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TRUSTS ACT 1994

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AN ACT to make provisions for the law relating to trusts and trustees and matters related thereto.

BE IT ENACTED by the Niue Assembly in Session assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short Title and Commencement

1.(1) This Act may be cited as the Trusts Act 1994.

(2) This Act shall apply only to trusts created on or after the Commencement Date.

Interpretation

2.(1) In this Act, unless the context otherwise requires -

"bankrupt", in relation to a corporation, includes a corporation which is insolvent, and "bankruptcy" shall be construed accordingly;

"beneficiary" means a person entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised;

"breach of trust" means a breach of any duty imposed on a trustee by this Act or by the terms of the trust;

"corporate trustee" means a trustee which is a corporation;

"corporation" means a body corporate wherever incorporated;

"Court" means the High Court or a Judge thereof;

"family" in relation to an individual means his father and mother, his spouse, the father and mother of his spouse, his brothers and sisters and the brothers and sisters of his spouse, his children and remoter issue and the spouses of such children and issue;

"functions" includes rights, powers, discretions, obligations, liabilities and duties;

"the Gazette" means the Niue Government Gazette and includes any supplement thereto;

"he", "him", and "his", "her", "she", in relation to a corporation include "it" and "its";

"insolvency" includes the making of an administration order, the appointment of a receiver and the bankruptcy of any person;

"insurance" includes assurance;

"interest", in relation to a beneficiary, means his interest under a trust;

"the Minister" means the Minister of Justice for Niue;

"minor" means a person who has not attained full age under the law of his domicile;

"ordinarily resident" shall have the meaning prescribed in Article 17 of the Niue Constitution and "residence" and "resident" shall have corresponding meanings;

"personal representative" means the executor or administrator of the estate of a deceased person;

"profit" includes gain or advantage;

"property" -

(a) means property of any description, wherever situated, including any share therein,

(b) in relation to rights and interests, includes rights and interests whether vested, contingent, defeasible or future;

"provisions of this Act" includes the provisions of any order hereunder;

"settlor" means a person who provides the trust property or makes a testamentary disposition on trust or to a trust;

"terms of a trust" means the written or oral terms of a trust, and any other applicable under its proper law;

"trust" includes-

(a) the trust property; and

(b) the functions, interests and relationships under a trust;

"trustee" has the meaning given by section 3, and includes a corporate trustee;

"trust property" means property held on trust;

"unit trust" means a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust in any profits or income arising from the acquisition, holding, management or disposal of property.

(2) For the purposes of this Act, a corporation is resident in the place in which it has its registered office.

(3) Any reference in this Act to an enactment is, unless the context otherwise requires, a reference to that enactment as amended, extended, re-enacted, or applied by or under any other enactment, including this Act.

Definition of Trust

3. 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 which does not form, or which has ceased to form, part of his own estate

(a) for the benefit of any person (known as "a beneficiary") whether or not yet ascertained or in existence; or

(b) for any valid charitable or non-charitable purpose which is not for the benefit only of the trustee; or

(c) for such benefit as is mentioned in sub-paragraph (a) and also for any such purpose as is mentioned in sub-paragraph (b).

Validity of Trusts

4. Subject to the provisions of this Act, a trust is valid and enforceable in Niue.

Proper Law of Trusts

5.(1) Subject to sub-section (4) below, the proper law of a trust shall be -

(a) the law expressed by the terms of the trust or intended by the settlor to be the proper law;

(b) if no such law is expressed or intended, the law with which the trust has its closest connection at the time of its creation; or

(c) if the law expressed by the terms of the trust or intended by the settlor to be the proper law, or the law with which the trust has its closest connection at the time of its creation, does not provide for trusts or the category of trusts involved, then the proper law of the trust shall be the law of Niue.

(2) In ascertaining the law with which a trust has its 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 trustee;

(d) the objects of the trust and the places where they are to be fulfilled.

(3) The terms of a trust may provide for a severable aspect of the trust (particularly the administration of the trust) to be governed by a different law from the proper law of the trust.

(4) The terms of a trust may provide for the proper law of the trust or the law governing a severable aspect of the trust to be changed from the law of one jurisdiction to the law of another jurisdiction.

(5) Where the proper law of a trust or the law governing a severable aspect of a trust is changed from the law of another jurisdiction (here called "the old law") to the law of Niue no provision of the old law shall operate so as 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 Niue.

(6) Where the proper law of a trust or the law governing a severable aspect of a trust is changed from the law of Niue to the law of another jurisdiction (here called "the old law") no provision of the law of Niue shall operate so as to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the new law.

(7) The provisions of this Act shall not apply and the provisions of the Trustee Act 1956 (New Zealand) shall continue to apply to a trust created on or after the Commencement Date where:

(a) the trust substantially provides benefits for an individual ordinarily resident in or domiciled in Niue; or

(b) the trust substantially provides benefits for any corporation or other entity owned by an individual ordinarily resident or domiciled in Niue.

Creation of a Trust

6.(1) A trust other than a unit trust may be created by an instrument in writing (including a will or codicil), by conduct, by operation of law, or in any other manner whatsoever.

(2) A unit trust may be created only by an instrument in writing.

(3) No formalities or technical expressions are required for the creation of a trust provided that the intention of the settlor to create a trust is clearly manifested.

(4) A trust (other than a trust by operation of law) respecting land situated in Niue shall not be enforceable.

Maximum Duration of a Trust and of Accumulation

7.(1) Subject to sub-section (2), the maximum duration of a trust shall be one hundred and twenty years from the date of its creation and a trust shall terminate on the one hundred and twentieth anniversary of the date of its creation unless it is terminated sooner.

(2) Sub-section (1) shall not apply to a trust established exclusively for a charitable purpose or purposes.

(3) The rule of law known as the rule against perpetuities shall not apply to any trust to which this section applies.

(4) The terms of a trust may direct or authorise the accumulation of all or part of the income of the trust for a period not exceeding the maximum duration of a the trust.

Validity of a Trust

8.(1) Subject to the provisions of this Act, a trust shall be valid and enforceable in accordance with its terms.

(2) A trust shall be invalid and unenforceable -

(a) to the extent that -

(i) it purports to do anything contrary to the law of Niue; or

(ii) it purports to confer any right or power or impose any obligation the exercise of which or the carrying out of which is contrary to the law of Niue; or

(iii) it has no beneficiary identifiable or ascertainable (unless the trust was created for a valid charitable or non-charitable purpose);

(b) to the extent that the Court declares that -

(i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation; or

(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 (provided that a charitable purpose shall be deemed always to be capable of performance); or

(iv) the settlor was, at the time of its creation, incapable under the law in force in Niue of creating such a trust.

(3) Where a trust is created for two or more purposes of which some are lawful and others are not, or where some of the terms of a trust are invalid and others are not -

(a) if those purposes cannot be separated or the terms cannot be separated, the trust is invalid;

(b) if those purposes can be separated or the terms can be separated, the Court may declare that the trust is valid as to the terms which are valid and the purposes which are lawful.

(4) Where a trust is partially invalid the Court may declare what property is to be held subject to the trust.

(5) Property provided by a settlor and as to which a trust is invalid shall, subject to any order of the Court, be held by the trust for the settlor absolutely or, if he is dead, as if it had formed part of his estate at his death.

(6) Where a trust is created under the law of Niue, the Court shall not vary it or set it aside or recognise the validity of any claim against the trust property pursuant to the law of another jurisdiction or the order of a court of other jurisdiction in respect of -

(a) the personal and proprietary consequences of marriage or the termination of marriage;

(b) succession rights (whether testate or intestate) including the fixed shares of spouses or relatives; or

(c) the claims of creditors in an insolvency.

(7) Sub-section (6) above shall have effect notwithstanding the provisions of the Reciprocal Enforcement of Judgments Act 1934.

Property which may be held on Trust

9.(1) Any property may be held by or vested in a trustee upon trust.

(2) A trustee may accept from any person property to be held on trust.

(3) A trustee shall not be bound to accept property to be held on trust, but where a trustee accepts property subject to the performance of an obligation the trustee shall be deemed to have given to the obligee for good consideration an undertaking to perform that obligation.

(4) Where a settlor declares a trust respecting property he does not own at the time of the declaration, then -

(a) the trust is incompletely constituted at the time of the declaration and no rights or duties arise thereunder, but

(b) if the settlor subsequently receives property which was the intended subject matter of the declaration of trust, the Court shall at the instance of the beneficiary or the trustee (and whether the beneficiary has given consideration for the declaration of trust or not) compel the settlor to transfer that property to the trustee or to hold that property on the terms of the trust.

PART II

THE SETTLOR, BENEFICIARIES AND PURPOSES OF A TRUST

Who may be the Settlor of a Trust

10.(1) Any person who has under the law of Niue the capacity to own and transfer property may be the settlor of a trust.

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

Beneficiaries of a Trust

11.(1) A beneficiary shall be identifiable by name or ascertainable by reference to a relationship of some person (whether or not living at the time of creation of the trust) or otherwise by reference to a description or to a class.

(2) The terms of a trust may -

(a) provide for the addition of a person as a beneficiary or the

exclusion of a beneficiary from benefit under the trust;

(b) impose an obligation on a beneficiary as a condition of benefit under the trust;

(3) Where a trust is in favour of a class of persons then, subject to the terms of the trust -

(a) the class closes when it is no longer possible for any other person to become a member of the class;

(b) a woman over the age of 60 years shall be deemed to be no longer capable of bearing a child; and

(c) where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and retained until a member of the class exists or the class closes.

(4) A beneficiary may -

(a) disclaim his whole interest under a trust; or

(b) subject to the terms of the trust, disclaim part of his interest under a trust (whether or not he has received some benefit from his interest).

(5) Subject to the terms of the trust, a disclaimer -

(a) shall be in writing;

(b) may be temporary; and

(c) may, if the disclaimer so provides, be revoked in the manner and under the circumstances specified therein.

(6) Where a beneficiary disclaims the whole or part of his interest under a trust the like consequences shall apply under section 7(5) as if the trust were invalid with respect to that interest or that part.

Nature of a Beneficial Interest

12.(1) The interest of a beneficiary is personal property.

(2) Subject to the terms of the trust, the interest of a beneficiary may be sold, pledged, charged, transferred or otherwise dealt with in any manner whatsoever.

Protective or Spendthrift Trusts

13.(1) The terms of a trust may make the interest of a beneficiary -

(a) subject to termination;

(b) subject to restriction on alienation of or dealing in that interest or any part of that interest; or

(c) subject to diminution or termination in the event of the beneficiary becoming insolvent or any of his property becoming liable to seizure or sequestration for the benefit of his creditors and such a trust shall be known as a protective or a spendthrift trust.

(2) Where any property is directed to be held on protective or spendthrift trust for the benefit of a beneficiary, the trustee shall hold that property -

(a) in trust to pay the income to the beneficiary until the interest terminates in accordance with the terms of the trust or a determining event occurs; and

(b) if a determining event occurs, and while the interest of the beneficiary continues, in trust to pay the income to such of the following (and if more than one in such shares) as the trustee in his absolute discretion shall appoint -

(i) the beneficiary and any spouse or child of the beneficiary; or

(ii) if there is no spouse or child of the beneficiary the beneficiary and the persons who would be entitled to the estate of the beneficiary if he had then died intestate and domiciled in Niue.

(3) In sub-section (2) above, a "determining event" shall mean the occurrence of any event or any act or omission on the part of the beneficiary (other than the giving of consent to an advancement of trust property) which would result in the whole or part of the income of the beneficiary from the

trust becoming payable to any person other than the beneficiary.

(4) Any rule of law or public policy which prevents a settlor from establishing a protective or a spendthrift trust of which he is a beneficiary is hereby abolished.

Letters or Memoranda of Wishes

14.(1) The settlor of a trust may give to the trustee a letter of his wishes or the trustee may prepare a memorandum of the wishes of the settlor with regard to the exercise of any functions conferred on the trustee by the terms of the trust.

(2) A beneficiary of a trust may give to the trustee a letter of his wishes or the trustee may prepare a memorandum of the wishes of the beneficiary with regard to the exercise of any functions conferred on the trustee by the terms of the trust.

(3) Where a trust is in favour of a class of persons then a member of that class may give to the trustee a letter of his wishes or the trustee may prepare a memorandum of the wishes of that member with regard to the exercise of any functions conferred on the trustee by the terms of the trust.

(4) Where a letter of wishes or a memorandum of wishes is given to or prepared by the trustee of a trust then -

(a) the trustee may have regard to the letter or memorandum in exercising any functions conferred upon him by the terms of the trust;

but

(b) the trustees shall not be bound to have regard to that letter or memorandum and shall not be accountable in any way for his failure or refusal to have regard to that letter or memorandum.

(5) No fiduciary duty or obligation shall be imposed on a trustee merely by the giving to him of a letter of wishes or the preparation by him of a memorandum of wishes.

Definition of Charitable Purposes

15.(1) For the purposes of this Act, and subject to sub-sections (2) and (3) below, the following purposes shall be regarded as charitable -

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the protection of the environment;
- (e) the advancement of human rights and fundamental freedoms;
- (f) the advancement of amateur sport;
- (g) any other purposes which are beneficial to the community.

(2) A purpose shall not be regarded as charitable unless the fulfillment of that purpose is for the benefit of the community or a substantial section of the community having regard to the type and nature of the purpose.

(3) A purpose may be regarded as charitable whether it is to be carried out in Niue or elsewhere and whether it is beneficial to the community in Niue or elsewhere.

Trusts for Non-Charitable Purposes

16.(1) A trust may be created for a purpose which is non-charitable provided that -

(a) the purpose is specific, reasonable and capable of fulfillment;

(b) the purpose is not immoral, unlawful or contrary to public policy;
and

(c) the terms of the trust provide for the appointment of a protector who is capable of enforcing the trust and for the appointment of a successor to any protector.

(2) If Cabinet, on the advice of the Minister, has reason to believe that there is no protector of a trust for a non-charitable purpose or the protector is unwilling or incapable of acting, it may appoint a person to be protector of the trust and such person shall from the date of appointment exercise the functions of protector of the trust.

PART III
PROTECTORS AND TRUSTEES

The Protector of a Trust

17.(1) The terms of a trust may provide for the office of protector of the trust.

(2) The protector shall have the following powers:

(a) (unless the terms of the trust shall otherwise provide) the power to remove a trustee and to appoint a new or additional trustee;

(b) such further powers as are conferred on the protector by the terms of the trust or of this Act.

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

(4) In the exercise of his office, the protector shall not be accounted or regarded as a trustee.

(5) Subject to the terms of the trust, in the exercise of his office a protector shall owe a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust is created.

(6) Where there is more than one protector of a trust then, subject to the

terms of the trust, any functions conferred on the protectors may be exercised if more than one half of the protectors for the time being agree on its exercise.

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

Who may be the Trustee of a Trust

18.(1) Any person who has under the law of Niue the capacity to own and transfer property may be the trustee of a trust.

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

The Number of Trustees

19.(1) Unless the terms of the trust provide for a greater number, the minimum of trustees shall be one.

(2) A trust shall not cease to be valid only on the ground that there is no trustee or fewer than the number of trustees required by the terms of the trust.

(3) Where there is no trustee or fewer than the number of trustees required by the terms of the trust, the necessary number of new or additional trustees shall be appointed and until the minimum number is reached the surviving trustee (if any) shall act only for the purpose of preserving the trust property.

(4) Except in the case of a trust established for a charitable purpose -

(a) the number of trustees shall be not more than four; and

(b) if at any time there are more than four persons named as trustees, only the first four persons so named shall be the trustees of the trust.

Appointment of New or Additional Trustees

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

(a) the protector (if any); or

(b) the trustees for the time being (but so that a trustee shall not be required to join in the appointment of his replacement); or

(c) the last remaining trustee; or

(d) the personal representative or liquidator of the last remaining trustee; or

(e) if there is no such person (or no such person willing to act) the Court may appoint a new or additional trustee.

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

appointed a trustee.

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

Appointment of Trustee Resident in Niue

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

(2) The Court -

(a) if satisfied that notice of the application has been served on the existing trustee;

(b) having heard any representations; and

(c) having ascertained that the person nominated is willing to act;

may appoint that person as an additional trustee.

(3) Notwithstanding the provisions of section 19, the power contained in this section may be exercised even if it results in there being more than four trustees for the time being of the trust.

(4) The terms of a trust may expressly exclude the operation of sub-

sections (1) and (2) of this section.

Renunciation of Trusteeship

22.(1) No person shall be obliged to accept appointment as a trustee, but a person nominated as trustee who knowingly intermeddles with the trust 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 of a trust may within a reasonable period of time after becoming aware of this nomination as trustee -

(a) disclaim his appointment by notice in writing to the other trustees of such trust (if any); or

(b) if there are no such other trustees or such other trustees cannot be contacted, apply to the Court for relief from his appointment and the Court may make such order as it thinks fit.

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

Resignation or Removal of Trustees

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

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

(a) the delivery of a notice of resignation under sub-section (1);

(b) his removal from office by the Court;

(c) his removal from office by the protector of the trust;

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

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

(4) When a trustee resigns or is removed -

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

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

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

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

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

Nature of Trustees' and Protectors' Interests

24.(1) Subject to sub-section (2) -

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

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

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

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

Corporate Trustee May Act by Resolution

25. A corporate trustee may -

(a) act in connection with a trust by a resolution of the corporate trustee or of its board of directors or other governing body; or

(b) appoint an officer or employee to act on its behalf in connection with the trust.

Trustees of more than one Trust

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

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

Dealings by Trustees with Third Parties

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

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

trustee -

(a) he incurs personal liability to the third party in respect of the transaction or matter; and

(b) he has a right of indemnity against the trust property in respect of his personal liability, unless he acted in breach of trust.

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

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

(a) may deal with a trustee in relation to trust property as if the trustee were the beneficial owner thereof; and

(b) is not affected by the trusts on which the property is held.

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

(a) that the money is needed in the proper exercise of the trust functions;

(b) that no more than is so needed is raised; or

(c) that the transaction or the application of the money is proper.

(6) In this section "third party" means a person other than a settlor, trustee, protector or beneficiary of the trust.

PART IV

DUTIES AND POWERS OF TRUSTEES

General Duties of Trustees

28.(1) A trustee shall in the execution of his functions -

(a) act with due diligence; and

(b) observe utmost good faith; and

(c) act to the best of his skills and abilities; and

(d) exercise the standard or care of a reasonable and prudent man of business.

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

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

(4) Where a fiduciary duty is owed to a purpose for which a trust was

established, that duty may be enforced by the protector of the trust or (in the case of a trust established for a charitable purpose) by the Minister.

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

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

(b) preserve and, so far as is reasonable, enhance the value of the trust property.

(6) Except with the approval of the Court or in accordance with the terms of the trust or the provisions of this Act, a trustee shall not-

(a) derive, directly or indirectly, any profit from his trusteeship;

(b) cause or permit any other person directly or indirectly to derive any profit from his trusteeship; or

(c) on his own account enter into any transaction with his co-trustees or relating to the trust property which may result in any such profit.

(7) The trustee of a trust shall keep accurate accounts and records of his trusteeship.

(8) A trustee shall keep trust property separate from his own property and

separately identifiable from any other property of which he is a trustee.

Duty to Supply Information and Duty of Confidentiality

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

(a) the Court;

(b) the settlor or protector of the trust;

(c) in the case of a trust established for a charitable purpose, the Minister;

(d) subject to the terms of the trust, any beneficiary of the trust who is of full age and capacity; and

(e) subject to the terms of the trust, any charity for the benefit of which the trust was established.

(2) Subject to the provisions of this Act and to the terms of the trust, and except as is necessary for the proper administration of the trust or by reason of any other Act, the trustee of a trust shall keep confidential all information regarding the state and amount of the trust property or the conduct of the trust administration.

(3) A trustee is not (subject to the terms of the trust and to any order of the Court) obliged to disclose documents which reveal-

(a) his deliberations as to how he should exercise his functions as trustee;

(b) the reasons for any decision made in the exercise of those functions;

(c) any material upon which such a decision was or might have been based.

Duty of Trustees to Act Together

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

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

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

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

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

Duty to Act Impartially

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

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

General Powers of Trustees

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

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

(3) Where the terms of a trust provide that the trustee may add or remove

beneficiaries or purposes for which the trust is established, then if such power is exercised properly and on the basis of valid considerations the exercise of the power shall not be regarded as a breach of the duty of the trustee under the trust.

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

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

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

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

Powers of Investment

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

(2) Where the terms of a trust or any other instrument provide that any money requiring investing shall only be invested in "authorised trustee investments" (or any similar expression) then the money shall be invested only in such investments as are specified in Schedule 1 to this Act.

(3) The terms of a trust may provide that Schedule 1 to this Act shall apply to the trust with such modifications as are specified by the terms of the trust.

(4) Cabinet may, on the advice of the Minister, by Order published in the Gazette amend the list of authorised trustee investments in paragraph 1 of Schedule 1.

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

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

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

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

(7) Subject to the terms of the trust, before investing money in any

investment a trustee shall consider whether he should obtain appropriate advice as to whether the investment is suitable and satisfactory and (if he considers that the obtaining of such advice is necessary) shall obtain and consider such advice accordingly.

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

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

Implied Powers of Trustee

34.(1) Subject to the terms of the trust, the powers contained in Schedule 2 to this Act shall apply to all trusts to which this section applies.

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

Delegation by Trustees

35.(1) A trustee may not delegate the exercise of his functions unless

permitted to do so by this Act or by the terms of the trust.

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

(a) delegate the management of trust property to and appoint investment managers whom the trustee reasonably considers to be qualified to manage the investment of the trust property;

(b) appoint and employ any lawyer, accountant or other person to act in relation to any of the affairs of the trust or to hold any of the trust property; and

(c) authorise any such manager or person to retain or receive commission or other payment usually payable for services of the description rendered.

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

(a) the selection of the delegate or appointee; and

(b) the supervision of the activities of the delegate or appointee.

Reimbursements of Expenses

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

Payment of Trustees

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

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

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

(a) by the Court; or

(b) by some or all of the beneficiaries of the trust:

Provided that a beneficiary may not authorise such payment if the beneficiary -

(i) is a minor or a person under legal disability;

(ii) does not have full knowledge of all material facts; or

(iii) is improperly induced by the trustee to authorise such payment.

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

Power to appropriate

38. 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 he considers appropriate.

Power and Duty of Maintenance

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

(a) while the beneficiary is a minor, the trustee -

(i) may, at his discretion, pay to the parent or guardian of the beneficiary or otherwise apply the whole or part of the income attributable to that interest for or towards the maintenance,

education or benefit of the beneficiary; and

- (ii) shall accumulate the residue of that income as an accretion to the trust property and as one fund with the trust property for all purposes:

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

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

Power of Advancement

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

Provided that -

- (a) any trust property so paid or applied shall be brought into account in determining the share of the beneficiary in the trust property;

- (b) no such payment or application shall be made which prejudices any person entitled to any prior interest unless such person is of full age and consents to the payment or application or (if such person is not of

full age) the Court consents; and

(c) the part of the trust property so paid or advanced shall not exceed the presumptive share of the beneficiary in the trust property.

Accumulation and Maintenance Settlements

41. Where property is directed to be held on accumulation and maintenance trusts for the benefit of a beneficiary or a class of beneficiaries, the provisions of the two foregoing sections of this Act shall (unless the terms of the trust otherwise provide) apply to the interest of such beneficiary or beneficiaries.

Receipts of Parents or Guardians

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

Power of Appointment

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

Power of Revocation or Variation

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

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

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

(4) In so far as the terms of a trust make no provision for revocation of the trust, then the trust shall be irrevocable.

PART V

TERMINATION OR FAILURE OF TRUSTS

Failure or Lapse of Interest

45.(1) Subject to the terms of the trust and to any order of the Court, where

-

(a) an interest lapses;

(b) a trust terminates; or

(c) there is no beneficiary and no person (whether or not then living) who can become a beneficiary in accordance with the terms of the trust;

the interest or property concerned shall be held by the trustee in trust for the settlor absolutely, if he is dead, as if it had formed part of his estate at death.

(2) Subsection (1) shall not apply to a trust established for a charitable purpose to which the following section applies.

Application of Property held on Charitable Trusts

46.(1) Where trust property is held for a charitable purpose and -

- (a) the purpose has been, as far as may be, fulfilled;
- (b) the purpose cannot be carried out at all, or not according to the directions given and to the spirit of the gift;
- (c) the purpose provides a use for part only of the property;
- (d) the property, and other property applicable for a similar purpose, can be more effectively used in conjunction, and to that end can more suitably be applied to a common purpose;
- (e) the purpose was laid down by reference to an area which was then, but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable or to be practicable in administering the gift;
- (f) the purpose has been adequately provided for by other means;
- (g) the purpose has ceased to be charitable (by being useless or

harmful to the community or otherwise); or

(h) the purpose has ceased in any other way to provide a suitable and effective method of using the property;

the property, or the remainder of the property, as the case may be, shall be held for such other charitable purpose as the Court, on the application of the Minister or the trustee, may declare to be consistent with the original intention of the settlor.

(2) Where trust property is held for a charitable purpose, the Court, on the application of the Minister or the trustee, may approve any arrangement which varies or revokes the purposes or terms of the trust or enlarges or modifies the powers of management or administration of the trustee, if it is satisfied that the arrangement -

(a) is now suitable or expedient; and

(b) is consistent with the original intention of the settlor.

(3) The Court shall not make a declaration under sub-section (1) above or approve and arrangement under sub-section (2) above unless satisfied that any person with a material interest in the trust has had an opportunity of being heard.

Termination of Trusts

47.(1) On the termination of a trust, the trust property shall, subject to

sub-section (2), be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.

(2) The trustee may retain sufficient assets to make reasonable provision for liabilities (existing, future, contingent or other).

Termination by Beneficiaries

48.(1) Without prejudice to any power of the Court and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained, and none is a person under legal disability or a minor, and all beneficiaries are in agreement so to do, they may require the trustee to terminate the trust and distribute the trust property as the beneficiaries direct.

(2) A beneficiary of an interest under a protective or spendthrift trust may not enter into such an agreement as is referred to in subsection (1).

PART VI

VARIATION OF TRUSTS

Variation of Trusts

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

(a) a minor or a person under legal disability having, directly or indirectly, an interest, vested or contingent, under the trust;

(b) any person unborn;

(c) any person who is presently unascertained but who may become entitled, directly or indirectly, to an interest under the trust, as being (at a future date or on the happening of a future event) a person of any specified description or a member of any specified class; or

(d) any person, in respect of an interest that may accrue to him by virtue of the exercise of a discretionary power on the failure or determination of an interest under a protective or spendthrift trust -

any arrangement which varies or revokes the terms of the trust or enlarges or modified the powers of management or administration of the trustee, whether or not there is another person with a beneficial interest who is capable of assenting to the arrangement:

Provided that the Court shall not approve an arrangement on behalf of a person mentioned in paragraphs (a), (b) or (c) unless the arrangement appears to be for his benefit.

Approval of Particular Transaction

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

(a) may confer upon the trustee, generally or in any particular circumstances, the necessary power, on such terms and subject to such conditions as the Court thinks fit; and

(b) may direct the manner in which, and the property from which, any moneys authorised to be expended, and the costs of any transaction, are to be paid or borne.

PART VII

BREACH OF TRUST

Liability for Breach of Trust

51.(1) Subject to the provisions of this Act and to the terms of the trust, a trustee who commits or concurs in a breach of trust is liable for -

(a) any loss or depreciation in value of the trust property resulting from the breach; and

(b) any profit which would have accrued to the trust had there been no breach.

(2) A trustee may not set off a profit accruing from one breach of trust against a loss or depreciation in value resulting from another.

(3) A trustee is not liable for a breach of trust committed by another person prior to his appointment or for a breach of trust committed by a co-

trustee unless -

(a) he becomes or ought to have become aware of the breach; and

(b) he actively conceals the breach, or fails within a reasonable time to take proper steps to protect or restore the trust property or to prevent the breach.

(4) Where trustees are liable for a breach of trust, they are liable jointly and severally.

(5) A trustee who becomes aware of a breach of trust shall take all reasonable steps to have the breach remedied.

(6) Nothing in terms of a trust shall relieve a trustee of liability for a breach of trust arising from his own fraud or willful misconduct.

Constructive Trusts

52.(1) A person who derives a profit from a breach of trust, or who obtains property in breach of trust, shall be deemed to be a trustee of the property, unless he derives or obtains it in good faith and without actual constructive or implied notice of the breach of trust.

(2) A person who becomes a trustee by virtue of sub-section (1) shall deliver up the profit or property to the person properly entitled to it.

(3) This section does not exclude any other circumstances in which a

constructive trust may arise.

Tracing Trust Property

53. Without prejudice to the personal liability of a trustee, trust property which has been charged or dealt with in breach of trust, or any property into which it has been converted, may be followed and recovered unless -

(a) it is no longer identifiable; or

(b) it is in the hands of a bona fide purchaser for value without actual, constructive or implied notice of the breach of trust.

Beneficiary May Relieve or Indemnify Trustee

54.(1) A beneficiary may relieve a trustee of liability to him for a breach of trust or indemnify a trustee against liability for a breach of trust.

(2) Sub-section (1) does not apply if the beneficiary -

(a) is a minor or a person under legal disability;

(b) does not have full knowledge of all material facts; or

(c) is improperly induced by the trustee to act under sub-section (1).

Power to Relieve Trustees from Personal Liability

55. The Court may relieve a trustee wholly or partly of liability for a breach of trust where it appears to the Court that the trustee has acted

honestly and reasonably and ought fairly to be excused for the breach of trust or for omitting to obtain the directions of the Court in the matter in which the breach arose.

Power to Make Beneficiaries Indemnify

56. Where a trustee commits a breach of trust at the instigation, at the request or with the concurrence of a beneficiary, the Court (whether or not the beneficiary is a minor or a person under legal disability) may impound all or part of his interest by way of indemnity to the trustee or any person claiming through him.

Limitation and Prescription

57.(1) No period of limitation or prescription applies to an action brought against a trustee -

(a) in respect of any fraud to which the trustee was a party or was privy; or

(b) to recover from the trustee trust property or the proceeds thereof

(i) held by or vested in him or otherwise in his possession or under his control; or

(ii) previously received by him or converted to his use.

(2) Subject to sub-section (1), the period within which an action founded

on breach of trust may be brought against a trustee is -

(a) three years from delivery of the final accounts of the trust to the beneficiaries; or

(b) three years from the date on which the plaintiff first has knowledge of the breach of trust, whichever period first begins to run.

(3) Where the plaintiff is a minor or a person under legal disability, the period referred to in sub-section (2) does not begin to run until his minority or disability, as the case may be, ceases.

(4) This section shall apply notwithstanding the provisions of section 21 of the Limitation Act 1950 (New Zealand).

PART VIII

POWERS OF THE COURT

Jurisdiction of the Court

58. The Court has jurisdiction in respect of any matters concerning a trust where -

(a) the proper law of the trust is the law of Niue;

(b) a trustee of the trust is resident in Niue;

(c) any property of the trust is situated in Niue;

(d) any part of the administration of the trust is carried on in Niue.

General Powers of the Court

59.(1) On the application of a trustee, a beneficiary, a settlor or his personal representatives, a protector, (in the case of a trust established for a charitable purpose) the Minister or, with the leave of the Court, any other person the Court may -

(a) make an order in respect of -

(i) the execution, administration or enforcement of a trust;

(ii) a trustee, including an order as to the exercise by a trustee of his functions, the removal of a trustee, the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments whether into Court or otherwise;

(iii) a protector, including an order appointing a protector;

(iv) a beneficiary, or any person connected with a trust;

(v) any trust property, including an order as to the vesting, preservation, application, surrender or recovery thereof;

(b) make a declaration as to the validity or enforceability of a trust;

(c) direct the trustee to distribute, or not to distribute the trust property;

(d) make such order in respect of the termination of the trust and the distribution of the property as it thinks fit;

(e) rescind or vary an order or declaration under this Act, or make a new or further order or declaration.

(2) Where the Court appoints or removes a trustee under this section -

(a) it may impose such requirements and conditions as it thinks fit, including provisions as to remuneration and requirements or conditions as to the vesting of trust property;

(b) subject to the Court's order, a trustee appointed by the Court has the same functions, and may act in all respects, as if he had been originally appointed a trustee.

(3) If a person does not comply with an order of the Court under this Act requiring him to do any thing, the Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the Court, at the expense of the person in default (or otherwise, as the Court directs) and a thing so done has effect in all respects as if done by the person in default.

Applications for Directions

60. A trustee may apply to the Court for directions as to how he should or might act in any of the affairs of the trust, and the Court may make such order as it thinks fit.

Payment of Costs

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

PART IX

VARIANT TYPES OF TRUST

Variant Types of Trust

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

(a) there is a recital to that effect in the instrument creating the trust; and

(b) the trust is of a type approved by the Minister by Order published in the Gazette.

(2) The instrument creating a trust may be written in a language other than

English, provided that a version in the English language certified by the original trustee to be a true translation is appended to the instrument.

Provisions of Variant Types of Trust

63. A trust of a type approved under sub-section (1) of section 62 may provide that the trustee shall hold the trust property -

(a) for a period not exceeding one hundred and twenty years, to pay or apply the income and capital thereof for the maintenance, education, advancement or benefit of the family of the settlor, and/or for the purpose of performing acts or services in honour of the settlor or the ancestors of the settlor; and

(b) thereafter for the advancement of the settlor's religion, or for such other charitable purpose as the settlor may specify or, if the settlor has not specified a charitable purpose, for such charitable purpose as the trustee shall determine.

PART X

REGISTRATION OF TRUSTS AND EXEMPT TRUSTS

Facility to Register Trusts

64.(1) The registrar of the Court (in this section called "the Registrar") shall maintain a register of trusts (in this section called "the Register").

(2) The settlor or a trustee of a trust may apply to the Registrar to enter

the trust on the Register.

(3) An application for entry on the Register shall be accompanied by -

(a) a certified copy of the instrument creating the trust (if any); and

(b) a fee of \$300.

(4) The Registrar shall, on receipt of an application for registration, a certified copy of the instrument creating the trust (if any) and the required fee -

(a) enter on the Register the name of the trust (if any), the name of the settlor and the name of the beneficiary or the purpose for which the trust is established; and

(b) issue to the trustee a certificate of registration.

(5) Where the terms of a trust which has been registered are varied, the trustee shall send to the Registrar a notification of such variation together with a fee of \$150 and the Registrar shall amend the entry on the Register accordingly and issue an amended certificate of registration.

(6) Where a trust which has been registered terminates, the trustee shall notify the Registrar and return the certificate of registration and the Registrar shall then cancel the entry on the Register and the certificate of registration.

(7) The Register shall not be open for inspection except that the trustee of a trust may in writing authorise a person to inspect the entry of that trust on the Register.

(8) Notwithstanding subsection (7) of this section and section 29, the Register shall be open to inspection by any foreign government or any court and tribunal of any other country including Niue but only if and to the extent that the High Court so directs having been satisfied that the information is required and will be used solely for the purposes of an investigation or prosecution of any person in relation to the sale, or the laundering of the proceeds of sale, of any prohibited narcotic substances, or the laundering of the proceeds gained from any other serious criminal activity whether that sale or laundering or other serious criminal activity occurred in Niue or elsewhere.

(9) The Minister may increase the fees payable under this section by Order in Cabinet.

(10) Nothing in subsection (7) of this section shall prevent the High Court from requiring any person to produce claimants or to give evidence in any proceedings of any facts relevant in such proceedings.

Exemption from Taxes and Duties

65.(1) For the purposes of this Act a trust shall be an exempt trust in any year if -

(a) the settlor is not resident in Niue during that year;

(b) none of the beneficiaries are resident in Niue during that year;
and

(c) the trust property does not include any land situated in Niue.

(2) In any year when a trust is an exempt trust, then, notwithstanding any provision to the contrary in any enactment -

(a) the income of the trust for that year shall be exempt from all provisions of the Income Tax Ordinance 1961;

(b) no estate, inheritance, succession or gift tax or duty shall be payable with respect to the trust property by reason of any death occurring during that year; and

(c) all instruments executed in that year and relating to the trust property or to transactions carried out by the trustee on behalf of the trust shall be exempt from stamp duty.

(3) In this section "resident" shall mean resident for the purposes of the Income Tax Ordinance 1961.

SCHEDULES

SCHEDULE 1

Authorised Trustee Investments

1. The following shall be regarded as authorised trustee investments:

(a) securities issued by, or the payment of interest on which is guaranteed by, the Government of Niue or by any other sovereign state;

(b) securities issued by, or the payment of interest on which is guaranteed by, any of the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Economic Community, the European Investment Bank, the International Finance Corporation, the International Monetary Fund, or the International Bank for Reconstruction and Development;

(c) any trustee investments authorised by the Trustee Act 1956 (New Zealand), the Commonwealth of Australia or any State or Territory thereof, or the United Kingdom;

(d) securities issued by or deposits with any Bank registered with the relevant authorities in any of the jurisdictions in (c) above or in the United States of America, the Cook Islands or Niue:

(e) freehold property situated in any of the jurisdictions in (c) above, or leasehold property situated in Niue of which the unexpired term of the end of the investment is not less than forty years.

SCHEDULE 2

Implied Powers of Trustees

Trust for Sale and Investment

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

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

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

Powers respecting trustee investments

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

(2) The trustee shall have power to purchase any land, building or chattel or any interest therein in any jurisdiction, provided that the power to purchase land in Niue shall be limited to the purchase of a leasehold interest only, for the use or occupation of any one or more persons (such use or occupation to be only in accordance with the preceding sub-paragraph of this paragraph) or partly for such use and partly as an investment.

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

Corporations

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

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

Appropriation

4. The trustee shall have power to appropriate any investments or property from time to time forming part of the trust property in its actual state of investment in or towards the satisfaction of the beneficial interest of any

person interested in the trust property upon making such valuation if any as the trustee may think fit and without the necessity of obtaining the consent of any person.

Holding and Custody of Investments

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

Land

6. Subject to the provisions of the Land Ordinance 1969, the Niue Amendment Act 1968 and any relevant principles of Land Law applicable to Niue, Where the trust property includes any land (in this paragraph called "the Land") -

(a) the trustee may lease, mortgage, charge, grant any licence over (whether exclusive or not) and otherwise dispose of the Land or any interest therein, provided that there shall be no power to sell, mortgage or exchange land in Niue;

(b) the trustee may spend capital money on erecting buildings on the Land or on demolishing and rebuilding or on altering or improving buildings on it or otherwise on improving the Land as he thinks fit (and any certificate of any architect or surveyor employed by the trustee or of any trustee who is qualified as an architect or surveyor that the work specified in such certificate consists only of alteration or improvement

shall be conclusive as between the trustee and all persons interested under the trust that any capital money spent on such work was properly spent by the trustee in exercise of the powers conferred by this subparagraph);

(c) the trustee may observe and perform all obligations imposed on or incurred by him as owner or lessor or lessee of the Land and shall be entitled to be indemnified out of every part of the trust property against all personal liability imposed on him by or by any breach of any one or more of such obligations and in this subparagraph "obligations" includes every obligation whether imposed by contract or by general law or otherwise;

(d) the trustee may employ any of the capital of the trust property in repairing, developing, enlarging, equipping, furnishing, insuring and maintaining the Land and buildings and fixtures on it.

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

Borrowing

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

(2) The trustee shall hold any borrowed money as capital of the trust

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

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

Insurance

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

Loans to Beneficiaries

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

Release of Powers

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

Trustees Appointed as Directors

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

Associated Parties

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

Sundry Powers

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

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

(a) to compromise and settle for such consideration and upon such terms and conditions as the trustee may consider advisable all matters arising in relation to the trust;

(b) to pay out of the income or capital of the trust property all the costs of and incidental to the preparation and execution of the trust instrument;

(c) to receive any property from any person as an addition to the trust property either by gift inter vivos or by will or under the provisions of any other trust or otherwise.

Revocable Appointments

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