

THE TRUSTS ACT 2008
- A Draft (for the Maldives) -

BILL

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PART 1 - GENERAL

1. **Commencement**

This Act shall come into effect on [].

2. **Interpretation**

In this Act, unless the context otherwise requires:

“beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised;

“breach of trust” means a breach of any duty imposed on a trustee by this Act;

“CIS Act” means the Collective Investment Schemes Act [No: []];

“CMDA” means the Capital Market Development Authority established by the Securities Act No. 02/06;

"client" in relation to a registered trust corporation, means a trust administered by that registered trust corporation and includes the settlor and any beneficiary of the trust;

“collective investment scheme” has the meaning given in the CIS Act;

“company” means a company incorporated or registered under the Companies Act No. 10/96 or any company formed and registered under any other law in the Maldives or any other jurisdiction;

“controller” means, in relation to a company:

- (a) any person holding or interested in, directly or indirectly, 50% of the share capital of such company;
- (b) any person entitled to exercise or direct the exercise of more than 50% of the votes at any meeting of shareholders of the company;
- (c) any person entitled directly or indirectly to receive 50% of any income distributions of the company;
- (d) any person entitled to appoint or remove a majority of the directors of that company; or
- (e) any person who is a controller of any other company which is a controller of the first mentioned company.

“corporate trustee” means a trustee which is a company;

“Court” means [any duly established any recognised court of the Maldives]¹;

“director” means a person occupying the position of a director of the company concerned by whatever name called;

“enforcer” means any person (other than the trustee) having a duty to enforce a special purpose trust in relation to non-charitable purposes in accordance with section 13;

“foreign trust” means a trust whose proper law is the law of some jurisdiction other than the Maldives;

“insurance” includes assurance;

“interest of a beneficiary” means the beneficiary’s interest under a trust and references to the beneficiary’s interest have a corresponding meaning;

“Maldives trust” means a trust whose proper law is the law of the Maldives (as determined by reference to section 5);

"Minister" means [the Minister of Finance and Treasury or where the President transfers the responsibility for finance and treasury to another person, that person]²;

"minimum criteria" means the minimum criteria for registration set out in Schedule 1;

“minor” means a person who under the law of the Maldives or under the law of the person’s domicile has not reached the age of legal capacity;

“officer” of a company means any director, secretary or other executive officer of that company;

“personal representative” means the executor or administrator for the time being of a deceased person [and, in the context of a Maldives trust, includes the principal heir];

“principal” means any person who is likely to have significant influence over a registered trust corporation or its business activities;

“property” means property of any description wherever situated, and, in relation to rights and interests includes those rights and interests whether vested, contingent, defeasible or future;

“registered trust corporation” means a corporate trustee that has been approved and registered with the CMDA pursuant to section 18 for the purposes of acting as a trustee by way of business;

¹ Makbul/John to advise of correct reference to Maldives Court.

² Makbul to advise

“settlor” means a person who provides trust property or makes a testamentary disposition on trust or to a trust;

“special purpose trust” means a trust to the extent that it has no beneficiaries and has been established for non-charitable purposes in compliance with section 13;

“terms of a trust” means the written or oral terms of a trust, and also means any other terms made applicable by the proper law;

“trust” includes:

- (a) the trust property; and
- (b) the rights, powers, duties, interests, relationships and obligations under a trust;

“trust property” means the property for the time being held in a trust;

"trust regulations" means any regulation made by [the CMDA and approved by the Minister]³ under any provision of this Act;

“unit trust” means any collective investment scheme established as a trust; and words importing the masculine gender (such as "he", "him" and "his") include the feminine and neuter.

3. **Existence of a trust**

A trust exists where a person (known as a trustee) holds or has vested in him or is deemed to hold or have vested in him property:

- (a) for the benefit of any other person (known as a beneficiary) whether or not yet ascertained or in existence; and/or
- (b) for any purpose which is not for the benefit only of the trustees.

4. **Recognition of a trust by the Law of the Maldives**

Subject to this Act, a trust shall be recognised by the law of the Maldives as valid and enforceable.

5. **Proper law of a trust**

- (1) The proper law of a trust shall be the law of the Maldives if:
 - (a) the terms of the trust express the laws of the Maldives as being the proper law; or

³ Procedure to be discussed.

- (b) it is implied from the terms of the trust; or
 - (c) the Maldives is the jurisdiction that had the closest connection with the trust at the time it was created.
- (2) For the purpose of determining which jurisdiction has the closest connection with the trust under subsection (1)(c), any jurisdiction where the law does not provide for trusts or the category of trusts concerned shall be ignored.
- (3) In ascertaining, for the purpose of subsection (1)(c), the law with which a trust had the closest connection, reference shall be made in particular to:
- (a) the place of administration of the trust designated by the settlor;
 - (b) the situs of the assets of the trust;
 - (c) the place of residence or business of the trustees; and
 - (d) the objects of the trust and the places where they are to be fulfilled.

6. **Jurisdiction of Court**

The Court has jurisdiction where:

- (a) the trust is a Maldives trust;
- (b) a trustee of a foreign trust is resident in the Maldives;
- (c) any trust property of a foreign trust is situated in the Maldives; or
- (d) administration of any trust property of a foreign trust is carried on in the Maldives.

7. **Application of Parts II to XIV**

- (1) Parts II to XIV shall apply only to a Maldives trust.
- (2) Parts III and VII shall not apply to a unit trust. The remaining provisions of this Act shall apply to unit trusts as modified by the provisions of the CIS Act and any regulations made thereunder.
- (3) Trust regulations passed pursuant to this section may exempt any specific arrangement, or any class or type of arrangement, from all or certain specified sections of this Act.

PART II – CREATION, VALIDITY AND DURATION OF A MALDIVES TRUST

8. Creation of a trust

- (1) Subject to subsection (3), a trust may come into existence in any manner.
- (2) Without prejudice to the generality of subsection (1), a trust may come into existence by oral declaration, or by an instrument in writing (including a will or codicil) or arise by conduct.
- (3) A unit trust may be created only by an instrument in writing between the trustee and the manager of the unit trust, pursuant to Part V of the CIS Act.

9. Property which may be placed in a trust

Subject to section 12(2):

- (a) any property may be held by or vested in a trustee upon trust; and
- (b) a trustee may accept from any person property to be added to the trust property.

10. Extent of application of foreign law

- (1) Any question concerning:
 - (a) the validity or interpretation of a trust;
 - (b) the validity or effect of any transfer or other disposition of property to a trust;
 - (c) the capacity of a settlor;
 - (d) the administration of the trust, whether the administration be conducted in the Maldives or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment or removal; or
 - (e) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment and the validity of any exercise of such powers,

shall be determined in accordance with the law of the Maldives and no rule of foreign law shall affect such question.

- (2) Without prejudice to the generality of subsection (1), any question mentioned in that paragraph shall be determined without consideration of whether or not:
 - (a) any foreign law prohibits or does not recognise the concept of a trust; or
 - (b) the trust or disposition avoids or defeats rights, claims, or interests conferred by any foreign law upon any person by reason of a personal

relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests.

(3) No foreign judgment with respect to a trust shall be enforceable to the extent that it is inconsistent with this section irrespective of any applicable law relating to conflicts of law.

(4) In this section –

"foreign" refers to any jurisdiction other than the Maldives;

"heirship rights" means rights, claims or interests in, against or to property of a person arising or accruing in consequence of his or her death, other than rights, claims or interests created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of his or her property;

"personal relationship" includes the situation where there exists, or has in the past existed, any of the following relationships between a person and the settlor –

- (a) any relationship by blood, marriage or adoption (whether or not the marriage or adoption is recognised by law);
- (b) any arrangement between them such 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
- (c) any personal relationship between the person or the settlor and a third person who in turn has a personal relationship with the settlor or the person as the case may be.

11. Beneficiaries of a trust

(1) A beneficiary shall be:

- (a) identifiable by name; or
- (b) ascertainable by reference to:
 - (i) a class; or
 - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.

(2) The terms of a trust may provide for the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit.

- (3) Subject to section 53(10), the terms of a trust may impose upon a beneficiary an obligation as a condition for benefit.
- (4) Despite the terms of the trust, a beneficiary may disclaim, either permanently or for such period as he may specify, the whole or any part of his interest under a trust if he does so in writing.
- (5) Subsection (4) applies whether or not the beneficiary has received any benefit from the interest.
- (6) Subject to the terms of the trust, if the disclaimer so provides it may be revoked in accordance with its terms.
- (7) Subject to the terms of the trust, a beneficiary may sell, pledge, charge, transfer or otherwise deal with his or her interest in any manner.
- (8) A settlor or a trustee of a trust may also be a beneficiary of the trust.

12. Validity of a Maldives trust

- (1) Subject to subsections (2) and (3), a trust shall be valid and enforceable in accordance with its terms.
- (2) Subject to section 13, a trust shall be invalid:
 - (c) to the extent that:
 - (i) it purports to do anything the doing of which is contrary to the law of the Maldives;
 - (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 the Maldives;
 - (iii) subject to section 13 it is created for a purpose in relation to which there is no beneficiary, not being a charitable purpose;
 - (d) to the extent that the Court declares that:
 - (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty;
 - (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.
- (3) Where a trust is created for two or more purposes of which some are lawful and others are unlawful:
 - (a) if those purposes cannot be separated the trust shall be invalid;
 - (b) where those purposes can be separated the Court may declare that the trust is valid as to the purposes which are lawful.
- (4) Where a trust is partially or wholly invalid the Court may declare what property is trust property, and what property is not trust property and may provide for property that is not trust property to be vested or transferred back to the settlor (or his personal representatives if he be dead) to such other person, as the court may think fit.
- (5) In subsection (4), “settlor” means the particular person who provided the property as to which the trust is wholly or partially invalid.
- (6) An application to the Court under this section may be made by any person referred to in section 75(3).

13. Special purpose trusts

A trust shall not be invalid to any extent by reason of section 12 if the trust is established wholly or partly for any non-charitable purpose and the terms of the trust provide for the appointment of an enforcer in relation to its non-charitable purposes, and for the appointment of a new enforcer at any time when there is none.

14. Enforcers

- (1) It shall be the duty of an enforcer to enforce the trust in relation to its non-charitable purposes.
- (2) The appointment of a person as enforcer of a trust in relation to its non-charitable purposes shall not have effect if the person is also a trustee of the trust.
- (3) Section 31(5) shall apply to an enforcer as if the reference in sub paragraph (b) of that subsection to “a trustee” were a reference to “an enforcer” and the references in that sub-paragraph to the “trustee’s trusteeship” and “such trusteeship” were both references to the “enforcer’s appointment”.

15. Resignation or removal of enforcer

- (1) Subject to subsection (3), an enforcer may resign his office by notice in writing delivered to the trustee.
- (2) A resignation takes effect on the delivery of notice in accordance with subsection (1).
- (3) A resignation given in order to facilitate a breach of trust shall be of no effect.
- (4) An enforcer shall cease to be enforcer of the trust in relation to its non-charitable purposes immediately upon:
 - (a) the enforcer’s removal from office by the Court;
 - (b) the enforcer’s resignation becoming effective;
 - (c) the coming into effect of a provision in the terms of a trust under which the enforcer is removed from office or otherwise ceases to hold office;
or
 - (d) the enforcer’s appointment as a trustee of the trust.

16. Duration of a Maldives trust

- (1) Unless its terms provide otherwise, a trust may continue in existence for an unlimited period.

- (2) Except where the terms of a trust provide to the contrary, any advancement, appointment, payment or application of assets from that trust to another trust shall be valid even if that other trust may continue after the date by which the first trust must terminate.

PART III – PROVIDING TRUST SERVICES BY WAY OF BUSINESS

17. **Provision of trust services by way of business**

- (1) No person may provide trustee services by way of business in or from within the Maldives unless that person is:
- (a) a registered trust corporation; or
 - (b) any other category of person as may be designated by trust regulations made pursuant to this section.
- (2) A person who contravenes this section is guilty of an offence and shall be liable to such penalty as shall be prescribed by trust regulations.

18. **Registered Trust Corporations**

- (1) Any company incorporated in the Maldives may apply to the CMDA to be registered as a registered trust corporation.
- (2) Any application pursuant to subsection (1) shall be made in such manner as the CMDA may direct and be accompanied by:
- (a) a business plan setting out the nature and scale of the trust business which is to be carried on by the company;
 - (b) particulars of the company's arrangements for the management of the business;
 - (c) such other information and documents as the CMDA may reasonably require for the purpose of determining the application; and
 - (d) the payment of such fee as shall be prescribed pursuant to section 21.
- (3) At any time prior to determining an application, the CMDA may require the applicant to furnish such additional information as the CMDA may reasonably require for the purpose of determining the application (which may differ as between different applications).
- (4) The CMDA shall maintain a register of registered trust corporations, and the register shall, at all reasonable times, be available for inspection at the office of

the CMDA by any person upon payment of the such fee to the CMDA as shall be prescribed by trust regulations.

19. Grant and refusal of registration

- (1) The CMDA shall consider any application made pursuant to section 18(1) and notify the relevant company not later than [six]⁴ months after the date on which the CMDA received the application or, if later, any further information required pursuant to section 18(3) as to whether or not the company has been placed on the register of registered trust corporations.
- (2) The CMDA shall only register a company as a registered trust corporation if it appears to it from the information furnished by the applicant, and having regard to any other information in its possession, that such company fulfills the minimum criteria.
- (3) The CMDA may, in determining whether to grant or refuse an application, also have regard to any other business which the applicant proposes to carry on in connection with its activities as a registered trust corporation.
- (4) The CMDA shall give the applicant written notice of the grant or refusal of the application.
- (5) The CMDA may attach such conditions as it may think reasonably necessary to the registration of any company as a registered trust corporation and may, on the application of the relevant registered trust corporation, vary such conditions from time to time.
- (6) Where the CMDA refuses to register a company as a registered trust corporation, the provisions of section 26 shall apply.
- (8) Trust regulations may be made pursuant to this section relating to the rules of conduct applicable to registered trust corporations, including ongoing reporting requirements.

⁴ TBD

20. Withdrawal of applications and registrations on consent

- (1) An application under section 18 may be withdrawn before it is granted or refused and, subject to subsection (2), a registration granted under section 19 may be withdrawn by the CMDA at the request, or with the consent, of the relevant registered trust corporation.
- (2) Notwithstanding the withdrawal of a registration, the CMDA shall retain the right to take action against any person who was previously a registered trust corporation for breach of any provision of this Act or any trust regulations.
- (3) The CMDA shall give public notice of any withdrawal of a registration under subsection (1).

21. Fees

- (1) Every application made under section 18 shall be accompanied by the payment to the CDMA of such fee as may be prescribed in trust regulations made under this section from time to time.
- (2) An application referred to in subsection (1) shall not be regarded as duly made or given unless this section is complied with.
- (3) Every registered trust corporation shall pay to the CMDA such annual fee as may be prescribed by way of trust regulations made under this section from time to time, which may also make provision for the time when such fee shall be paid, penalties for late payment and for recovery of outstanding fees.

22. Withdrawal or suspension of registration

- (1) The CMDA may at any time withdraw or suspend the registration of a company under section 19 of this Act if it appears to it:
 - (a) any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled; or
 - (b) without prejudice to paragraph (a), that:
 - (i) the company has contravened any provision of this Act or any trust regulations;
 - (ii) in purported compliance with this Act or any trust regulations, the company has furnished the CMDA with false, inaccurate or misleading information; or

- (iii) the company has contravened any prohibition or requirement imposed under this Act or any conditions attached to its registration.
- (2) The suspension of a company's registration under this section shall be for a specified period, or until the occurrence of a specified event, or until specified conditions are complied with; and, for the avoidance of doubt, while a licence is suspended that company is not a registered trust corporation.
- (3) The CMDA may, on the application of a registered trust corporation, vary any period, event or condition specified under subsection (2).

23. Surrender of registration

- (1) A company may surrender its registration by written notice to the CMDA.
- (2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the undertaking may be further written notice to the CMDA substitute an earlier date, not being earlier than that on which the first notice was given.
- (3) The surrender of a registration shall be irrevocable unless it is expressed to take effect at a later date and before that date the CMDA by notice in writing allows it to be withdrawn.

24. Directions to protect interests of clients

- (1) The CMDA may give a company directions under this section at any time after its licence is revoked or surrendered.
- (2) Directions under this section shall be such as appear to the CMDA to be desirable for safeguarding the interests of the company's clients.
- (3) No direction shall be given to a company under this section after it has ceased to hold or control trust property; and any such direction which is in force shall cease to have effect when the company ceases to hold or control any trust property.
- (4) A company which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable to such penalty as shall be prescribed by trust regulations.
- (5) A direction under this section shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the CMDA by a notice in writing to the company concerned.

- (6) A direction under this section shall state the reasons for which it is given and shall give particulars of the right conferred by subsection (7).
- (7) A company on whom a notice is served under this section may, within 21 days after the service, make written representations to the CMDA and, if desired, oral representations to a person appointed by the CMDA for that purpose.
- (8) The CMDA shall have regard to any representations made in accordance with subsection (7) in determining whether to vary, revoke or confirm a direction and shall give written notice of its determination to the company concerned.
- (9) A company upon whom notice is served under this section who is aggrieved by the decision of the CMDA may appeal to the [Minister/Court]⁵, whose decision shall be final.

25. **Transfer of trusts to new trustees**

- (1) Where the CMDA is satisfied that in the interests of clients of a registered trust corporation, or clients of any company whose registration has been revoked or surrendered, it is necessary to remove the registered trust corporation or company, as the case may be, from the trusteeship of all or any of the trusts of which it is a trustee and to appoint a new trustee in its place, the CMDA may apply the Court for that purpose.
- (2) In any such case, the Court, after hearing representations from the CMDA or any other person appearing to the Court to be affected, may order the removal of the registered trust corporation or company, as the case may be, as trustee of all or any of the trusts of which it is a trustee and may appoint one or more persons as new trustees in its place, and in that connection may make such supplemental or incidental orders or give such directions, as the Court thinks fit.

26. **Notice and appeals**

- (1) Where the CMDA proposes:
 - (a) to withdraw or suspend or attach a condition to a registration under this Act; or
 - (b) to refuse an application under section 19,

it shall give the registered trust corporation or applicant notice of its intention to do so, stating the reasons for which it proposes to act or to refuse an application.

⁵ Makbul to advise.

(2) The notice shall, where applicable, state the date on which it is proposed that the withdrawal, suspension or condition should take effect and, where relevant, its proposed duration.

(3) Where the reasons stated in a notice under this section relate specifically to matters which:

(a) refer to a person identified in the notice other than the applicant or the registered trust corporation; and

(b) are, in the opinion of the CMDA, prejudicial to that person in any office or employment,

the CMDA shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(4) A notice under this section shall give particulars of the right conferred by subsection (5).

(5) A company on whom a notice is served under subsection (1) may, within 21 days after the service, make written representations to the CMDA and, if desired, oral representations to a person appointed by the CMDA for that purpose.

(6) The CMDA shall have regard to any representations made in accordance with subsection (5) in determining whether to withdraw, suspend or attach conditions to the registration or to refuse the application and shall give written notice of its determination to all persons notified by it under subsection (1) or (3).

(7) The CMDA may give public notice of any decision notified by it under subsection (6) and the reasons for the decision; except that it shall not do so in the case of a decision to grant the application or, as the case may be, not to withdraw or suspend the registration, unless the person concerned consents to it doing so.

(8) A person upon whom notice is served under subsection (6) who is aggrieved by the decision of the CMDA may appeal to the [Minister/Court]⁶, whose decision shall be final.

PART IV – APPOINTMENT, RETIREMENT AND DISCHARGE OF TRUSTEES

27. Number of trustees

(1) The number of trustees shall be not less than two.

⁶ Makbul to advise.

- (2) Notwithstanding subsection (1) a trust need only have one trustee if the trustee is a registered trust corporation or other category of person designated for the purposes of section 17.
- (3) Where there is no trustee or less than the number required under subsection (1) a trust shall not fail on that account.
- (4) If the number of trustees falls below the minimum number required by this section or, if greater, by the terms of the trust, the required number of new trustees must be appointed as soon as practicable.
- (5) While there are fewer trustees than are required by this section or the terms of the trust, the existing trustees may only act for the purpose of preserving the trust property.

28. Appointment of new or additional trustee

- (1) Where:
 - (a) the terms of a trust do not provide for the appointment of a new or additional trustee;
 - (b) any such terms providing for any such appointment have lapsed or failed; or
 - (c) the person who has the power to make any such appointment is not capable of exercising the power,
 and there is no other power to make the appointment, paragraph 2 shall apply.
- (2) A new or additional trustee may be appointed by:
 - (a) the trustees for the time being, or failing them
 - (b) the last remaining trustee; or failing him
 - (c) the personal representative or liquidator of the last remaining trustee; or if such person does not exist or is unwilling 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 powers, discretions and duties and may act as if the trustee had been originally appointed a trustee.
- (3) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the Court.
- (4) 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.

29. Prohibition of renunciation after acceptance

- (1) No person shall be obliged to accept appointment as a trustee, but a person who knowingly does any act or thing in relation to the trust property consistent with the status of a trustee of that property shall be 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 may disclaim such appointment within a reasonable period of time after becoming aware of it by notice in writing to the settlor or to the trustees.
- (3) If the settlor is dead or cannot be found and there are no other trustees a person to whom subsection (2) applies may apply to the Court for relief from the person's appointment and the Court may make such order as it thinks fit.

30. Resignation or removal of trustee

- (1) Subject to subsection (3), a trustee, not being a sole trustee, may resign his or her office by notice in writing delivered to his co-trustees.
- (2) A resignation takes effect on the delivery of notice in accordance with subsection (1).
- (3) A resignation:
 - (a) given in order to facilitate a breach of trust; or
 - (b) which would result in there being no trustee or fewer than the number of trustees required under section 27,shall have no effect.
- (4) A trustee shall cease to be a trustee of the trust immediately upon:
 - (a) the trustee's removal from office by the court; or
 - (b) the trustee's resignation becoming effective; or
 - (c) the coming into effect of a provision in the terms of a trust under which the trustee is removed from office or otherwise ceases to hold office.
- (5) A person who ceases to be a trustee under this section shall concur in executing all documents necessary for the vesting of the trust property in the new or continuing trustees.

PART V – DUTIES OF TRUSTEES

31. **Duties of trustee**

- (1) A trustee shall in the execution of his duties and in the exercise of his powers and discretions:
 - (a) act:
 - (i) with due diligence;
 - (ii) as would a prudent person; and
 - (iii) to the best of the trustee's ability and skill; and
 - (b) observe the utmost good faith.
- (2) A trustee must exercise such care and skill as is reasonable in the circumstances, having regard in particular:
 - (a) to any special knowledge or experience that he has or holds himself out as having; and
 - (b) if he acts as trustee in the case of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
- (3) Subject to this Act, a trustee shall carry out and administer the trust in accordance with its terms.
- (4) Subject to the terms of the trust, a trustee shall:
 - (a) so far as is reasonable preserve the value of the trust property; and
 - (b) so far as is reasonable enhance the value of the trust property.
- (5) Except:
 - (a) with the approval of the Court; or
 - (b) as permitted by this Act or expressly provided by the terms of the trust, a trustee shall not:
 - (i) directly or indirectly profit from the trustee's trusteeship;
 - (ii) cause or permit any other person, not being a beneficiary, to profit directly or indirectly from such trusteeship; or
 - (iii) on the trustee's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.
- (6) A trustee shall keep accurate accounts and records of the trustee's trusteeship.

- (7) A trustee shall keep trust property separate from his personal property and separately identifiable from any other property of which he is a trustee.
- (8) A trustee of a special purpose trust shall, at any time when there is no enforcer in relation to it, take such steps as may be necessary to secure the appointment of a new enforcer.
- (9) Where the trustee of a special purpose trust has reason to believe that the enforcer in relation to it is unwilling or refuses to act, or is unfit to act or incapable of acting, the trustee shall apply to the Court for the removal of the enforcer and the appointment of a replacement.

32. Duty of co-trustees to act together

- (1) Subject to the terms of the trust, where there is more than one trustee all the trustees shall join in performing the trust.
- (2) Subject to subsection (3), where there is more than one trustee, no power or discretion given to the trustees shall be exercised unless all the trustees agree on its exercise.
- (3) The terms of a trust may empower the trustees to act by a majority but a trustee who dissents from a decision of the majority of the trustees may require the trustee's dissent to be recorded in writing.

33. Impartiality of trustee

Subject to the terms of the trust, where there is more than one beneficiary and/or purpose, a trustee shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

PART VI – GENERAL POWERS OF TRUSTEES

34. Powers of trustee

- (1) Subject to the terms of the trust and subject to the trustee's duties under this Act, a trustee shall in relation to the trust property, have all the same powers as a natural person acting as the beneficial owner of such property;..
- (2) A trustee shall exercise the trustee's powers only in the interests of the beneficiaries and in accordance with the terms of the trust.
- (3) The terms of a trust may require a trustee to obtain the consent of some other person before exercising a power or a discretion.

- (4) A person who consents as provided in subsection (3) shall not by virtue of so doing be deemed to be a trustee.

35. Remuneration and expenses of trustee

- (1) Unless and to the extent authorised by:
- (a) the terms of the trust;
 - (b) the consent in writing of all of the beneficiaries;
 - (c) in the case of a unit trust, the unit trust's formation documents (as defined in the CIS Act) or any of the procedure set forth in the CIS Act or regulations made thereunder; or
 - (d) any order of the court,
- a trustee shall not be entitled to remuneration for his or her services.
- (2) A trustee may reimburse himself out of the trust for or pay out of the trust all expenses and liabilities reasonably incurred in connection with the trust.
- (3) No corporate trustee other than a registered trust corporation or other category of person designation for the purposes of section 17, may be paid remuneration out of the trust pursuant to this section or pursuant to the terms of the relevant trust.

36. Power to appropriate

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

37. Corporate trustee acting by resolution

A corporate trustee may:

- (a) act in connection with a trust by a resolution of such corporate trustee or of its board of directors or other governing body; or
- (b) by such a resolution appoint one or more of its officers or employees to act on its behalf in connection with the trust.

38. Trustee may refuse to make disclosure

Subject to the terms of the trust and subject to any order of the Court, a trustee shall not be required to disclose to any person, any document which:

- (a) discloses the trustee's deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty conferred or imposed upon him;
- (b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based;
- (c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty; or
- (d) relates to or forms part of the accounts of the trust,

unless, in a case to which sub-paragraph (d) applies, that person is a beneficiary under the trust not being a charity, or a charity which is referred to by name in the terms of the trust as a beneficiary under the trust or the enforcer in relation to any special purpose trust.

PART VII – INVESTMENT OF TRUST PROPERTY**39. Standard investment criteria**

- (1) In making any investment of trust property, a trustee must have regard to the standard investment criteria.

- (2) A trustee must from time to time review the investments of the trust and consider whether, having regard to the standard investment criteria, they should be varied.
- (3) The standard investment criteria, in relation to a trust, are:
 - (a) the suitability for the trust of investments of the kind proposed to be made or retained and of the particular investment proposed to be made or retained;
 - (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust; and
 - (c) such other criteria as may be specified in the terms of the trust.

40. **Advice**

- (1) Before making any investment of trust property, a trustee must (unless the exception applies) obtain and consider proper advice about the way in which, having regard to the standard investment criteria, that investment should be made.
- (2) When reviewing the investments of the trust, a trustee must (unless the exception applies) obtain and consider proper advice about whether, having regard to the standard investment criteria, the investments should be varied.
- (3) The exception is that a trustee need not obtain such advice if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so.
- (4) Proper advice is the advice of a person who is reasonably believed by the trustee to be qualified to give it by his ability in and practical experience of financial and other matters relating to the proposed investment.

PART VIII – DELEGATES, AGENTS, NOMINEES AND CUSTODIANS

41. **Power to employ agents and delegates**

- (1) A trustee shall not delegate the trustee's powers unless permitted to do so by this Act or by the terms of the trust.
- (2) Subject to the provisions of this Act and the terms of the trust, the trustees of a trust may authorise any person to exercise any or all of their delegable functions as their agent.

- (3) The trustees' delegable functions consist of any function other than:
 - (a) any function relating to whether or in what way any assets of the trust should be distributed;
 - (b) any power to decide whether any fees or other payment due to be made out of the trust funds should be made out of income or capital;
 - (c) any power to appoint a person to be a trustee of the trust; or
 - (d) any power conferred by any other enactment or the trust instrument which permits the trustees to delegate any of their functions or to appoint a person to act as a nominee or custodian.
- (4) The trustees may not authorise two (or more) persons to exercise the same function unless they are to exercise the function jointly.
- (5) The trustees may not authorise a beneficiary to exercise any function as their agent (even if the beneficiary is also a trustee).

42. Linked functions etc

- (1) Subject to subsection (2), a person who is authorised under section 41 to exercise a function is (whatever the terms of the agency) subject to any specific duties or restrictions attached to the function.

For example, a person who is authorised under section 41 to make investments of trust property is subject to the duties under section 39 in relation to that power.

- (2) A person who is authorised under section 41 to exercise a function which is subject to a requirement to obtain advice is not subject to the requirement if he is the kind of person from whom it would have been proper for the trustees, in compliance with the requirement, to obtain advice.

43. Terms of agency

- (1) Subject to subsection (2) and sections 44 and 52 and the terms of the trust, the trustees may authorise a person to exercise functions as their agent on such terms as to remuneration and other matters as they may determine.
- (2) The trustees may not authorise a person to exercise functions as their agent on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.
- (3) The terms are:
 - (a) a term permitting the agent to appoint a substitute;
 - (b) a term restricting the liability of the agent or his substitute to the trustees or any beneficiary;
 - (c) a term permitting the agent to act in circumstances capable of giving rise to a conflict of interest.

44. Asset management: special restrictions

- (1) The trustees may not authorise a person to exercise any of their asset management functions as their agent except by an agreement which is in or evidenced in writing.
- (2) The trustees may not authorise a person to exercise any of their asset management functions as their agent unless:

- (a) they have prepared a statement that gives guidance as to how the functions should be exercised (“a policy statement”); and
- (b) the agreement under which the agent is to act includes a term to the effect that he will secure compliance with —
 - (i) the policy statement; or
 - (ii) if the policy statement is revised or replaced under section 49, the revised or replacement policy statement.
- (3) The trustees must formulate any guidance given in the policy statement with a view to ensuring that the functions will be exercised in the best interests of the trust.
- (4) The policy statement must be in or evidenced in writing.
- (5) The asset management functions of trustees are their functions relating to:
 - (a) the investment of assets subject to the trust;
 - (b) the acquisition of property which is to be subject to the trust; and
 - (c) managing property which is subject to the trust and disposing of, or creating or disposing of an interest in, such property.

45. **Persons who may be appointed as nominees or custodians**

- (1) The trustees may not appoint a person as a nominee or custodian in relation to trust property unless one of the relevant conditions is satisfied.
- (2) For the purposes of this Act a person is a custodian in relation to property if he undertakes the safe custody of the property or of any documents or records concerning the property.
- (3) The relevant conditions are that:
 - (a) the person carries on a business which consists of or includes acting as a nominee or custodian;
 - (b) the person is a body corporate which is controlled by the trustees or any person referred to in paragraphs (b) or (d) below;
 - (c) the person is a registered trust corporation; or
 - (d) the person is a [licensed bank].⁷

⁷ TBD.

- (3) Subject to subsection (1), the trustees may appoint one (or more) of their number as a nominee or custodian if they are to act as joint nominees or joint custodians.

46. Investment in bearer securities

- (1) If trustees retain or invest in securities payable to bearer, they must appoint a person to act as a custodian of the securities.
- (2) Subsection (1) does not apply if the trust instrument or any enactment or provision of subordinate legislation contains provision which (however expressed) permits the trustees to retain or invest in securities payable to bearer without appointing a person to act as a custodian.
- (3) An appointment under this section must be in or evidenced in writing.

47. Terms of appointment of nominees and custodians

- (1) The trustees may not appoint a person to act as a nominee or custodian on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.
- (2) The terms are:
- (a) a term permitting the nominee or custodian to appoint a substitute;
 - (b) a term restricting the liability of the nominee or custodian or his substitute to the trustees or to any beneficiary; or
 - (c) a term permitting the nominee or custodian to act in circumstances capable of giving rise to a conflict of interest.

PART IX – REVIEW OF AND LIABILITY FOR AGENTS, NOMINEES AND CUSTODIANS ETC

48. Application of sections 49 and 50

Sections 49 and 50 apply in a case where trustees have:

- (a) authorised a person to exercise functions as their agent; or
- (b) appointed a person to act as a nominee or custodian.

49. Review of agents, nominees and custodians etc

- (1) While the agent, nominee or custodian continues to act for the trust, the trustees:

- (a) must keep under review the arrangements under which the agent, nominee or custodian acts and how those arrangements are being put into effect;
 - (b) if circumstances make it appropriate to do so, must consider whether there is a need to exercise any power of intervention that they have; and
 - (c) if they consider that there is a need to exercise such a power, must do so.
- (2) If the agent has been authorised to exercise asset management functions, the duty under subsection (1) includes, in particular:
- (a) a duty to consider whether there is any need to revise or replace the policy statement made for the purpose of section 44;
 - (b) if they consider that there is a need to revise or replace the policy statement, a duty to do so; and
 - (c) a duty to assess whether the policy statement (as it has effect for the time being) is being complied with.
- (3) Subsections (3) and (4) of section 44 apply to the revision or replacement of a policy statement under this section as they apply to the making of a policy statement under the section.
- (4) “Power of intervention” includes:
- (a) a power to give directions to the agent, nominee or custodian;
 - (b) a power to revoke the authorisation or appointment.

50. Liability for agents, nominees and custodians etc

A trustee is not liable for any loss to the trust arising from any act or default of any agent, nominee or custodian if the delegation or appointment was made, or permitted to continue:

- (a) in good faith and without neglect; and
- (b) in compliance with any provision of this Act.

PART X - SUPPLEMENTARY

51. Effect of trustees exceeding their powers

A failure by the trustees to act in compliance with any provision of this Act:

- (a) in authorising a person to exercise a function of theirs as an agent; or

- (b) in appointing a person to act as a nominee or custodian, does not invalidate the authorisation or appointment.

52. **Remuneration and expenses of agents, nominees and custodians**

- (1) This section applies if a person other than a trustee has been:
 - (a) authorised to exercise functions as an agent of the trustees; or
 - (b) appointed to act as a nominee or custodian.
- (2) The trustees may remunerate the agent, nominee or custodian out of the trust property for services if:
 - (a) he is engaged on terms entitling him to be remunerated for those services; and
 - (b) the amount does not exceed such remuneration as is reasonable in the circumstances for the provision of those services by him to or on behalf of that trust.
- (3) The trustees may reimburse the agent, nominee or custodian out of the trust property for any expenses properly incurred by him in exercising functions as an agent, nominee or custodian.

PART XI – LIABILITY FOR BREACH OF TRUST

53. **Liability for breach of trust**

- (1) Subject to this Act and to the terms of the trust, a trustee shall be liable for a breach of trust committed by the trustee or in which the trustee has concurred.
- (2) A trustee who is liable for a breach of trust shall be liable for:
 - (a) the loss or depreciation in value of the trust property resulting from such breach; and
 - (b) the profit, if any, which would have accrued to the trust property if there had been no such breach.
- (3) Where there are two or more breaches of trust, a trustee shall not set off a gain from one breach of trust against a loss resulting from another breach of trust.
- (4) A trustee shall not be liable for a breach of trust committed prior to the trustee's appointment, if such breach of trust was committed by some other person.
- (5) A trustee shall not be liable for a breach of trust committed by a co-trustee unless:

- (a) the trustee becomes aware or ought to have become aware of the commission of such breach or of the intention of his co-trustee to commit a breach of trust; and
 - (b) the co-trustee actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent such breach.
- (6) A beneficiary may:
- (a) relieve a trustee of liability to the beneficiary for a breach of trust; and/or
 - (b) indemnify a trustee against liability for a breach of trust.
- (7) Subsection (6) shall not apply unless the beneficiary:
- (a) has legal capacity;
 - (b) has full knowledge of all material facts; and
 - (c) is not improperly induced by the trustee to take action under subsection (6).
- (8) Where two or more trustees are liable in respect of a breach of trust, they shall be liable jointly and severally.
- (9) A trustee who becomes aware of a breach of trust to which subsection (4) relates shall take all reasonable steps to have such breach remedied.
- (10) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from the trustee's own fraud, wilful misconduct or negligence save as mentioned in subsection (11).
- (11) Subject as expressly mentioned in the terms of the trust, a trustee may at the expense of the trust take out such insurance to protect the trust property as the trustee may reasonably consider is prudent, and such insurance may include insurance against any loss arising on a breach of trust by a trustee caused by such trustee's negligence.

54. **Trustee acting in respect of more than one trust**

- (1) A trustee acting for the purposes of more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust if the trustee has obtained notice of it by reason of the trustee's acting or having acted for the purposes 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 trustee of such other trust.

55. Dealings by trustee with other parties

- (1) Subject to subsection (2), where in any transaction or matter affecting a trust a trustee informs another party to the transaction or matter that he is acting as trustee, a claim by such other party in relation to that transaction or matter shall extend only to the trust property.
- (2) Nothing in subsection (1) shall affect the liability of a trustee for breach of trust.
- (3) Where in any such transaction or matter as referred to in subsection (1), a trustee fails to inform such other party that he is acting as trustee and that party is otherwise unaware of it, the trustee shall:
 - (a) be personally liable to such other party in respect thereof; and
 - (b) have a right of recourse to the trust property by way of indemnity against such personal liability.

56. Constructive trustee

- (1) Subject to subsection (2), where a person (in this section referred to as a constructive trustee) makes or receives any profit, gain or advantage from a breach of trust the person shall be deemed to be a trustee of that profit, gain, or advantage.
- (2) Section (1) shall not apply to a bona fide purchaser of property for value and without notice⁸ of a breach of trust.
- (3) A person who is or becomes a constructive trustee shall deliver up the property of which the person is a constructive trustee to the person properly entitled to it.
- (4) This section shall not be construed as excluding any other circumstances under which a person may be or become a constructive trustee.

57. Position of outgoing trustee

- (1) Subject to subsection (2), when a trustee resigns, retires or is removed, he shall duly surrender trust property in his possession or under his control.
- (2) A trustee who resigns, retires or is removed may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before surrendering trust property.
- (3) A trustee who resigns, retires or is removed and has complied with subsection (1) shall be released from liability to any beneficiary, trustee or person

⁸ TBD.

interested under the trust for any act or omission in relation to the trust property or the trustee's duty as a trustee except liability:

- (a) arising from any breach of trust to which such trustee (or in the case of a corporate trustee any of its officers or employees) was a party or to which the trustee was privy; or
- (b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees.

PART XII – PROTECTIVE TRUSTS, CLASS INTERESTS, AND CERTAIN POWERS

58. **Protective trusts**

- (1) The terms of a trust may make the interest of a beneficiary liable to termination.
- (2) Without prejudice to the generality of subsection (1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to:
 - (a) a restriction on alienation or disposal; or
 - (b) diminution or termination in the event of the beneficiary becoming bankrupt or any of his property becoming liable to sequestration for the benefit of his creditors.
- (3) A trust under which the interest of a beneficiary is subject to restriction, diminution or termination under subsection (2) is a protective trust.
- (4) A provision in the terms of a trust requiring the interest of a beneficiary in trust property to be held upon a protective trust shall be construed as a requirement that the interest of the beneficiary be subjected to restriction, diminution or termination as mentioned in subsection (2).

59. **Class interests**

- (1) Subject to the terms of a trust, the following rules shall apply where a trust or an interest under a trust is in favour of a class of persons:
 - (a) a class closes when it is no longer possible for any other person to become a member of the class;
 - (b) a woman who is over the age of 55 years shall be deemed to be no longer capable of bearing a child; and

- (c) where any class interest relates to income and for any period there is no member of the class in existence the income shall be accumulated and, subject to section 16, shall be retained until there is a member of the class in existence or the class closes.
- (2) In this section “class interest” means a trust or an interest under a trust which is in favour of a class of persons.

60. Power to provide for variation of terms of trust

- (1) The terms of a trust may be varied in any manner provided by its terms.
- (2) This section is in addition to section 70.

61. Power of accumulation and advancement

- (1) Subject to section 16, the terms of a trust may direct or authorise the accumulation for any period of all or part of the income of the trust.
- (2) Subject to subsection (3), income of the trust which is not accumulated under subsection (1) shall be distributed.
- (3) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, where a beneficiary is a minor and whether or not the beneficiary's interest is a vested interest or is an interest which will become vested:
 - (a) on attaining the age of majority;
 - (b) at any later age; or
 - (c) upon the happening of any event,the trustee may:
 - (i) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or such later age or the happening of such event;
 - (ii) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary; or
 - (iii) advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest.
- (4) The receipt of a parent or the lawful guardian of a beneficiary who is a minor shall be a sufficient discharge to the trustee for a payment made under subsection (3).
- (5) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, the trustee may advance or apply for the benefit of a beneficiary part of the trust property prior to the date of the happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.
- (6) Any part of the trust property advanced or applied under subsection (5) shall be brought into account in determining from time to time the share of the beneficiary in the trust property.

- (7) No part of the trust property advanced or applied under subsection (5) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

62. Power of appointment

The terms of a trust may confer on the trustee or any other person power to appoint or assign 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, whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

63. Power of revocation

- (1) A trust and any exercise of a power under a trust may be expressed to be:
- (a) revocable whether wholly or partly; or
 - (b) capable of variation.
- (2) No such revocation or variation shall prejudice anything lawfully done by a trustee in relation to a trust before the trustee receives notice of such revocation or variation.
- (3) Subject to the terms of the trust, if it is revoked the trustee shall hold the trust property in trust for the settlor absolutely.
- (4) Where a trust is partly revoked subsection (3) shall apply to the property which is the subject of such revocation.
- (5) In subsection (3) “settlor” means the particular person who provided the property which is the subject of revocation.

64. Power to provide for change of proper law

The terms of a trust may provide for the proper law of the trust to be changed from the law of the Maldives to the law of another jurisdiction.

PART XIII – FAILURE, LAPSE AND TERMINATION OF TRUSTS

65. Failure or lapse of interest

- (1) Subject to the terms of a trust and subject to any order of the Court, where:
- (a) an interest lapses;
 - (b) a trust terminates;

- (c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust; or
- (d) property is vested in a person which is not for his sole benefit and the trusts upon which he is to hold the property are not declared or communicated to the person,

the interest or property affected by such lapse, termination, lack of beneficiary or lack of declaration or communication of trusts shall be held by the trustee or the person referred to in sub-paragraph (d), as the case may be, in trust for the settlor absolutely or if he is dead for his personal representative.

- (2) Where an interest or property is held by the trustee for a purpose which has ceased to exist or is no longer applicable, that interest or property shall be held for such other purpose as the Court may declare to be consistent with the original intention of the settlor.
- (3) In subsections (1) and (2) “settlor” means the particular person who provided the interest or property affected as mentioned in subsection (1).

66. **Termination of a Maldives trust**

- (1) On the termination of a trust the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.
- (2) Notwithstanding subsection (1), the trustee may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before distributing trust property.
- (3) Without prejudice to the powers of the Court under subsection (4) and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are minors or otherwise incapable of holding the trust property directly they may require the trustee to terminate the trust and distribute the trust property among them.
- (4) The Court may:
 - (a) require the trustee to distribute the trust property;
 - (b) direct the trustee not to distribute the trust property; or
 - (c) make such other order as it thinks fit.
- (5) In this section “liabilities” includes contingent liabilities.
- (6) An application to the Court under this section may be made by any person referred to in section 75(3).

PART XIV – POWERS OF THE COURT

67. Appointment of resident trustee

- (1) Where there is no trustee resident in the Maldives a beneficiary may apply to the Court for the appointment of a person nominated for the purpose in the application, who shall be a person who resides in the Maldives, as an additional trustee.
- (2) The Court:
 - (a) upon being satisfied that notice of the application by the beneficiary has been served upon the trustees;
 - (b) having heard any representations made by the trustees or any other beneficiary; and
 - (c) having ascertained that the person nominated for the purpose in the application is willing to act,may make an order appointing such person as an additional trustee.

68. Power to relieve trustee from personal liability

The Court may relieve a trustee either wholly or partly from personal liability for a breach of trust where it appears to the Court that:

- (a) the trustee is or may be personally liable for the breach of trust;
- (b) the trustee has acted honestly and with good faith; and
- (c) the trustee ought fairly to be excused
 - (i) for the breach of trust; or
 - (ii) for omitting to obtain the directions of the Court in the matter in which such breach arose.

69. Power to make beneficiary indemnify for breach of trust

Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the Court may by order impound all or part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through the trustee.

70. Variation of terms of a Maldives trust by the Court and approval of particular transactions

- (1) Subject to subsection (2), the Court may, if it thinks fit, by order approve on behalf of:
- (a) a minor or any person of unsound mind having, directly or indirectly, an interest, whether vested or contingent, under the trust;
 - (b) any person, whether ascertained or not, 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 of persons;
 - (c) any person unborn; or
 - (d) any person in respect of any interest of his that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined,
- any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of the trust or enlarging the powers of the trustee of managing or administering any of the trust property.
- (2) The Court shall not approve an arrangement on behalf of any person coming within subsection (1)(a), (b) or (c) if the carrying out thereof shall appear to be materially prejudicial to that person.
- (3) Where in the management or administration of a trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is in the opinion of the court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee by the terms of the trust or by law, the Court may confer upon the trustee either generally or in any particular circumstances a power for that purpose on such terms and subject to such provisions and conditions, if any, as the Court thinks fit and may direct in what manner and from what property any money authorised to be expended and the costs of any transaction are to be paid or borne.
- (4) An application to the Court under this section may be made by any person referred to in section 75(3).

71. **Trusts for purposes**

- (1) Where trust property is held for a purpose in relation to which there is no beneficiary, including a charitable purpose, and any of the circumstances mentioned in subsection (2) apply, the court may, on the application of a trustee or the enforcer, declare that the property or the remainder of the property, as the case may be, shall be held for such other purpose as the Court considers to be consistent with the original intention of the settlor.

- (2) The circumstances are that –
 - (a) the purpose has, as far as is reasonably possible, been fulfilled, has ceased to exist or is no longer applicable;
 - (b) the purpose cannot be carried out having regard to the directions given by the settlor or the spirit of the gift;
 - (c) the purpose provides a use for only part of the trust property;
 - (d) the property, and any other property applicable for a similar purpose, can more effectively be applied to a common purpose, regard being had to the spirit of the gift;
 - (e) the purpose was laid down by reference to an area that is no longer a unit for that purpose, or by reference to a class of persons or to an area that is no longer appropriate, regard being had to the spirit of the gift or the practicality of administering the gift;
 - (f) the purpose has been adequately provided for by other means;
 - (g) in the case of a trust for charitable purposes, the purpose has ceased for what ever reason to be charitable; or
 - (h) the purpose has ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift.
- (3) Where trust property is held for a purpose in relation to which there is no beneficiary, including a charitable purpose, the Court may, on the application of a trustee or the enforcer, approve any arrangement that varies or revokes the purposes of the trust or enlarges or modifies the powers of management or administration of the trustees, if it is satisfied that the arrangement –
 - (a) is suitable and expedient; and
 - (b) is consistent with the original intention of the settlor and the spirit of the gift.
- (4) The Court shall not approve an arrangement under subsection (3) unless it is satisfied that any person with a material interest in the trust has had an opportunity to be heard.

PART XV - PROVISIONS APPLICABLE TO A FOREIGN TRUST

72. **Application of Part XV**

This Part XV shall apply only to a foreign trust.

73. **Enforceability of a foreign trust**

- (1) Subject to subsection (2), a foreign trust shall be regarded as being governed by, and shall be interpreted in accordance with its proper law.
- (2) A foreign trust shall be unenforceable in the Maldives:
 - (a) to the extent that it purports:
 - (i) to do anything the doing of which is contrary to the law of the Maldives, or
 - (ii) to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of the Maldives; or
 - (b) to the extent that the Court declares that the trust is immoral or contrary to public policy.

PART XVI - PROVISIONS OF GENERAL APPLICATION

74. **Application of Part XVI**

This Part XVI shall apply to a Maldives trust and, to the extent that the context admits, shall apply to a foreign trust.

75. **Applications to and certain powers of the Court**

- (1) A trustee may apply to the Court for direction concerning the manner in which the trustee may or should act in connection with any matter concerning the trust and the Court may make such order, if any, as it thinks fit.
- (2) The Court may, if it thinks fit:
 - (a) make an order concerning:
 - (i) the execution or the administration of any trust;
 - (ii) the trustee of any trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and payments, whether payments into court or otherwise;
 - (iii) a beneficiary or any person having a connection with the trust; or
 - (iv) the appointment or removal of an enforcer in relation to any special purpose trust;

- (b) make a declaration as to the validity or the enforceability of a trust; and/or
 - (c) rescind or vary any order or declaration made under this Act, or make any new or further order or declaration.
- (3) An application to the Court for an order or declaration under subsection (2) may be made by the trustee, the enforcer or a beneficiary or, with leave of the Court, by any other person.
- (4) Where the Court makes an order for the appointment of a trustee it may impose such conditions as it thinks fit, including conditions as to the vesting of trust property.
- (5) Subject to any order of the Court, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed as a trustee.

76. Execution of instruments by order of the Court

Where any person neglects or refuses to comply with an order of the Court directing the person to execute or make any conveyance, assignment, or other document or instrument or endorsement for giving effect to any order of the Court under this Act, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, assignment, or other document or instrument or endorsement, shall be executed, made or done by such person as the Court nominates for the purpose, at the cost of the person in default, or otherwise as the Court directs, and a conveyance, assignment, document, instrument or endorsement so executed, made or done shall operate and be for all purposes available as if it had been executed, made or done by the person originally directed to execute, make or do it.

77. Payment of costs

The Court may order the costs and expenses of and incidental to an application to the Court under this Act to be raised and paid out of the trust property or to be borne and paid in such manner and by such persons as it thinks fit.

78. Nature of trustee's estate, following trust property and insolvency of trustee

- (1) Subject to subsection (2):
- (a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust; and
 - (b) such property shall not be deemed to form part of the trustee's assets.

- (2) Where a trustee is also a beneficiary of the same trust, subsection (1) shall not apply to the trustee's interest in the trust property as a beneficiary.
- (3) Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered unless it is in the hands of a bona fide purchaser for value without notice of a breach of trust or a person (other than the trustee) deriving title through such a person.
- (4) Where a trustee becomes insolvent or upon distraint, execution or any similar process of law being made, taken or used against any of the trustee's property, the trustee's creditors shall have no right or claim against the trust property except to the extent that the trustee himself has a claim against the trust or has a beneficial interest in the trust.

79. Protection to persons dealing with trustee

- (1) A bona fide purchaser or mortgagee for value of property without notice of the existence of any trust of such property:
 - (a) may deal with a trustee in relation to trust property as if the trustee was the beneficial owner of the trust property; and
 - (b) shall not be affected by the trusts on which such property is held.
- (2) No person paying or advancing money to a trustee shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the propriety of the transaction or the application of the money.
- (3) Any two trustees, or any registered trust corporation or other type of person designated for the purposes of section 17, may provide good receipt to any bona fide person dealing with trust property on an arm's length basis, and no such person shall be obliged to enquire as to whether the transaction has been approved or authorised or is otherwise within the terms of the trust, and no such person shall be obliged to enquire as to the propriety of the transaction or the application of any payments made to such trustee(s).

80. Offences by companies

Where an offence under this Act committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the company, or any person who was purporting to act in any such capacity, he, as well as the company, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.

PART XVII - SUPPLEMENTAL

81. Application of this Act

This Act shall apply to trusts constituted or created either before or after the commencement of this Act.

82. Saving provisions

- (1) Nothing in this Act shall derogate from the powers of the Court which exist independently of this Act —
 - [(a) to set aside or reduce any transfer or other disposition of property;
 - (b) to vary any trust;
 - (c) to reduce or vary any testamentary or other disposition;
 - (d) to make an order relating to matrimonial proceedings; or
 - (e) to make an order relating to the avoidance of fraud on creditors.]⁹
- (2) Nothing in this Act shall affect a personal representative where he is acting as such.

83. Citation

This Act maybe cited as the Trusts Act [2008].

SCHEDULE 1 – MINIMUM CRITERIA**1 *Controllers and officers to be fit and proper persons***

- (1) Every person who is, or is to be, a controller or officer of the company is a fit and proper person to hold the particular position which he holds or is to hold.
- (2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of clients or potential

⁹ TBD.

clients of the company are, or are likely to be, in any way threatened by his holding that position.

- (3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has –
- (a) committed an offence involving fraud or other dishonesty or violence;
 - (b) contravened any provision made by or under any enactment appearing to the CMDA to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
 - (c) engaged in any business practices appearing to the CMDA to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
 - (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

2 *Business to be directed by at least two individuals*

At least two individuals must effectively direct the business of the company.

3 *Business to be conducted in prudent manner*

- (1) The company is conducting, or as the case may be, will conduct its trust business in a prudent manner.
- (2) In determining whether an company is conducting its business in a prudent manner, the CMDA shall take into account any failure by the company to comply with the provisions of this Act or other provisions of law.
- (3) An company shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain minimum net assets amounting to [\$250,000]¹⁰ or such greater amount as may be prescribed by trust regulations.

¹⁰ TBD

- (4) A company shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.
- (5) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the company to be prudently managed and the company to comply with the duties imposed on it by or under this Act or other provision of law.
- (6) A company shall not be regarded as conducting its business in a prudent manner unless it has effected a policy insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of the company's operations.
- (7) Subparagraphs (2) to (6) are without prejudice to the generality of subparagraph (1).

4 *Integrity and skill*

The business of the company is or, in the case of an company which is not yet carrying on trust business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.