act or omission in relation to the trust property or to his functions as a trustee, except for any liability—

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

(b) in respect of an action to recover from the trustee (or, in the case of a corporate trustee, any of its officers or employees) trust property or the proceeds thereof in his possession or under his control.

## Nature of interests

17. (1) Subject to subsection (2)—

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

(b) the trust property does not form part of the trustee's or protector's estate.

(2) Where a trustee or protector of a trust is also a beneficiary thereof, subsection (1) does not apply to his interest as a beneficiary.

(3) Where a trustee or protector becomes insolvent, or upon his property becoming liable to distraint, seizure, sequestration or similar process of law, his creditors shall have no recourse against the trust property except to the extent that the trustee or protector himself has a claim against it or a beneficial interest in it.

### Corporate trustee

18. A corporate trustee may—

- (a) act in connection with a trust by a resolution of the corporate trust or of its board of directors or other governing body; or
- (b) appoint an officer or employee to act on its behalf in connection with the trust.

### Trustees of more than one trust

19. (1) A trustee is not, in the absence of fraud, affected by notice of any instrument, matter, fact or thing in relation to a trust if he obtained notice of it by reason of his acting or having acted as trustee of another trust.

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

### Dealing with third parties

20. (1) Where, in a transaction or matter affecting a trust a trustee informs a third party that he is acting as trustee, a claim by the third party in respect of the transaction or matter shall (subject to subsection (3)) extend only to the trust property.

(2) If the trustee fails to inform the third party that he is acting as trustee—

- (a) he incurs personal liability to the third party in respect of the transaction or matter; or
- (b) he has a right of indemnity against the trust property in respect of his personal liability, unless, he acted in breach of trust.

(3) Nothing in this section shall prejudice any claim for breach of authority.

(4) A *bona fide* purchaser for value without notice of a breach of trust—

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

(5) A third party paying or advancing money to a trustee is not concerned to see—

- (a) that the money is needed in the proper exercise of the trust functions;
- (b) that no more than is so needed is raised; or
- (c) that the transaction or the application of the money is proper.

## PART 5

### CHARITABLE TRUSTS

#### Charitable trusts

**21. (1)** For any of the purposes of this Act but subject to subsections (2) and (3) a trust created for any of the following purposes is charitable—

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of human rights and fundamental freedoms;
- (e) any other purposes that are beneficial to the public.

**(2)** A trust created for one or more of the purposes set out in subsection (1) is deemed to be charitable notwithstanding—

- (a) that the purpose may not be of a public nature or for the benefit of the public, but may benefit a section of the public or one or more persons within a class;
- (b) that the international trust is liable to be modified or terminated whether by the exercise of a power of appointment or the disposition of assets;
- (c) that the trustee has the power to defer the distribution of the benefits to any charity of the trust for any period not exceeding the duration of the trust; or
- (d) that the international trust is or is considered to be in the nature of a discretionary trust.

## PART 6

### PURPOSE TRUSTS

#### Interpretation

**22.** In this Part—

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

- (a) that is for the benefit of particular persons, whether or not immediately ascertainable; or
- (b) that is for the benefit of some aggregate of persons ascertained by reference to some personal relationship.

### **Creation of purpose trusts**

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

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

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

### **Custody of copy of instrument**

**24. (1)** A designated person who is trustee of a trust created under section 23 shall keep in Montserrat—

- (a) a copy of the instrument creating the trust and copies of any instrument amending or supplementing that instrument;
- (b) a register of the trust specifying—
  - (i) the name of the settler;
  - (ii) a summary of the purposes of the trust;
  - (iii) the name of the protector of the trust; and
  - (iv) such documents as are necessary to show the true financial position of the trust at the end of the trust's financial year together with details of the application of principal and income during the financial year.

**(2)** The instrument, register and documents referred to in subsection (1) are confidential and not available to the public, but the trustee who is a designated person shall allow the Attorney General or the protector to inspect the instrument, register and documents.

**(3)** Where a designated person who is a trustee of a trust created under section 23—

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

- (b) refuses to allow a person referred to in subsection (2) to inspect the instrument, register or documents referred to in that subsection; or
- (c) makes or authorises the making in any deed, register or document referred to in subsection (2) any statement that he knows to be false or does not believe to be true,

is guilty of an offence and liable on summary conviction to a fine of \$10,000.

### Extension of *cy-pres*

**25. (1)** Where a trust is created for non-charitable purposes the terms of the trust may provide that the doctrine of *cy-pres* is *mutatis mutandis* applicable thereto.

**(2)** For the purposes of subsection (1), where a purpose that is reasonably similar to the original purpose cannot be found, a purpose that is not contrary to the spirit or intent of the settlement may be substituted for the original purpose.

## PART 7

### FOREIGN ELEMENTS LAW

### Interpretation

**26. (1)** In this Act—

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

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

### Exclusion of foreign law

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

- (a) the law of any foreign jurisdiction prohibits or does not recognize the concept of a trust; or
- (b) the trust or disposition—
  - (i) avoids or defeats any right, claim or interest conferred by any foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or
  - (ii) contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any right, claim or interest referred to in sub-paragraph (i).

### Capacity of settlor

28. (1) Subject to this section, any person who, under the law of Montserrat, has the capacity to own or transfer property may be a settlor of a trust.

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

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

## PART 8

### VARIANT TYPES OF TRUST

#### Variant types of trust

29. (1) A settlor may create a trust (in whatever form and by whatever name it is known) of a type recognised by the law or rules of his religion or nationality or which is customarily used by his community, provided that—

- (a) there is a recital to that effect in the instrument creating the trust; and
- (b) the trust is of a type approved by the Governor acting on the advice of Cabinet by order published in the *Gazette*.

*(Amended by Act 9 of 2011)*

(2) The instrument creating a trust may be written in a language other than English provided that, a version in the English language certified by the original trustee to be a true translation is appended to the instrument.

### Provisions of variant types

30. A trust of a type approved under section 29(1) may provide that the trustee shall hold the trust property—

- (a) for such term as is provided in the trust, to pay or apply the income and capital thereof for the maintenance, education, advancement or benefit of the family of the settlor, or for the purposes of performing acts or services in honour of the settlor or the ancestors of the settlor or both; and
- (b) thereafter for the advancement of the settlor's religion, or for such other charitable purpose as the settlor may specify or, if the settlor has not specified a charitable purpose, for such charitable purpose as the trustee shall determine.

## PART 9

### DUTIES AND POWERS OF TRUSTEES

#### General duties of trustees

31. (1) A trustee shall in the execution of his functions—

- (a) act with due diligence; and
- (b) observe utmost good faith; and
- (c) act to the best of his skills and abilities; and
- (d) exercise the standard of care of a reasonable and prudent man of business.

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

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

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

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

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

- (b) preserve and, so far as is reasonable, enhance the value of the trust property.
- (6) Except with the approval of the Court or in accordance with the terms of the trust or the provisions of this Act, a trustee shall not—
  - (a) derive, directly or indirectly, any profit from his trusteeship;
  - (b) cause or permit or enter into any transaction with his co-trustees or relating to the trust property which may result in any such profit;
  - (c) on his own account enter into any transaction with his co-trustees or relating to the trust property which may result in any such profit.
- (7) A trustee shall maintain identity information on all the beneficiaries of a trust. (*Inserted by Act 13 of 2013*)
- (8) The trustee of a trust shall keep accurate accounts and records of his trusteeship.
- (9) A trustee shall keep trust property separate from his own property and separately identifiable from any other property of which he is a trustee.

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

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

- (a) the Court;
  - (b) the settlor or protector of the trust;
  - (c) in the case of a trust established for a charitable purpose, the Attorney General;
  - (d) subject to the terms of the trust, any beneficiary of the trust who is of full age and capacity; and
  - (e) subject to the terms of the trust, any charity for the benefit of which the trust was established.
- (2) Subject to the provisions of the Act and to the terms of the trust, and except as is necessary for the proper administration of the trust or by reason of any other Act, the trustee of a trust shall keep confidential all information regarding the state and amount of the trust property or the conduct of the trust administration.
- (3) A trustee is not (subject to the terms of the trust and to any order of the Court) obliged to disclose documents which reveal—
  - (a) his deliberations as to how he should exercise his function as trustee;

- (b) the reasons for any decision made in the exercise of those functions;
- (c) any material upon which such a decision was or might have been based.

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

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

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

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

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

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

### **Duty to act impartially**

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

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

### **General power of trustees**

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

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

**(3)** Where the terms of a trust provide that the trustee may add or remove beneficiaries or purposes for which the trust is established, then if such power is exercised properly and on the basis of valid considerations

the exercise of the power shall not be regarded as a breach of the duty of the trustee under the trust.

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

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

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

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

### **Powers of investment**

**36. (1)** Subject to the terms of the trust and to the provisions of this Act, a trustee may invest any money requiring investment in any investment or property of whatsoever nature and wheresoever situated and whether producing income or not and whether involving any liability or not and upon such security (if any) as the trustee shall in his own absolute discretion think fit as if the trustee were the absolute owner thereof.

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

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

(4) The Attorney General may by Order published in the *Gazette* amend the list of authorised trustee investments in paragraph 1 of the First Schedule.

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

(6) Subject to the terms of the trust, in selecting investments a trustee or (as the case may be) any investment advisor or other person to whom the trust has delegated the management of the trust property shall have regard—

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

(b) to the suitability for the trust of the investments proposed.

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

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

(9) For the purposes of the two foregoing subsections, advice is appropriate if it is the advice of a person who is reasonably believed by the trustee to be qualified to give such advice; and such advice may be given by a person notwithstanding that he gives it in the course of his employment (including employment with a trustee of the trust).

### **Implied powers of trustees**

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

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

### **Delegation by trustees**

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

(2) Except where the terms of the trust provide to the contrary, a trustee may—

- (a) delegate the management of trust property to and appoint investment managers whom the trustee reasonably considers to be qualified to manage the investment of the trust property;
- (b) appoint and employ any lawyer, accountant or other person to act in relation to any of the affairs of the trust or to hold any of the trust property; and
- (c) authorise any such manager or person to retain or receive any commission or other payment usually payable for services of the description rendered.

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

- (a) the selection of the delegate or appointee; and
- (b) the supervision of the activities of the delegate or appointee.

### **Reimbursement of expenses**

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

### **Payment of trustees**

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

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

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

- (a) by the Court; or
- (b) by some or all of the beneficiaries of the trust:

Provided that, a beneficiary may not authorise such payment if the beneficiary—

- (i) is a minor or a person under legal disability;
- (ii) does not have full knowledge of all material facts; or
- (iii) is improperly induced by the trustee to authorise such payment.

**(4)** Where only some of the beneficiaries authorise payment to a trustee in accordance with subsection (3), the payment shall be made out of the share of the trust property which in the opinion of the trustee is referable to the interests of those beneficiaries who so authorised payment.

### **Power to appropriate**

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

### Power and duty of maintenance

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

- (a) while the beneficiary is a minor, the trustee—
  - (i) may, at his discretion, pay to the parent or guardian of the beneficiary or otherwise apply the whole or part of the income attributable to that interest for or towards the maintenance, education or benefit of the beneficiary; and
  - (ii) shall accumulate the residue of that income as an accretion to the trust property and as one fund with the trust property for all purposes:

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

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

### Power of advancement

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

Provided that—

- (a) any trust property so paid or applied shall be brought into account in determining the share of the beneficiary in the trust property;
- (b) no such payment or application shall be made which prejudices any person entitled to any prior interest unless such person is of full age and consents to the payment or application (if such person is not of full age) or the Court consents; and
- (c) the part of the trust property so paid or advanced shall not exceed the presumptive share of the beneficiary in the trust property.

### Accumulation and maintenance settlements

44. Whenever any property is directed to be held on an accumulation and maintenance trust for the benefit of a beneficiary or beneficiaries, sections 42 and 43 apply to the interest of such beneficiary or beneficiaries, unless the terms of the trust provide otherwise.

### **Receipts of parents and guardians**

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

### **Power of appointment**

**46.** The terms of a trust may confer on the trustee or any other person power to appoint all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person or valid charitable or non-charitable purpose (whether or not such person was a beneficiary of the trust or such purpose was an object to the trust prior to such appointment).

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

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

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

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

### **Protective trusts**

**48.** 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 referred to as “**the principal beneficiary**”) for the period of his life or any less period, then, during that period (in this section referred to as “**the trust period**”) that income shall without prejudice to any prior estate or interest, be held—

- (a) upon trust for the principal beneficiary until whichever of the following events shall first occur—
  - (i) the trust period expires, or
  - (ii) the principal beneficiary, whether before or after the termination of any prior estate or interest, does or attempts to do or suffers any act or thing, or until any other event, not being an advance under any statutory or express power, happens whereby if during the trust period the said income were payable to the principal beneficiary absolutely, he would be deprived of the right to receive the same or any part thereof; and

(b) upon trust, where any of the events referred to in subparagraph (a)(ii) happens during the subsistence of the trust period, to apply the said income as the trustees in their absolute discretion, without being liable to account for the exercise of their discretion, think fit, for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other of the following persons—

- (i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any, and
- (ii) if as often as and while there is no living issue of the principal beneficiary, the principal beneficiary and his or her wife or husband, if any, and the persons who, if the principal beneficiary were actually dead without having married would for the time being be his next of kin,

so that the trustees in the exercise of their discretion may apply any income accrued but unpaid in any previous year for the purposes of the trusts implied as aforesaid in any subsequent year.

## PART 10

### VARIATION OF TRUST

#### Variation of trusts

49. The court may, on the application of any beneficiary, the trustee, the settlor or his personal representatives, or the protector of a trust, approve on behalf of—

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

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

### Approval of particular transaction

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

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

## PART 11

### MISCELLANEOUS

### Language of trusts

**51.** Where the deed creating a trust is in a language other than English the deed must be accompanied by a certified translation.

### Confidentiality

**52. (1)** Without affecting section 16(2) but subject to the terms of an international trust and to the order of the court, no trustee or other person shall disclose to any other person not legally entitled to any information or documents respecting an international trust—

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

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

**(3)** Notwithstanding any other law but subject to subsection (4), the court may, in any civil or criminal proceedings, allow the disclosure of information or documents referred to in subsection (1) on the application of a party to the proceedings in such circumstances as the court thinks fit.

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

**Income tax**

**53. (1)** The income from a trust that is received by a beneficiary who is not resident in Montserrat is exempt from income tax.

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

**Non-application of Act**

**54.** No levy or due imposed by the Exchange Control Act shall apply to exempt trusts.

**Application of other law**

**55** Except in so far as they are inconsistent with the express provisions of this Act, the rules of equity and common law apply to trusts.

**Optional registration**

**56.** A trustee may at his option register the trust instrument or will.

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**FIRST SCHEDULE**

*(Section 36)*

**AUTHORISED TRUSTEE INVESTMENTS**

**1.** The following shall be regarded as authorised trustee investments—

- (a) securities issued by, or the payment of interest on which is guaranteed by, the Government of Montserrat;
- (b) securities issued by, or the payment of interest on which is guaranteed by, any of the following—
  - (i) the Government of the United Kingdom;
  - (ii) the Government of the United States of America;
  - (iii) the Government of any territory within the Commonwealth;
  - (iv) the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Investment Bank, the International Finance Corporation, the International Monetary Fund, or the International Bank for Reconstruction and Development;
- (c) deposits with a company registered under the Companies Act that is licensed financial institution within the meaning of the Banking Act;
- (d) debentures issued by a quoted company;
- (e) units in a quoted unit trust;
- (f) quoted shares;
- (g) freehold property situated in Montserrat and leasehold property situated in Montserrat of which the unexpired term at the time of the investment is not less than forty years and mortgages of such freehold or leasehold property.

**(2)** In this Schedule, unless the context otherwise requires, the following expressions have the following meanings—

**“approved stock exchange”** means The International Stock Exchange of the United Kingdom and Republic of Ireland Limited (including the Unlisted Security Market of the International Stock Exchange), the New York Stock Exchange, the American Stock Exchange and the National Association of Security Dealers’ Automated Quotation System of the United States of America;

**“debentures”** includes debentures stock and bonds, whether constituting a charge on assets or not, and loan stock or notes;

**“quoted company”** means a company the ordinary shares in which are quoted on an approved stock exchange;

**“quoted shares”** means shares quoted on an approved stock exchange;

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

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

“**shares**” include stock.

## SECOND SCHEDULE

### *(Section 37)*

#### IMPLIED POWERS OF TRUSTEES FOR SALE AND INVESTMENT

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

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

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

#### POWERS RESPECTING TRUSTEE INVESTMENTS

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

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

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

#### CORPORATIONS

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

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

#### APPROPRIATION

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

#### HOLDING AND CUSTODY OF INVESTMENTS

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

6. Where the trust property includes any land (in this paragraph called “the land”)—

- (a) the trustee may sell, exchange lease, mortgage, charge, grant any licence over (whether exclusive or not) and otherwise dispose of the land or any interest therein;
- (b) the trustee may spend capital money on erecting buildings on the Land or on demolishing and rebuilding or on altering or improving buildings on it or otherwise on improving the land as he thinks fit (and any certificate of any architect or surveyor employed by the trustee or of any trustee who is qualified as an architect or surveyor that the work specified in such certificate consists only of alteration or improvement shall be conclusive as between the trustee and all persons interested under the trust that any capital money spent on such work was properly spent by the trustee in exercise of the powers conferred by this sub-paragraph);
- (c) the trustee may observe and perform all obligations imposed on or incurred by him as owner or lessor or lessee of the land and shall be entitled to be indemnified out of every part of the trust property against all personal liability imposed on him or by a breach of any one or more of such obligations and in this sub-paragraph “**obligations**” includes every obligation whether imposed by contract or by general law or otherwise;
- (d) the trustee may employ any of the capital of the trust property in repairing, developing, enlarging, equipping, furnishing, insuring and maintaining the land and buildings and fixtures on it.

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

#### BORROWING

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

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

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

#### INSURANCE

9. The trustee may effect and maintain out of the capital of the trust property any policy of insurance or assurance upon the life of any person or under which the death of any person is one of the events under which money becomes payable.

#### LOANS TO BENEFICIARIES

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

#### RELEASE OF POWERS

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

#### TRUSTEES APPOINTED AS DIRECTORS

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

#### ASSOCIATED PARTIES

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

SUNDRY POWERS

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

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

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

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