

CHAPTER 245

INTERNATIONAL TRUSTS

1995-14

This Act came into operation on 7th December, 1995 by Proclamation (S.I. 1995 No. 106).

Amended by:

1995-19

2001-29

2007-26

1998-27

2004-7

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1998

2007

2002

2008

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 245

INTERNATIONAL TRUSTS 1995-14

Arrangement of Sections

CITATION

- 1.** Short title

PART I

INTERPRETATION

- 2.** Definitions
- 3.** Trust described
- 4.** Application of Act

PART II

CREATION OF INTERNATIONAL TRUSTS

- 5.** Creation of international trusts
- 6.** Presumption against avoidance of trust
- 7.** Duration of trust and accumulation of income
- 8.** Proper law of trust

PART III

PURPOSE TRUSTS

9. Interpretation
10. Creation of purpose trusts
11. Protector not to be trustee
12. Appointment of protector by court
13. Custody of copy of instrument
14. Extension of *cy-près*

PART IV

EFFECT OF FOREIGN LAW

15. Capacity of settlor
16. Law of Barbados
17. Effect of section 16
18. Varying or setting aside trust

PART V

FRAUDULENT DISPOSITION

19. Interpretation
20. Fraudulent disposition voidable

- 21. Certain rights
- 22. Extent of avoidance of relevant dispositions
- 23. Act not to validate certain dispositions
- 24. Property Act
- 25. No interest to defraud

PART VI

PROTECTOR OF TRUST

- 26. Appointment of protector

PART VII

MISCELLANEOUS

- 27. Language of trust
- 28. Confidentiality
- 29. Taxation
- 30. Non-application of Acts
- 31. Application of other law
- 32. Registration
- 33. Penalties
- 34. Fees and forms

35. Regulations

**BARBADOS**

INTERNATIONAL TRUSTS

1995-14

An Act to provide for the creation and regulation of international trusts and for related matters.

[Commencement: 7th December, 1995]

CITATION

Short title

1. This Act may be cited as the *International Trusts Act*.

PART I

INTERPRETATION

Definitions

- 2.(1) In this Act,
 - (a) “beneficiary” includes
 - (i) an exempt insurance company within the meaning of the *Exempt Insurance Act*, Cap. 308A;

- (ii) a bank licensed to carry on an international financial service under the *International Financial Services Act*, Cap. 325;
[2007-26]
- (iii) an international business company within the meaning of the *International Business Companies Act*, Cap. 77;
- (iv) a charity within the meaning of section 2 of the *Charities Act*, Cap. 243; and
- (v) any other person or body that the Minister specifies under subsection (2),

but does not include a management company established for the purposes of the *Exempt Insurance Act*, Cap. 308A;

- (b) “court” means the High Court;
- (c) “Director” means the Director of International Business;
[2007-26]
- (d) “international trust” or “trust” means a trust in respect of which
 - (i) the settlor is resident outside Barbados at the time of the creation of the trust and at such times as the settlor adds new property to the trust;
 - (ii) at least one of the trustees is resident in Barbados;
 - (iii) no beneficiary, other than a person set out in paragraph (a), is a resident of Barbados at the time of the creation of the trust and at such times as the settlor adds new property to the trust; and
 - (iv) the trust property does not include any immovable property situate in Barbados or an interest in any property so situate.

(2) For the purposes of this Act, the Minister may by order specify any person or body to be a beneficiary of an international trust.

(3) For the purposes of this Act, the following are residents of Barbados, namely:

- (a) an individual ordinarily resident in Barbados or a citizen of Barbados with a residence in Barbados;
- (b) any incorporated or other body incorporated, registered, formed or organised in Barbados, the majority of the shares or other ownership of which is not beneficially held by persons resident outside Barbados;
- (c) any incorporated or other body incorporated, registered, formed or organised in Barbados and, immediately before 7th December, 1995, carrying on, in Barbados, trust business within the meaning of rule 26 of the *Public Trustee Rules, 1938*;
[1938 p.23]
- (d) a licensee within the meaning of Part III of the *Financial Institutions Act, Cap. 324A*, carrying on, in Barbados, business as a trust company immediately before 7th December, 1995;
[2007-26]
- (e) a licensee under the *International Financial Services Act, Cap. 325*.
[2004-7]

Trust 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 trustee’s own estate;
 - (b) title to the assets of the trust is 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 him by law; and
- (d) the trustee is accountable for the management and administration of the assets of the trust.

Application of Act

4. This Act applies to any trust that complies with subsection (1)(c) of section 2 and that was created

- (a) after the 7th December 1995, where
 - (i) it is declared in the instrument creating the trust that this Act applies thereto; or
 - (ii) the instrument creating the trust is amended to declare that this Act applies thereto; and
- (b) before the 7th December, 1995, where the trustees by deed declare that this Act applies to the trust.

[1995-19; 1998-27]

PART II

CREATION OF INTERNATIONAL TRUSTS

Creation of international trusts

5. An international trust may only be created by instrument in writing.

Presumption against avoidance of trust

6. An international 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

7.(1) Subject to subsection (2), a trust terminates on the one hundredth anniversary after the date of its creation, if not sooner terminated in accordance with the terms of the trust instrument.

(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 an international trust.

(4) The terms of an international 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

8.(1) Subject to subsections (2) and (3), the proper law of an international 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) Where the proper law of a trust is changed from the law of another jurisdiction to the law of Barbados, the change is valid and effective if it is recognised by the law of the other jurisdiction.

(3) Where the terms of an international trust provide for the proper law of the trust to be changed from the law of Barbados to the law of another jurisdiction

the change is valid and effective only if the new proper law recognises 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 purposes 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 Barbados to the law of another jurisdiction and *vice versa*.

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

(7) Subject to subsection (5) (a), 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 the severable aspects of a trust is changed from the law of Barbados to the law of another jurisdiction (herein called the “new law”) no provision of the law of Barbados 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 Barbados 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 Barbados.

PART III
PURPOSE TRUSTS

Interpretation

- 9.** In this Part, “purpose trust” means
- (a) a trust, other than a trust that is for the benefit of particular persons, whether or not immediately ascertainable, or
 - (b) a trust that is for the benefit of some aggregate of persons ascertained by reference to some personal relationship.

Creation of purpose trusts

- 10.(1)** Notwithstanding any law to the contrary but subject to this section, a valid international trust may be created for a non-charitable purpose, if
- (a) the purpose is specific, reasonable and capable of fulfillment;
 - (b) the purpose is not immoral, unlawful or contrary to public policy;
 - (c) the terms of the trust provide for the appointment of a protector to enforce the trust and for the appointment of a successor to such a protector; and
 - (d) 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.

Protector not to be trustee

- 11.** The protector of an international non-charitable purpose trust may not be a trustee thereof.

Appointment of protector by court

- 12.(1)** Where a trustee of an international trust has reason to believe that
- (a) the protector of that trust is dead, is unwilling, refuses or is unfit to act or is incapable of acting;
 - (b) there is no other protector of the trust;
 - (c) 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 (1) 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) In addition to the fine specified in subsection (3) the court may order the trustee referred to in that subsection to cease to be a trustee of non-charitable purpose trusts for 2 years.

(5) 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).

Custody of copy of instrument

13.(1) A trustee of an international trust created under section 10 shall keep in Barbados

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

- (b) a register in which the following information is set out:
- (i) the name of the settlor;
 - (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.

(1A) Notwithstanding any other provision of this Act, a trustee of an international trust shall file with the Director, upon payment of the prescribed fee, the information referred to in subsection (1)(b)(i), (ii) and (iii), and the Director shall issue to the trustee a certificate of registration in the prescribed form.

[2007-26]

(1B) The information referred to in subsection (1A) is confidential and not available to the public.

[2001-29]

(1C) A trustee of an international trust may, upon payment of the prescribed fee, require and obtain from the Director a certified copy of the certificate of registration issued in respect of the trust.

[2007-26]

(2) The instrument, register and documents referred to in subsection (1) are confidential and not available to the public, but the trustee shall allow the protector or a person authorised by the protector to inspect the instrument, register and documents.

(3) Where a trustee of an international trust created under section 10

- (a) fails to comply with subsection (1) or (2);
- (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) in any deed, register or document referred to in subsection (2) makes, or authorises the making of, any statement that he knows to be false or does not believe to be true,

he is guilty of an offence and liable on summary conviction to a fine of \$10 000, and in addition to such fine the court may order the trustee to cease to be a trustee of international non-charitable purpose trusts for 2 years.

Extension of *cy-près*

14.(1) Where a trust is created for a non-charitable purpose, the terms of the trust may provide that the doctrine of *cy-près* is, *mutatis mutandis*, applicable thereto.

(2) For the purpose 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 and meaning of the settlement may be substituted for the original purpose.

PART IV

EFFECT OF FOREIGN LAW

Capacity of settlor

15. A person may create

- (a) an *inter vivos* trust if the trust property is movable and the person has the capacity to create a trust of movable property under the law of Barbados;
- (b) a testamentary trust, if the trust property is movable and the person has the capacity to create a trust of movable property under the law of his domicile;

- (c) a trust of immovable property if he has the capacity to create a trust of immovable property under the law of the jurisdiction in which the immovable property is situate.

Law of Barbados

16. Any question arising with regard to

- (a) a trust that is governed by the law of Barbados; or
- (b) any disposition of property upon the trust thereof,

is to be determined according to the law of Barbados without reference to the law of any other jurisdiction with which the trust or disposition may be connected.

Effect of section 16

17.(1) Section 16

- (a) does not validate any disposition of property that is
 - (i) not owned by the settlor,
 - (ii) not the subject of a power in that behalf vested in the settlor;
- (b) takes effect subject to any express contrary term of the trust or disposition;
- (c) does not, with regard to the capacity of a corporation, affect the recognition of the laws of its place of incorporation;
- (d) does not affect the recognition of foreign laws prescribing generally, without reference to the existence or terms of the trust, the formalities for the disposition of property;
- (e) does not validate any trust or disposition of immovable property situate in a jurisdiction, other than Barbados, being a trust or disposition that is invalid under the law of that jurisdiction;
- (f) does not validate any testamentary trust or disposition that is invalid under the law of the testator's domicile.

(2) The recognition of any foreign law in determining whether the settlor is the owner of property referred to in this Part or the holder of a power so referred to before the time of disposition or at the time of disposition is not affected by this Part.

Varying or setting aside trust

18. Where a trust is validly created under the law of Barbados the court shall not vary it or set it aside pursuant to the law of another jurisdiction in respect of

- (a) the personal and proprietary effects of marriage;
- (b) succession rights, testate and intestate, especially the legal right of surviving spouses and the shares of relatives;
- (c) the protection of creditors in matters of bankruptcy,

unless there are corresponding laws in Barbados.

PART V

FRAUDULENT DISPOSITION

Interpretation

19.(1) In this Part

- (a) “creditor” means a person to whom an obligation is owed;
- (b) “intent to defraud” means an intention of a transferor wilfully to defeat an obligation owed to a creditor;
- (c) “obligation”
 - (i) means an obligation or liability that existed on or before the date of a relevant disposition and of which the transferor had notice, and

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- (ii) includes a liability contingent upon an obligation or liability referred to in sub-paragraph (i);
 - (d) “relevant disposition” means a disposition to which section 20 applies;
 - (e) “transferor” means the person who as owner of property or as the holder of a power in that behalf directly or indirectly makes a relevant disposition or causes it to be made; and
 - (f) “transferee” means the person to whom a relevant disposition is made and includes any successor in title.
- (2) This Part applies to any action or proceedings relating to the disposition of property, whether the property is situate within or outside Barbados, if
- (a) the disposition takes place after the 7th December, 1995; or
 - (b) the disposition took place before the 7th December, 1995 but the proceedings were not begun within 18 months after the 7th December, 1995.

Fraudulent disposition voidable

20.(1) Subject to this Act, every disposition of property made with an intent to defraud shall be voidable at the instance of a creditor thereby prejudiced.

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

(3) No action or proceedings shall be commenced pursuant to this Act later than 3 years after the date of the relevant disposition.

[2001-29]

Certain rights

- 21.** In the event that any disposition is set aside pursuant to this Act, then
- (a) if the court is satisfied that the transferee has not acted in bad faith
 - (i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the court), and
 - (ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee (and of any predecessor transferee who has not acted in bad faith); and
 - (b) if the court is satisfied that a beneficiary of a trust has not acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust, or any other person, and otherwise properly exercised.

Extent of avoidance of relevant dispositions

- 22.** A disposition shall be set aside pursuant to this Act only to the extent necessary to satisfy the obligation to a creditor at whose instance the disposition has been set aside together with such costs as the court may allow.

Act not to validate certain dispositions

- 23.** Nothing in this Act 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, and this Act does not affect the recognition of foreign laws in determining whether the transferor is the owner of such property or the holder of such a power.

Property Act

24. Section 193 of the *Property Act*, Cap. 236 does not apply to international trusts.

No interest to defraud

25. The fact that a settlor of a trust is a beneficiary under the trusts or a trustee thereof does not *per se* constitute an intent to defraud.

PART VI

PROTECTOR OF TRUST

Appointment of protector

26.(1) The terms of a trust may provide for the appointment of a protector of the trust whether called protector, guardian, advisor or by whatever name called.

(2) The following or any of them may, *inter alia*, be conferred on the protector by the terms of the trust

- (a) the power to appoint and remove trustees;
- (b) the power to change the proper law of the trust;
- (c) the right to receive notice in advance of specified actions of the trustees;
- (d) the right to receive information relating to or forming part of the accounts of the trust.

(3) Nothing in subsection (2) shall be construed as conferring the status of trustee on a protector.

(4) Subject to the terms of the trust, where there is more than one protector of a trust any function conferred on the protectors may be exercised by a majority of the protectors who agree thereto.

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

PART VII
MISCELLANEOUS

Language of trust

27. Where the deed creating an international trust is in a language other than English the deed must be accompanied by a certified English translation.

Confidentiality

28.(1) Without affecting section 13(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 was performed;
- (c) the reason for the exercise of the power or discretion or the performance of the duty or any evidence upon which such reason might have been based;
- (d) any information relating to or forming part of the accounts of an international trusts;
- (e) any other matter or thing respecting an international trust.

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

(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 document 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.

Taxation

29.(1) Non-resident beneficiaries of an international trust shall not be subject to income tax in Barbados on amounts allocated or distributed by trustees out of trust income.

(2) Amounts allocated or distributed out of capital of the trust to eligible beneficiaries are exempt from tax in Barbados.

(3) For the purposes of this section, the following rules shall apply

- (a) the trustees may transfer, appropriate or apply trust funds or any income thereof for the benefit of any beneficiary;
- (b) the classification of a distribution as capital shall be the exclusive discretion of the trustees, provided, however that such classification does not offend the provisions of the trust instrument;
- (c) subject to the provisions of the trust instrument, accumulated income of the trust which has been allocated but not distributed to beneficiaries in prior periods, shall form part of the capital of the trust;
- (d) where income of prior years has accumulated in a discretionary trust which is exempt from tax under subsection (3), subsequent distribution of such income shall not be subject to tax in Barbados when paid to a beneficiary who is a resident of Barbados, except to the extent that the income relates to prior years during which the beneficiary was a resident of Barbados.

(4) A beneficiary who is a resident of Barbados shall be subject to tax in Barbados on trust income in respect of any year during which he is resident in Barbados.

(5) For the purposes of section 17 of the *Income Tax Act*, Cap. 73, an international trust is deemed not to be domiciled in Barbados.

[1995-19]

(6) Subject to subsection (7), an international trust is exempt from indirect tax, *ad valorem* stamp duty or other imposts on transactions undertaken or documents executed pursuant to its activities.

(7) An international trust shall pay a fixed duty as specified in the Schedule to the *Stamp Duty Act*, Cap. 91.

Non-application of Acts

30. The *Exchange Control Act*, Cap. 71 and the *Succession Act*, Cap. 249 do not apply to international trusts.

Application of other law

31.(1) Except in so far as they are inconsistent with the express provisions of this Act, the following apply to international trusts:

- (a) the rules of equity and of common law applicable to trusts; and
- (b) the *Trustees Act*, Cap. 250, except section 3 thereof and the Schedule to that Act, and the *Charities Act*, Cap. 243.

(2) The Public Trustee is prohibited from being a trustee for the purposes of this Act.

Registration

32. International trusts are exempt from the requirement of registration under any law.

Penalties

33.(1) A person who makes or assists in making a report, return, notice or other document

- (a) that is required by this Act or the regulations to be sent to the Registrar of Companies or to any other person; and
- (b) that
 - (i) contains an untrue statement of a material fact; or
 - (ii) omits to state a material fact required in the report, return, notice or other document or makes a statement containing information that is misleading in light of the circumstances in which it was made,

is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 12 months or to both.

(2) A person is not guilty of an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

(3) Where an offence under subsection (1) is committed by a body corporate and a director or trustee of that body corporate knowingly authorised, permitted or acquiesced in the commission of the offence, that body corporate, director, or trustee is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 12 months or to both.

[2004-7]

Fees and forms

34. The Minister may by order prescribe

- (a) the fees to be paid; and

(b) the forms to be used,
under this Act.

[2007-26]

Regulations

35. The Minister may make regulations to give effect to this Act.

[2007-26]