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Act 554

LABUAN OFFSHORE TRUSTS ACT 1996

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LABUAN OFFSHORE TRUSTS ACT 1996

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LAWS OF MALAYSIA**Act 554****LABUAN OFFSHORE TRUSTS ACT 1996**

An Act to provide for the creation and recognition of offshore trusts; and for matters connected therewith or incidental thereto.

[31 October 1996, P.U. (B) 472/1996]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I**PRELIMINARY****Short title**

1. This Act may be cited as the Labuan Offshore Trusts Act 1996.

Interpretation

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

“Authority” has the meaning assigned thereto by the Labuan Offshore Financial Services Authority Act 1996 [*Act 545*];

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

“breach of trust” means—

(a) any act by a trustee which is in contravention of the duties imposed;

- (b) any act or neglect by a trustee which is not authorized or excused; or
- (c) any neglect or omission on the part of the trustee to fulfill the duties imposed upon him,

by this Act, the proper law of the trust or the terms of the trust;

“corporation” means a body corporate, wherever formed or incorporated;

“Court” means the High Court or a judge thereof;

“immovable property situated in Malaysia” includes shares, stocks or debentures in or of a company whose assets includes immovable property situated in Malaysia other than a public company quoted on the official list of a stock exchange of any country or jurisdiction therein;

“Labuan” means the Federal Territory of Labuan;

“Malaysia” means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;

“Minister” means the Minister for the time being charged with the responsibility for offshore companies;

“minor” means a person who has not attained the age of majority under the proper law of a trust or, where no law has been chosen, the law of his domicile;

“offshore trust” has the meaning assigned to it by subsection 7(1);

“person” includes a body of persons, corporate or unincorporate;

“prescribed” means prescribed by or under this Act or any regulation made under this Act;

“proper law” means—

- (a) the law chosen by the settlor to be applicable to a trust, the choice being expressed or implied in the terms of the trust; or
- (b) where no law is chosen, the law with which a trust is most closely connected at the time of its creation;

“property” means any movable or immovable property, and includes rights and interests, whether present or future and whether vested or contingent;

“qualified person” means a person who is not a resident of Malaysia;

“register” includes any kind of record;

“registered offshore trust” means an offshore trust registered under subsection 12(4);

“resident” means any person—

- (a) who is a citizen or permanent resident of Malaysia; or
- (b) who has established a place of business and is operating in Malaysia, other than an offshore company or a foreign offshore company incorporated or registered under the Offshore Companies Act 1990 [*Act 441*],

and includes a person who is declared to be a resident pursuant to section 43 of the Exchange Control Act 1953 [*Act 17*];

“settlor” means a person who makes a trust and includes a person who provides trust property or makes a testamentary disposition on trust or to a trust, but does not include a person who contributes to a unit trust;

“terms of the trust” means the written or oral terms of a trust or any other terms applicable under its proper law;

“trust” includes the trust property and the rights, powers, duties, interests, relationships and obligations under a trust;

“trust company” means a company registered under section 4 of the Labuan Trust Companies Act 1990 [*Act 442*] to carry on business as a trust company;

“trust instrument” means an instrument by which a trust is created and includes a unilateral declaration of trust and any instrument varying the terms of the trust;

“trust property” means the property for the time being held on trust;

“trustee” means a person appointed to act as a trustee of a trust in accordance with the provisions of this Act;

“unilateral declaration of trust” has the meaning assigned to it by section 8;

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

(2) For the purpose of the definition of “proper law” in subsection (1), in ascertaining the law with which a trust is most closely connected, reference shall be made, in particular, to—

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

(3) Any reference in this Act to “this Act” shall, unless otherwise expressly stated, be deemed to include a reference to any regulation, rule, order, notification or other subsidiary legislation made under this Act.

(4) Words and expressions used in this Act with reference to any other law shall, so far as necessary to give effect to this Act and consistently with the provisions thereof, have the same meaning as they have in the law with reference to which they are used in this Act.

Existence of a trust

3. A trust exists where a person holds or has vested in him or is deemed to hold or have vested in him property of which he is not the owner in his own right and is under an obligation as a trustee to deal with that property—

- (a) for the benefit of any beneficiary, whether or not ascertained or in existence;
- (b) for any purpose which is not for the benefit of the trustee;
or
- (c) for both such benefit and purpose mentioned in paragraphs (a) and (b).

Charitable and purpose trusts

4. (1) A trust shall be regarded as a trust for charitable purpose under this Act where the trust is made for any one or more of the following purposes and where the fulfilment of such purpose or purposes is for the benefit of the community or a substantial section of the community having regard to the type and nature of the purpose or purposes:

- (a) the relief or eradication of poverty;
- (b) the advancement of education;
- (c) the promotion of art, science and religion;
- (d) the protection of the environment;
- (e) the advancement of human rights and fundamental freedom;
or
- (f) any other purposes which are beneficial to the community.

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

(3) Notwithstanding any law to the contrary, a trust may be created or established for a particular purpose or purposes, whether charitable or not, but the trust must vest in natural persons within the perpetuity period applying or expressed to apply to the trust, and any trust so created or established shall be enforceable by the settlor or his personal representatives or by the person or persons

named in the instrument creating or establishing the trust as the person or persons appointed to enforce the trust and the trust shall be enforceable at the instance of the person or persons so named notwithstanding that such person or persons are not beneficiaries under the trust.

Spendthrift or protective trust

5. (1) The terms of a trust may make the interest of a beneficiary in the trust property or in any income or capital of such property—

- (a) liable to termination;
- (b) subject to a restriction on alienation or disposal; 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 to sequestration for the benefit of his creditors.

(2) A trust under which the interest of a beneficiary is subject to termination, restriction or diminution under subsection (1) is a spendthrift or protective trust.

(3) A provision in the terms of a trust requiring the interest of a beneficiary in the trust property or in any income or capital of such property to be held upon a spendthrift or protective trust shall be construed as a requirement that the interest of the beneficiary be subjected to termination, restriction or diminution as mentioned in subsection (1).

Proper law of a trust and power to change proper law

6. (1) Subject to the provisions of this Act, a trust shall be governed by its proper law and shall be interpreted and enforced accordingly.

(2) The terms of a trust may provide for the proper law of the trust to be changed from the laws of one jurisdiction to the laws of another jurisdiction and *vice versa*, subject to the provisions of this Act and to the recognition of such a change by the relevant laws of the other jurisdiction, in particular as regards the validity of the trust and the interests of the beneficiaries.

(3) A change in the proper law shall not affect the legality of, or render any person liable for, anything done before the change.

PART II

CREATION AND RECOGNITION OF OFFSHORE TRUSTS

Existence of offshore trust

7. (1) A trust is an offshore trust where—

- (a) the settlor is a qualified person at the time the trust is created;
- (b) the trust property does not include any immovable property situated in Malaysia, unless otherwise allowed by the relevant authorities and laws for the time being in force;
- (c) subject to subsections (2) and (3), all the beneficiaries under the trust are qualified persons at the time the trust is created or at the time any one or more of them otherwise become entitled to be beneficiaries under the trust; and
- (d) at least one of the trustees is a trust company.

(2) A trust shall be an offshore trust notwithstanding that a person who is not a qualified person benefits together with any other persons as members of a class of persons who are beneficiaries under a trust for charitable purpose.

(3) A trust shall remain as an offshore trust notwithstanding that one or more of the beneficiaries who are qualified persons at the time the trust is created subsequently become resident in Malaysia at the time they otherwise become entitled to be beneficiaries.

(4) For the purpose of this section, the expression “at the time the trust is created”, in relation to a trust created by a will, means the time at which the will takes effect.

Creation of offshore trust

8. (1) An offshore trust shall not be valid unless it is created by a will or other instrument in writing, including a unilateral declaration of trust, but a unit trust shall be created only by a will or other instrument in writing.

(2) A unilateral declaration of trust is a declaration in writing by a trust company stating—

- (a) that it is the trustee of an offshore trust;

- (b) the name of the trust;
- (c) the terms of the trust; and
- (d) the names or information enabling the identification of all the beneficiaries.

(3) A unilateral declaration of trust need not contain the name of the settlor, but in such case the declaration shall contain a statement by the trust company that the settlor is a qualified person on the date of the making of the declaration.

Validity of offshore trust

9. (1) An offshore trust, validly created in accordance with or as provided by this Act, whether in Labuan or abroad, shall be recognized and be enforceable in accordance with its terms, by the courts in Malaysia situated at Labuan or at such other place as may be designated by the Chief Justice of the Federal Court notwithstanding the provisions of any other law.

(2) An offshore trust shall be invalid and unenforceable in Labuan where—

- (a) it requires, purports or encourages the doing of any act which is an offence under the laws of Malaysia or which, if carried out in Malaysia, would be such an offence:

Provided that if the act takes place in any country other than Malaysia, it must also be punishable as a criminal offence under the laws of the other country or a jurisdiction within the other country in which it takes place;

- (b) it has income accruing to, or derived by it, which originates from an operation, transaction or other activity which is or would be such an offence as referred to in paragraph (a);
- (c) it comprises property the receipt, ownership or control of which is or would be such an offence as referred to in paragraph (a); or
- (d) the Court declares that the object for which it was created has failed or that the terms of the trust are such that its performance is not possible.

(3) Where an offshore trust is created for two or more purposes of which some are lawful and others are unlawful—

- (a) the whole trust is invalid if the unlawful purposes cannot be properly separated; or
- (b) where the unlawful purposes can be properly separated, the Court may make a finding that the trust is valid with respect to the lawful purpose or purposes which do not affect the validity of trust to the extent and under the conditions as may be determined by it.

(4) Where the trustee of an offshore trust is of the opinion that the trust is or may be, in whole or in part, invalid, he shall seek directives from the Court as to the validity of the trust and as to any matter concerning the trust property and his obligations in relation to the trust.

(5) A settlor or beneficiary of an offshore trust may also request for directives from the Court as to matters referred to in subsection (4).

Unenforceability of foreign claim or judgement

10. (1) Where an offshore trust is validly created in accordance with or as provided by this Act, the Court shall not vary it or set it aside or recognize the validity of any claim against the trust property pursuant to the law of another jurisdiction or the order of a court of another 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;
- (c) any claims or orders of court with regard to matters referred to in paragraph (a) or (b) in reference to the personal laws of the settlor or the beneficiaries; or
- (d) the claims of creditors in an insolvency subject to the provisions of section 11.

(2) For the avoidance of doubt, it is hereby declared that in the event of any inconsistency between the proper law of a trust and the personal laws of the settlor or the beneficiaries, the former shall prevail.

Fraudulent offshore trust or disposition

11. (1) Where it is proved beyond reasonable doubt, the onus of which is on the claiming creditor, that an offshore trust created or registered in Labuan, or property disposed of to such an offshore trust—

- (a) was so created or registered or disposed of by or on behalf of the settlor with principal intent to defraud that creditor of the settlor; and
- (b) did, at the time such creation or registration or disposition took place, render the settlor, insolvent or without property by which that creditor's claim, if successful, could have been satisfied,

then such creation, registration or disposition shall not be void or voidable and the offshore trust shall be liable to satisfy the creditor's claim out of the property which but for the creation, registration or disposition would have been available to satisfy the creditor's claim and such liability shall only be to the extent of the interest that the settlor had in the property prior to the creation, registration or disposition, and any accumulation to the property, if any, subsequent thereto.

(2) For the purpose of subsection (1), in determining whether an offshore trust created or registered or a disposition has rendered the settlor insolvent or without property by which a creditor's claim, if successful, may be satisfied, regard shall be had to the fair market value of the settlor's property (not being property of or relating to the trust), at the time immediately after such creation, registration or disposition, and in the event that the fair market value of such property exceeded the value of the creditor's claim, at that time, after the creation, registration or disposition, then the offshore trust so created or registered or the disposition shall for the purposes of this Act be deemed not to have been so created or registered, or the property disposed of, with principal intent to defraud the creditor.

(3) An offshore trust created or registered in Labuan and a disposition of property to such trust shall not be fraudulent as against a creditor of a settlor—

- (a) if its creation or registration, or the disposition, takes place after the expiration of two years from the date that creditor's cause of action accrued; or

(b) if its creation or registration, or the disposition, takes place before the expiration of two years from the date that creditor's cause of action accrued and that creditor fails to commence such action before the expiration of one year from the date of such creation or registration, or disposition.

(4) An offshore trust created or registered in Labuan and a disposition of property to such trust shall not be fraudulent as against a creditor of a settlor if the creation or registration, or the disposition of property, took place before that creditor's cause of action against the settlor accrued or had arisen.

(5) A settlor shall not have imputed to him an intent to defraud a creditor solely by reason that the settlor—

(a) has created or registered an offshore trust or has disposed of property to such trust within two years from the date of that creditor's cause of action accruing; or

(b) is a beneficiary.

(6) Where an offshore trust is liable to satisfy a creditor's claim in the manner provided for in subsection (1) but is unable to do so by reason of the fact that the property has been disposed of, other than to a *bona fide* purchaser for value, then any such disposition shall be void.

(7) For the purposes of this section, the date of the cause of action accruing shall be—

(a) the date of that act or omission which shall be relied upon to either partly or wholly establish the cause of action; and if there is more than one act or the omission is a continuing one, the date of the first act or the date on which the omission first occurred, as the case may be; and

(b) in the case of an action upon a judgement, the date of that act or omission, or where there is more than one act or the omission is a continuing one, the date of the first act or the date on which the omission first occurred, as the case may be, which gave rise to the judgement itself.

(8) In this section, the term "creditor" includes any person who alleges a cause of action.

Registration of offshore trust

12. (1) Every offshore trust validly created in accordance with or as provided by this Act, whether in Labuan or abroad, may be registered with the Authority.

(2) The trustee of an offshore trust shall be responsible for registering the offshore trust and any subsequent changes in connection therewith under this Act, if the offshore trust is registered pursuant to subsection (1).

(3) The registration of an offshore trust shall be effected by filing with the Authority the following:

(a) a statement containing—

- (i) the name of the offshore trust;
- (ii) the date of its creation;
- (iii) the name and address of the trust company acting as trustee;
- (iv) the address of the registered office of the offshore trust;
- (v) the proper law of the offshore trust; and

(b) a declaration by the trust company acting as trustee of the offshore trust that the trust satisfies the conditions of this Act in order that it be an offshore trust.

(4) The Authority may, on being satisfied that all the requirements of this Act for the existence of an offshore trust have been complied with and upon payment of the prescribed fee, register the trust and issue a certificate of registration accordingly.

(5) Any subsequent change in the particulars of the registered offshore trust as referred to in subsection (3) shall be notified to and be registered with the Authority in the prescribed form within one month of the change and shall not have effect until it is so registered.

(6) The trustee of the registered offshore trust shall notify the Authority of the termination of the trust in the prescribed form within one month of the termination.

(7) The trustee of the registered offshore trust shall notify the Authority in the prescribed form as to whether the trust is still in existence and whether he is still the trustee thereof not later than one month after every anniversary of the registration of the trust in Labuan.

(8) Any trustee who fails to comply with the requirements of this section shall be guilty of an offence.

Penalty: Ten thousand ringgit.

(9) For the purpose of subsection (8), if there are two or more trustees, the requirements of this section shall be deemed to have been complied with by all the trustees so long as one of them has complied with them.

Registration of trust instrument

13. The trustee of a registered offshore trust may furnish the Authority with a copy of the trust instrument or any amendment thereto which has been certified by the trustee and the Authority shall register and file that copy as a true copy.

Name and registered office of offshore trust

14. (1) Every trust instrument shall include the name by which the offshore trust is to be known and registered and such name shall remain unchanged until the termination of the trust unless the Authority, having regard to the circumstances of the case, thinks it fit to authorize a change in the name.

(2) The registered office of an offshore trust shall be the registered office of the trust company which has been appointed as trustee of the trust and shall be the address for service of any documents upon the trust.

Register and restriction on disclosure

15. (1) The Authority may keep and maintain a register of all offshore trusts registered under subsection 12(4) and shall enter therein any change in particulars that has been duly notified to the Authority and any other matters as the Authority deems appropriate.

(2) At the request of a trustee of a trust, and on adequate proof being given to the satisfaction of the Authority, the Authority may issue a certificate stating, based on the information available to the Authority, that on the date of the certificate—

- (a) the applicant was a trustee of the trust; or
- (b) a copy of the trust instrument as reproduced and certified has been registered with the Authority pursuant to section 13.

(3) Subject to the terms of the trust and to any order of the Court to the contrary, all documents filed with or kept by the Authority in relation to offshore trusts shall not be open to the public for inspection, and the Authority shall not disclose to any person any such documents or any information which may have come to its knowledge in the performance of its duties under this Act.

Duration of offshore trust

16. An offshore trust shall, unless otherwise stated in and subject to the terms of the trust, continue to exist for a period not exceeding one hundred years; but it may be terminated at any time in accordance with the provisions of this Act.

Variation and revocation of offshore trust

17. (1) An offshore trust may expressly provide—

- (a) that its terms are capable of variation; or
- (b) that the trust itself or a power exercisable under the trust is revocable, either in whole or in part.

(2) Where an offshore trust provides that the terms of the trust may be varied, such power to vary shall be without prejudice to the power vested in the Court by this Act for the variation of the terms of the trust.

(3) No variation of the terms of an offshore trust or revocation of an offshore trust or a power exercisable under an offshore trust shall prejudice anything lawfully done by a trustee in relation to an offshore trust prior to his receiving notice of such variation or revocation.

(4) Subject to the terms of the trust, where an offshore trust is revoked, either in whole or in part, the trustee shall hold the trust property affected by the revocation for the settlor absolutely or, if the settlor is dead, for the settlor's personal representative or estate.

Failure or lapse of interest

18. (1) Subject to the terms of an offshore trust and to any order of the Court, the trust property or interest under the trust shall be held by the trustee in trust for the settlor absolutely or, if the settlor is dead, for the settlor's personal representative or estate where—

- (a) the interest in question lapses;
- (b) the trust property is vested in a person otherwise than for his sole benefit but the trusts upon which he is to hold the property are not declared or communicated to him;
- (c) there is no beneficiary and there is no person who can become a beneficiary in accordance with the terms of the trust; or
- (d) the trust terminates otherwise than in pursuance of section 19.

(2) Where the trust property or interest under the trust is held by a trustee for a charitable purpose which has ceased to exist or is no longer applicable, that property or interest shall be held for such charitable purpose as the Court may declare to be consistent with the original intention of the settlor or as the Court may otherwise determine.

(3) An application to the Court under this section may be made by any trustee or beneficiary, as the case may be.

(4) In this section, "settlor" means the particular person who provided the trust property or the interest under the trust referred to in subsection (1).

Termination of offshore trust

19. (1) Without prejudice to the powers of the Court under subsection (4) and notwithstanding the terms of the trust, where all the beneficiaries of an offshore trust are in existence and have

been ascertained and none of them is a minor or a person under any legal disability, they may require the trustee to terminate the trust and distribute the trust property among them.

(2) On the termination of the trust, the trustee shall distribute the trust property to the persons entitled thereto within a reasonable time and in accordance with the terms of the trust.

(3) The trustee may retain sufficient assets to make reasonable provision for liabilities, whether existing, future, contingent or otherwise, before distributing the trust property under subsection (2).

(4) The Court may, on the termination of a trust or at any time thereafter, upon an application made by the trustee or any beneficiary—

- (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.

Redomiciliation of foreign trust in Labuan

20. Subject to the provisions of this Act, a trust established or created in accordance with the laws of any country other than Malaysia, or of any jurisdiction within such a country, may, if it is so authorized by the laws of that country or jurisdiction, or the terms of the trust and its proper law, be enforceable, recognized or registered in Labuan as if it had been created under this Act.

Migration of offshore trust from Labuan

21. (1) Subject to the provisions of this Act and the terms of the trust and its proper law, an offshore trust validly created or recognized under this Act may be transferred to and become a trust under the laws of another country or of a jurisdiction within such a country.

(2) An offshore trust which has been previously transferred to Labuan under the provisions of section 20 may be transferred to and become a trust under the laws of another country or of a jurisdiction within such country in accordance with this section.

PART III

BENEFICIARIES OF OFFSHORE TRUSTS

Beneficiaries

22. (1) Subject to subsection 4(3), a beneficiary shall be—

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

(2) Where there are no beneficiaries identifiable or ascertainable in accordance with subsection (1), the trust shall not be valid unless the purpose is a charitable purpose.

(3) A settlor or a trustee of an offshore trust may also be a beneficiary of the trust, but if he is the sole trustee, he shall not also be a beneficiary thereunder.

(4) The terms of an offshore trust may provide for—

- (a) the addition of a person as a beneficiary;
- (b) the exclusion of a beneficiary from benefit; or
- (c) the imposition on a beneficiary of an obligation as a condition for benefit.

Disclaimer

23. (1) A beneficiary may disclaim his whole interest.

(2) A disclaimer made under subsection (1) shall be in writing and shall be irrevocable.

(3) Subject to the terms of the trust, a beneficiary under an offshore trust may disclaim part of his interest, whether or not he has received some benefit from his interest.

(4) A disclaimer made under subsection (3) may, subject to the terms of the trust, be revocable and it shall be exercisable in the manner and under the circumstances so expressed.

Interest of beneficiary and dealings thereof

24. (1) Notwithstanding that the trust property of an offshore trust may include immovable property, the interest of a beneficiary of any offshore trust shall consist of movable property only.

(2) Where the terms of the trust so provided, a beneficiary may, by instrument in writing, sell, charge, transfer or otherwise deal with his interest in any manner.

Class interest

25. (1) Subject to the terms of the trust, the following 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 fifty-five years shall be deemed to be no longer capable of bearing a child;
- (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.

PART IV**TRUSTEES OF OFFSHORE TRUSTS****Appointment of trustees**

26. (1) Trustees are appointed by or as provided in the trust instrument and in such number as may be provided therein.

(2) There are no restrictions imposed on the number of trustees that may be provided for in a trust instrument but—

- (a) if there is only one trustee, the trustee shall be a trust company; and

(b) if there is more than one trustee, one of such trustees shall be a trust company.

(3) Where there is no trustee appointed or provided by the trust instrument or there is a vacancy among the trustees which cannot otherwise be filled, any of the surviving or continuing trustees, any beneficiary or the last former trustee, as the circumstances may require, may apply to the Court for the appointment of a new trustee.

(4) The Court may make an order appointing a new trustee where—

(a) in a case where an application under subsection (3) is made by a beneficiary, it is satisfied that the application made by the beneficiary has been served on the last former trustee or on at least one of the surviving or continuing trustees, if any;

(b) it has heard the representations made by the last former trustee, the surviving or continuing trustees or any beneficiary; and

(c) it has ascertained that the person indicated in the application or otherwise intended for the appointment as the new trustee is willing to act.

(5) Subject to the terms of the trust, a new trustee appointed under this section shall have the same powers, discretions and duties and may in all respects act as if he had been originally appointed a trustee by the trust instrument.

(6) On the appointment of a new trustee, anything requisite for vesting the trust property in, or under the control of, the trustee shall be done.

Acceptance of appointment as trustee

27. (1) No person shall be obliged to accept an appointment as trustee but if a trust company that is appointed as trustee does any act or thing in relation to the trust property consistent with the status of a trustee of that property, the trust company shall be deemed to have accepted the appointment as trustee.

(2) A trust company which has not accepted or which is not deemed to have accepted the appointment as trustee may disclaim such appointment within a reasonable period of time after becoming aware of it by giving a notice in writing to the settlor or to the other trustees.

(3) If the settlor is dead or cannot be found or is no longer in existence and there are no other trustees, the trust company disclaiming the appointment as trustee under subsection (2) may apply to the Court for relief from the appointment and the Court may make such order as it thinks fit.

Resignation of trustees

28. (1) Subject to subsection (2) and the terms of the trust, a trustee may resign his office by delivering to—

- (a) the settlor or, in the absence of the settlor, at least one beneficiary; and
- (b) in the case of a registered offshore trust, the Authority,

a notice in writing of his intention and the resignation shall take effect on the delivery of the notice.

(2) A resignation shall not have effect if—

- (a) it is given in order to facilitate a breach of trust; or
- (b) it would result in there being no trustee, unless, before the resignation takes effect, an application has been made to the Court for the appointment of a new trustee and a new trustee has been appointed.

Vacancy in a trust

29. (1) A trustee shall cease to be a trustee and his position as trustee shall be considered vacant upon—

- (a) his removal as trustee by the Court;
- (b) his resignation taking effect;
- (c) the coming into effect of a provision in the terms of the trust under which the trustee is removed from office or otherwise ceases to hold office; or
- (d) steps being taken for the winding up of the trust company acting as trustee.

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

Duties of trustees

30. (1) A trustee shall in the execution of his duties and the exercise of his powers and discretion act with due diligence as would a prudent person to the best of his ability and skill, and observe the utmost good faith.

(2) Subject to the provisions of this Act, a trustee shall carry out and administer a trust according to the terms of the trust and shall—

- (a) ensure that the trust property is vested in him or is otherwise under his control; and
- (b) in so far as it is reasonable, preserve and enhance the value of the trust property.

(3) Except as otherwise permitted by this Act or as expressly provided by the terms of the trust, a trustee shall not—

- (a) profit, directly or indirectly, from his trusteeship;
- (b) cause or permit any person, other than a person properly appointed or delegated by the trustee under this Act or by the Court or pursuant to the terms of the trust, to profit, directly or indirectly, from such trusteeship; or
- (c) on his own account enter into any transaction with the other trustees, or relating to the trust property, which may result in such profit,

without the approval of the Court.

(4) A trustee shall keep accurate accounts and records of his trusteeship and shall render an account of such trusteeship as required by the terms of the trust or by an order of the Court.

(5) A settlor or any of the beneficiaries may apply to the Court for an order to require the trustee to render an account of his trusteeship to any of them.

(6) A trustee shall keep the trust property distinct and separate from his own property and separately identifiable from any other property of which he is a trustee or to which he is beneficially entitled.

Duty of co-trustees

31. (1) Subject to subsection (2) and the terms of the trust, where there is more than one trustee, all the trustees shall—

- (a) act jointly in the performance of their duties and the exercise of their powers; and
- (b) not exercise any power or discretion unless they are all in agreement.

(2) Where the terms of the trust empower the trustees to act by a majority—

- (a) a trustee who dissents from a decision of the majority of the trustees shall cause his dissent to be recorded in writing;
- (b) no act, decision, power or discretion to be done, taken or exercised by the majority of the trustees shall, notwithstanding anything contained in the terms of the trust, be valid or have effect if it is done, taken or exercised without the agreement of the trust company acting as one of the trustees of the trust.

Impartiality of trustees

32. Subject to the terms of the trust and without prejudice to the exercise of a discretion conferred upon a trustee by the terms of the trust, a trustee shall be impartial and shall not execute the trust for the advantage of a beneficiary or a charitable purpose at the expense of another beneficiary or charitable purpose where there is more than one beneficiary or charitable purpose under the trust, or for the advantage of a beneficiary at the expense of the charitable purpose or *vice versa*, where the trust has only one beneficiary and one charitable purpose.

Powers of trustees

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

(2) A trustee shall exercise his powers in the interest of the beneficiaries and in accordance with the terms of the trust.

Letter or memorandum of wishes

34. (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 he may have regard to that letter or memorandum in exercising any functions conferred on him by the terms of the trust but 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.

Appointment of protector

35. (1) The terms of a trust may expressly provide for the appointment of a protector of the trust who shall be consulted upon by the trustee in the exercise of all or certain specified powers as may be provided in the terms of the trust, but if the protector of the trust cannot be found, the Court may upon an application by the trustee dispense with the requirement.

(2) Where the terms of the trust require the trustee to obtain the consent of the protector before exercising a power or discretion, the protector who so consents shall not by virtue of so doing be deemed to be a trustee.

(3) Unless otherwise expressly excluded by the terms of the trust, a protector shall have the power to remove a trustee or to appoint a new or additional trustee, but if the protector removes a trust company as trustee, the protector shall appoint another trust company as a new trustee in its place.

Delegation of powers by trustee

36. (1) A trustee shall not delegate his powers unless permitted to do so by this Act or by the terms of the trust or by the Court.

(2) A trustee may, unless the terms of the trust specifically provide to the contrary—

- (a) appoint or delegate the management of the trust property to investment managers whom the trustee reasonably considers competent and qualified to manage the investment of the trust property;
- (b) appoint an agent, whether a solicitor, banker, stockbroker or any other person, to transact any business or do any act required to be transacted or done in the execution of the trust or to hold any of the trust property; and
- (c) authorize any such manager or agent to retain any commission or other payment usually payable for services of the description rendered.

(3) A trustee who in good faith and without neglect makes an appointment or a delegation in accordance with the provisions of this section shall not be liable for any loss arising to the trust in consequence thereof or from the default of any appointee or delegate if the trustee has exercised due skill and care in the selection of the appointee or delegate.

Power of attorney

37. (1) Unless the terms of the trust provide to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding twelve months, the performance of any trust or function vested in him, either alone or jointly, as trustee except for the power to give powers of attorney under this section.

(2) A trustee who delegates a trust or function by a power of attorney under this section shall be referred to in this section as the “donor” and the person to whom the trust or function is delegated is referred to as the “donee”.

(3) A person who is the only other co-trustee of the donor shall not be the donee.

(4) The donor shall, within seven days of giving a power of attorney under this section, give written notice of such delegation to—

- (a) any other person who under the terms of the trust has power, either alone or jointly, to appoint a new trustee;
- (b) every co-trustee; and
- (c) in the case of a registered trust, the Authority.

(5) The notice under subsection (4) shall state—

- (a) the date of commencement and duration of the power of attorney;
- (b) the name and address of the donee;
- (c) the reason for giving the power of attorney; and
- (d) the trust or function delegated.

(6) Failure of the donor to comply with subsection (4) or (5) shall not of itself, in favour of a person dealing with the donee, invalidate anything done by the donee.

(7) The donor is bound by and liable for all acts or defaults of the donee done or purportedly done under the power of attorney as if they were his own acts or defaults.

(8) The provisions of this section shall not apply to a trust company acting as trustee.

Accumulation, advancement or appropriation of trust property

38. (1) Where the terms of the trust direct or authorize the accumulation for a period of all or part of the income of the trust, the trustee shall distribute the income of the trust which is not accumulated as directed or authorized by the terms of the trust.

(2) Subject to the terms of the trust, and subject to any prior interest or charges affecting the trust property, where a beneficiary is a minor and whether or not his interest is a vested interest or an interest which will become vested on attaining the age of majority or a later age or upon the happening of any event, the trustee may—

- (a) 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 an event;
- (b) pay to the parent or guardian or otherwise apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary; or
- (c) advance or appropriate to or for the benefit of any such beneficiary such income or part of such income.

(3) The receipt given by a parent or the lawful guardian of a beneficiary who is a minor shall be sufficient discharge to the trustee for a payment made under subsection (2).

(4) Subject to the terms of the trust and to any prior interest 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.

(5) Subject to the terms of the trust, a trustee may appropriate trust property in or towards the satisfaction of the interest of a beneficiary in such manner and in accordance with such valuation as the trustee may think fit.

(6) Subject to the terms of the trust, any part of the trust property advanced, applied or appropriated under this section 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, applied or appropriated as provided in this section shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

Appointment or assignment of trust property

39. Where the terms of the trust confer on the trustee or on any other person power to appoint or to 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, such power shall, subject to the terms of the trust, have effect whether or not such person was a beneficiary of the trust immediately prior to such an appointment or assignment.

Remuneration and expenses

40. (1) A trustee shall not be entitled to any remuneration for services rendered unless authorized—

- (a) by the terms of the trust;
- (b) by the consent in writing of all the identifiable or ascertainable beneficiaries; or
- (c) by an order of the Court.

(2) A trustee may reimburse himself or pay out of the trust all expenses and liabilities reasonably incurred by him in connection with the trust.

Confidentiality in relation to trusts

41. (1) Subject to the terms of the trust and to any order of the Court given on special and exceptional grounds, a trustee or any other person shall not be required to disclose to any person any document or information which discloses—

- (a) his deliberations as to how he should exercise or has exercised 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;
- (d) any part of the accounts of the trust; or
- (e) any letter of wishes given by the settlor or beneficiary.

(2) Notwithstanding subsection (1), where a request for the disclosure of any document or information relating to or forming part of the accounts of the trust is made by a beneficiary under the trust or, in the case of a trust for a charitable purpose, by a charity referred to by name in the trust instrument as a beneficiary under the trust, the trustee shall be obliged to disclose the document or other information requested.

(3) Except as is required, permitted or otherwise provided by this Act, or by the terms of the trust or as may be necessary for the purposes of the trust, and notwithstanding the provisions of any other law—

- (a) every trustee and every other person shall at all times regard and deal with all documents and information relating to a trust as secret and confidential;
- (b) no trustee or other person shall at any time be required to produce to or before any court, tribunal, board, committee of inquiry or any other authority or to divulge to any such authority any matter or thing coming to his notice or being in his possession for any reason, where such matter or thing relates to a trust.

(3) Any trustee or other person who, except as is required, permitted or otherwise provided by this Act, or by the terms of the trust or by the Court, at any time communicates or attempts to communicate any matter or thing relating to a trust to any person shall be guilty of an offence.

Penalty: Imprisonment for five years or thirty thousand ringgit or both.

Liability for breach of trust

42. (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 shall, without prejudice to any other liability, be 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 such breach.

(2) In the case of a breach of trust committed or concurred in by a trust company acting as trustee, every person who, at the time of the breach, was a director of the trust company shall, subject to subsection (3), be deemed to be a guarantor of the trust company in respect of any damages and costs that may be awarded by the Court against the trust company in respect of the breach.

(3) The Court may relieve a director either in whole or in part from his personal liability as a guarantor if he satisfies the Court that he ought fairly to be so relieved because—

- (a) he was not aware of the breach of trust or of the intention to commit it and, in being not so aware, was neither reckless nor negligent; or
- (b) he expressly objected, and exercised such rights as he had by way of voting power or otherwise as a shareholder or director or other officer of the company, so as to try to prevent the breach of trust.

(4) A trustee shall not be liable for a breach of trust committed prior to his appointment, if such breach of trust was committed by some other person, but the trustee shall take all reasonable steps to remedy the consequences or any loss arising from such breach.

(5) A trustee shall not be liable for breach of trust committed by a co-trustee unless—

- (a) he becomes or ought to have become aware of the breach or the intention of the co-trustee to the breach; and
- (b) he 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) Subject to the terms of the trust, a trustee shall not be liable—

- (a) for the default of a co-trustee unless he—
 - (i) concurs in the default of that trustee; or
 - (ii) fails to take reasonable care to prevent it;
- (b) for any loss to the trust property, unless such loss is due to—
 - (i) his wilful default, act or concurrence; or
 - (ii) his neglect or failure to exercise reasonable care to prevent such loss.

(7) 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.

(8) Where two or more trustees are liable in respect of a breach of trust, their liability shall be joint and several.

(9) A beneficiary may, in respect of a liability to him for a breach of trust already committed, relieve a trustee of, or indemnify him against, such liability, if the beneficiary—

- (a) has legal capacity;
- (b) has full knowledge of all material facts; and
- (c) has not been improperly induced by the trustee to give the relief or indemnity.

(10) The Court may relieve the trustee either in whole or in part from liability for a breach of trust if it is satisfied that the trustee has acted honestly and reasonably and ought in fairness to be excused in the circumstances.

(11) For the purposes of this section—

“director” means any person occupying the position of director of a company, by whatever name called, and includes a person who acts or issues directions or instructions in a manner in which directors of a company are accustomed to issue or act, and an alternate or substitute director, notwithstanding any defect in the appointment or qualification of such person;

“officer” in relation to a company includes—

- (a) any director, secretary or employee of the company;
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; and
- (c) any liquidator of a company appointed in a voluntary winding up, but does not include—
 - (i) any receiver who is not also a manager;
 - (ii) any receiver and manager appointed by the Court; or
 - (iii) any liquidator appointed by the Court or by the creditors.

Trustee acting in respect of more than one trust

43. (1) A trustee acting for 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 acting or having acted for the purposes of another trust.

(2) A trustee of a trust shall disclose to any co-trustee 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 the other trust.

Dealings with third parties

44. (1) Where in any transaction or matter affecting a trust, a trustee informs a third party that he is acting as trustee, a claim by such third party in relation thereto shall extend only to the trust property.

(2) Where in any such transaction or matter a trustee fails to inform a third party that he is acting as trustee and the third party is otherwise unaware of the fact, the trustee—

(a) shall be personally liable to such third party in respect thereof; and

(b) shall have a right to recourse to the trust property by way of indemnity against such liability, unless the trustee acted in breach of trust.

(3) Nothing in this section shall prejudice a trustee's liability for breach of trust or any other liability under any law.

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

Constructive trustee

45. (1) Subject to subsection (2), where a person makes or receives any profit, gain or advantage from a breach of trust he shall be deemed to be a constructive trustee of that profit, gain or advantage.

(2) Subsection (1) shall not apply to a *bona fide* purchaser of property for value and without notice of a breach of trust.

(3) A person who is or becomes a constructive trustee shall deliver up the property of which he is a constructive trustee to the person properly entitled to it.

(4) This section shall not exclude any other circumstances under which a person may be or become a constructive trustee.

Indemnity of retiring trustee

46. (1) A trustee who resigns or is removed or otherwise ceases to be a trustee shall duly surrender trust property in his possession or control to the remaining surviving or continuing trustees or, where there are none, the trust property shall be held in abeyance until the appointment of a new trustee or trustees.

(2) A trustee who resigns or is removed or otherwise ceases to be a trustee may, before the surrender of trust property as required by subsection (1), reimburse himself or pay out of the trust any previous expenses and liabilities reasonably incurred by him in connection with the trust.

(3) A trustee who resigns or is removed or otherwise ceases to be a trustee and has complied with the requirements of subsection (1) shall be released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or his duty as a trustee, except in respect of actions arising from any breach of trust to which such trustee or, in the case of a trust company acting as such trustee, any of its officers or employees, was a party or to which he was privy.

(4) A trustee who resigns or is removed or otherwise ceases to be a trustee shall continue to be liable to any beneficiary, trustee or person interested under the trust for the recovery from such trustee or, in the case of a trust company acting as such trustee, from any of its officers or employees, of trust property or the proceeds thereof in his possession or previously received by him and converted to his own use or not surrendered as required by subsection (1).

(5) Subject to the terms of the trust, the trustee shall not indemnify himself to an extent greater than is provided in this section.

PART V

MISCELLANEOUS

Variation of terms of trust on behalf of minors, etc.

47. (1) Subject to subsection (2), the Court may, on the application of a settlor or his personal representative, the protector of a trust, a trustee or a beneficiary, on behalf of—

- (a) any minor, or any person incapacitated at law, who has 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;
- (c) a person of any specified description or a member of any specified class of persons;
- (d) any person unborn; or
- (e) any person in respect of any interest of his that may accrue to him by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined,

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

(2) The Court shall not approve an arrangement on behalf of any person mentioned in paragraph (1)(a), (b), or (c) unless it is satisfied that the carrying out of such arrangement appears to be for the benefit of that person.

Approval of particular transactions

48. 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 is not vested in the trustee

by the terms of the trust or by law, the Court may, on the application of the trustee or beneficiary—

- (a) confer on the trustee, either generally or in any particular circumstance, the necessary power, on such terms and subject to such conditions, if any, as it deems fit; and
- (b) direct in what manner and from what property any money authorized to be expended, and the costs of any transaction, are to be paid or borne.

General powers of the Court

49. (1) A trustee may apply to the Court for directions concerning the manner in which he may or should act in connection with any matter concerning the trust and the Court may make such order, if any, as it deems fit.

(2) The Court may also, if it deems 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 any payments into court;
 - (iii) any beneficiary or any person having any connection with the trust; or
 - (iv) 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) 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 or by any beneficiary.

(4) All proceedings other than criminal proceedings relating to any offshore trust commenced in any court shall, unless the court otherwise orders, be heard *in camera* and no details of the proceedings shall be published by any person without leave of the court.

(5) 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.

(6) Subject to any order of the Court, a trustee appointed by the Court under this section shall have the same powers, discretions and duties as if he had been originally appointed a trustee.

Payment of costs

50. The costs and expenses of and incidental to an application to the Court under this Act shall be paid out of the trust property or be borne and paid in such other manner or by such other person as the Court may order.

Protection of persons dealing with trustees

51. (1) A *bona fide* purchaser for value without actual notice of any breach of trust—

- (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 required for the purposes of the trust, or that no more than is required is raised, or otherwise as to the propriety of the transaction or the application of the money.

Limitation of action

52. (1) No period of limitation or prescription under any law shall apply to an action brought against a trustee—

- (a) in respect of any fraud or criminal breach of trust to which the trustee or, in the case of a trust company acting as trustee, any of its officers or employees was a party or privy; or

(b) for the recovery from the trustee or, in the case of a trust company acting as trustee, any of its officers or employees, of trust property or the proceeds thereof in his possession or control or previously received by him and converted to his use.

(2) Subject to subsection (1), no action may be brought against a trustee by a beneficiary for any breach of trust after the expiration of six years—

(a) commencing from the date of the delivery of the final accounts of the trust to the beneficiary; or

(b) commencing from the date on which the beneficiary first had knowledge of the occurrence of the breach of trust,

whichever is the earlier date.

(3) Where the beneficiary is a minor or is under any legal disability, the periods referred to in subsection (2) shall not begin to run until the day on which the beneficiary ceases to be a minor or his legal disability ceases.

(4) The periods mentioned in this section shall be interrupted if a claim or action is filed in the competent court and served on the trustee before the expiration of the periods.

Money or other property from illegal activities

53. (1) A trust company acting as a trustee of an offshore trust shall not accept—

(a) any money or other property originating from a transaction, operation or other activity which is a criminal offence under the laws of Malaysia or which, had it been carried out in Malaysia, would have been such an offence; or

(b) any money or other property the receipt, ownership or control of which is or would be an offence as mentioned in paragraph (a).

(2) Where any person, being a director, officer or agent of a trust company for the time being acting as a trustee of a trust—

(a) has reason to believe that the trust has property or has income accruing to it or derived by it and originating from a transaction, operation or other activity which is a criminal offence under the laws of Malaysia or which, had it been carried out in Malaysia, would have been such an offence; or

(b) has received or has in its possession or control money or other property the receipt, ownership or control of which is or would be an offence as mentioned in paragraph (a), it shall be the duty of such person to forthwith bring the matter to the notice of the Authority.

(3) Any person who without reasonable excuse fails to comply with the requirements of subsection (1) or (2) shall be guilty of an offence.

Penalty: Imprisonment for five years or thirty thousand ringgit or both.

(4) A person convicted of an offence for contravening subsection (2) shall be permanently disqualified from being a director or officer of a trust company.

(5) All moneys or property described in subsections (1) and (2) shall be forfeited to the Government and become its property absolutely.

General offence and penalty

54. (1) Any person who—

- (a) does anything which is forbidden by or under this Act;
- (b) does not do that which by or under this Act he is required to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act, shall be guilty of an offence.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty not exceeding the penalty expressly mentioned as the penalty for the offence, or if a penalty is not so mentioned, to a fine not exceeding ten thousand ringgit.

(3) The penalty, pecuniary or otherwise, set out in or at the foot of any section or part of a section of this Act shall indicate that the offence is punishable upon conviction by a penalty not exceeding that so set out and where the penalty is expressed to apply to part only of the section, it shall apply to that part only.

Power to prosecute

55. (1) No proceedings for any offence against this Act may be instituted by the Authority except with the written consent of the Public Prosecutor.

(2) Proceedings for any offence against this Act other than an offence punishable with imprisonment for a term exceeding three years may be prosecuted in a Magistrate's Court and an offence punishable with imprisonment for a term exceeding three years shall be prosecuted in the Sessions Court or in the High Court.

Compounding of offences

56. (1) The Authority may, with the consent of the Public Prosecutor, compound any offence committed by any person against this Act, by making a written offer to such person to compound the offence upon payment to the Authority within such time as may be specified in the offer such sum of money as may be specified in the offer, which shall not exceed fifty per centum of the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as the Authority may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

Regulations

57. (1) The Minister may from time to time make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out or achieving the objects and purposes of this Act, or for the further, better or more convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for prescribing such forms, notices, fees, charges and anything which is required by this Act to be prescribed or as the Minister may deem necessary.

Exemption

58. (1) The Minister may, on his own motion or pursuant to an application in writing lodged with the Authority by the settlor or trustee of an offshore trust or a registered offshore trust or any person exempt that offshore trust or registered offshore trust or any person from all or any of the provisions of this Act and any regulations made thereunder and may impose such terms and conditions as he thinks fit.

(2) An exemption granted under subsection (1) may be revoked or varied by the Minister at any time.

Prohibition on registration or carrying on of business

59. (1) The Minister may, without assigning reasons therefor, issue a direction—

- (a) prohibiting the registration or creation or recognition of any trust or enforcement of any trust under this Act; or
- (b) directing any offshore trust to cease to carry on its business or part of its business either immediately or within such time as may be specified in the direction.

(2) A direction made under this section may be revoked or varied by the Minister.

Procedure where none laid down

60. In the event that any act or step is required or permitted to be done or taken under this Act and no form is prescribed or procedure laid down for the purpose either in this Act or any regulations made thereunder, application may be made to the Authority for directions as to the manner in which the act or step may be done or taken, and any act or step done or taken in accordance with its directions shall be a valid performance of such act or step.

Saving in respect of trusts existing before the commencement of this Act

61. (1) Nothing in this Act shall affect the legality or validity of any trust existing in Labuan arising from a document or disposition executed or taking effect, or of any act taken or done in relation to any such trust before the commencement of this Act.

(2) Where, prior to the coming into force of this Act, a trust has been established or created in Labuan, the settlor, if he is still alive or in existence, or in any other case, the beneficiaries and the trustees including any protector, may, within a period of twelve months from the coming into force of this Act, amend or vary the trust to bring it into conformity with the provisions of this Act and upon such amendment or variation the trust shall be deemed to have been validly created in accordance with or as provided by this Act.

Non-application of certain laws

62. The provisions of the Trustee Act 1949 [*Act 208*], the Trustees (Incorporation) Act 1952 [*Act 258*] and section 9 of the Government Proceedings Act 1956 [*Act 359*] shall not apply to an offshore trust validly created or enforced or registered under this Act.

LAWS OF MALAYSIA**Act 554****LABUAN OFFSHORE TRUSTS ACT 1996**

LIST OF AMENDMENTS

Amending law	Short title	In force from
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– NIL –

LAWS OF MALAYSIA

Act 554

LABUAN OFFSHORE TRUSTS ACT 1996

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
	- NIL -	

