

DRAFT MALDIVES TRUST LAW

EXPLANATORY NOTE

1. INTRODUCTION

1.1 The draft Trusts Act (the "**Trusts Act**") is intended to introduce into Maldives' laws, provisions relating to the establishment and operation of trusts of all kinds. For these purposes, a trust is any arrangement where one or more persons (a trustee or trustees) hold property for the benefit of another person or persons (a beneficiary or beneficiaries) or for a purpose which is not for the benefit of the trustee. The Trusts Act caters for a wide range of trusts, including:

- (a) charitable trusts (i.e. where trustees hold a trust fund and apply it for the benefit of charitable causes);
- (b) personal or private trusts settled during the lifetime or on the death of a settlor (usually where assets are held for the benefit of minors, and/or family members);
- (c) special purpose trusts (where trustees hold a trust fund for specified non-charitable purposes not benefiting the trustee).

1.2 Unit trusts are provided for separately in the Collective Investment Schemes Act.

2. PRECEDENT

2.1 The Trusts Act has been based upon the Jersey trust law. This was chosen because Jersey had no common laws or rules of equity comprising a trust law (their legal system being a French based legal system rather than an English common law system); accordingly their trust law was also a statutory introduction. Secondly, Jersey is a well known and respected domicile for the establishment of trusts of many different types.

2.2 Although the Trusts Act was based largely on the Jersey law, some concepts and provisions have been expanded or based upon laws from other jurisdictions; notably (but not exclusively):

- (a) the provisions dealing with a trustee's investment powers, the appointment of asset managers, custodians, nominees and other agents and liability therefore is principally based upon the Trustee Act 2000 of England and Wales;
- (b) the provisions relating to the creation of special purpose trusts and the role of enforcers of such trusts have been supplemented by reference to recently enacted laws in Bermuda and the Cayman Islands;
- (c) the concept of a registered trust company has been taken from Bermuda law.

3. SUMMARY OF SUBSTANTIVE PROVISIONS

3.1 Sections 2 and 3 define the meaning of a trust relationship and confirm that such a trust will be recognised under Maldives law. Section 4 goes on to provide where the proper law of a trust shall be Maldives law (which will be where the majority of the trustees are resident in Maldives, or where the terms of the trust expressly or implicitly say so).

The Trusts Law states that a trust can include a provision that the proper law of the trust will change if the majority trustees no longer reside in the Maldives.

3.2 Parts II to XIV of the Act then applies to Maldives' trusts.

3.3 Part II deals with the creation of a trust, its validity and, in summary, provides:

- (a) a trust may be created in writing, by oral declaration or by conduct (save that a unit trust must be created in writing);
- (b) a trust can relate to a property of any description;
- (c) beneficiaries can be presently identified/identifiable or can be ascertainable (now or in the future);
- (d) non-charitable special purpose trusts require the appointment of an "enforcer" separate from the trustee to enforce the purpose of that trust;
- (e) no trust will be valid/enforceable if it purports to do anything illegal, immoral, or against public policy or if its terms are so vague/uncertain that its performance is not possible.

3.4 Part III provides that any person who can hold property may be a trustee but only certain persons may provide trustee services by way of business. These are persons registered as registered corporate trustees under the Trusts Act or other categories of person to be designated from time to time.

3.5 Part IV deals with the appointment, removal and retirement of trustees and Part V deals with the duties of trustees. Broadly speaking, a trustee must exercise due care and attention, and observe utmost good faith in dealing with trust property and always seek to preserve the value of the trust property. Where a trustee is a professional he must apply relevant his professional standards and expertise. Trustees must act jointly (where there is more than one) and impartially.

3.6 Under Part VI, a trustee may only be paid out of the trust if the trust terms so provide (although only certain trustees may be paid remuneration for a service provided by any of business).

3.7 Part VII deals with the investment powers of trustees of trust funds. In managing a trust fund, trustees should consider the suitability of investments and the need for diversification in addition to the terms of the trust. Generally speaking, a trustee should seek appropriate advice.

- 3.8 Part VIII deals with the appointment by trustees of custodians, nominees and other agents, including investment managers and the responsibility and liability of the trustee in respect of such appointments. Generally speaking, a trustee may delegate functions to appropriate professionals (and will not be liable for their default) but a trustee must keep under review the appropriateness of the appointments and the relevant arrangements. The appointment of an asset manager required the formulation of a policy statement dealing with the investment policy to be pursued.
- 3.9 Part XI imposes liabilities on the trustees in the case of a breach of trust and provides that a trustee may insure against professional negligence on its part for the benefit of the trust.
- 3.10 Part XII deals with specific rules relating to certain categories of trust and the determination of class interests.
- 3.11 Part XVI provides various protections to persons dealing with trustees. In particular, a bona fide purchaser or chargee of property, without notice of any trust can take good title to such property irrespective of the claims of beneficiaries. In addition, a person dealing with a trustee, with notice of a trust, need not enquire as to how a trustee will apply any proceeds of sale, etc (and any two trustees or a trust corporation may give good receipt to any person dealing with the Trust).
- 3.12 Part XIII deals with what happens if a trust fails, lapses or terminates and section 58 provides for revocation of a trust by the settlor in certain circumstances.
- 3.13 Part XIV gives the court various powers to intervene on the part of a beneficiary, relieve a trustee from liability in certain circumstances, and/or vary the terms of a trust and/or appoint a Maldives' resident trustee where none exists, and/or grant a power to a trustee to effect a specific transaction.
- 3.14 Part XV provides that a foreign trust will be recognised and enforced in the Maldives (save to the extent that it seeks to do anything illegal, immoral or against public policy).