



LAWS OF MALAYSIA

ACT 554

LABUAN TRUSTS ACT 1996

Incorporating latest amendment - Act A1368 of the year 2010

Date of publication in the Gazette : 26 September 1996

Date of coming into operation : 31 October 1996

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**LAWS OF MALAYSIA
ACT 545**

LABUAN TRUSTS ACT 1996

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

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

[Am. Act A1368:s.2]

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, and commencement.

1. This Act may be cited as the Labuan Trusts Act 1996 and shall come into force on such date as the Minister may, by notification in the Gazette, appoint.

[Am. Act A1368:s.3].

Interpretation.

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

“Authority” means the Labuan Financial Services Authority established under section 3 of the Labuan Financial Services Authority Act 1996 [Act 545];

[Subs. Act A1368:s.4]

“authorized officer” means an officer duly authorized by the Authority under section 6B;

[Ins. Act A1368:s.4]

"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;

“charitable trust” means a trust referred to in section 11B;

[Ins. Act A1368:s.4]

“corporation” means a body corporate formed or incorporated or existing within Malaysia or outside Malaysia and includes a foreign Labuan company but does not include—

(a) a corporation sole;

(b) a trade union registered under written law as a trade union; or

(c) a society registered under any written law relating to co-operative societies;

[Subs. Act A1368:s.4]

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

“enforcer” means a person referred to in section 11C;

[Ins. Act A1368:s.4]

"immovable property situated in Malaysia" *[Deleted Act A1368:s.4]*

"Labuan" means the Federal Territory of Labuan;

“Labuan company” has the meaning assigned to it in the Labuan Companies Act 1990 *[Act 441]*;

“Labuan trust” has the meaning assigned to it under subsection 8(1);

“Labuan trust company” means a corporation registered as a Labuan trust company under Part V of the Labuan Financial Services and Securities Act 2010 *[Act 704]*;

[Ins. Act A1368:s.4]

"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 finance;

[Am. Act A1368:s.4]

"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" [*Deleted Act A1368:s.4*];

"person" includes a corporation, a partnership, a body of persons, corporate or unincorporated, and a corporation sole;

[Subs. Act A1368:s.4]

"prescribed", where no mode is mentioned, means prescribed from time to time by order published in the *Gazette*, and a power to prescribe includes the power to make different provisions in the order for different persons or different classes, categories or descriptions of persons;

[Subs. Act A1368:s.4]

"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" includes—

(a) property of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, however acquired; or

(b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in, such property, including bank cheques, money orders, shares, securities, bonds, bank drafts and letters of credit;

[Subs. Act A1368:s.4]

“protector” means a person appointed in accordance with section 35;

“purpose trust” means a trust referred to in section 11A, and includes a charitable trust;

[Ins. Act A1368:s.4]

"qualified person" means a person who is not a resident of Malaysia;

"register" includes any kind of record;

"registered Labuan trust" means a Labuan trust registered under subsection 12(4);

[Subs. Act A1368:s.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-

(i) a Labuan company or a foreign Labuan company incorporated or registered under the Labuan Companies Act 1990;

(ii) a Labuan foundation established under the Labuan Foundations Act 2010 *[Act 706]*; and

(iii) a partnership registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 *[Act 707]*,

[Subs. Act A1368:s.4]

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

“ringgit” means a ringgit in the currency of Malaysia;

[Ins. Act A1368:s.4]

"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;

“specified”, where no mode is mentioned in this Act, means specified from time to time in writing, and a power to specify includes the power to specify differently for different persons or different classes, categories or description of persons;

[*Ins. Act A1368:s.4*]

"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" [*Deleted by Act A1368;s.4*];

"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) [*Deleted by Act A1368;s.4*];

(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).

4. [Deleted Act A1368:s.5].

5. [Deleted Act A1368:s.5].

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.

(1A) Subject to subsection (1B), the proper law of a trust shall be—

(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.

(1B) 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 property of the trust;

(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.

(1C) Without precluding other means for ascertaining the designated jurisdiction with which a trust is most closely connected, the terms of a trust designating the place of administration are valid and conclusive if—

(a) a trustee's principal place of business is located in or a trustee is resident of the designated jurisdiction; or

(b) all or any part of the administration occurs in the designated jurisdiction.

[*Ins. Act A1368:s.6*]

(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 I A ADMINISTRATION OF THE ACT

Administration of the Act.

6A. The Authority is responsible for the administration of this Act, subject to the general directions and control of the Minister.

[Ins. Act A1368:s.7]

Authorized officer.

6B. (1) The Authority may authorize any of its members or officers to perform any of its functions, exercise any of its powers or discharge any of its duties under this Act.

(2) Subject to such limitations, if any, as may be prescribed, an authorized officer shall perform all the functions, exercise all the powers and discharge all the duties of the Authority and every function so performed, power so exercised and duty so discharged shall be deemed to have been duly performed, exercised and discharged for the purpose of this Act.

[Ins. Act A1368:s.7]

PART II CREATION AND RECOGNITION OF LABUAN TRUSTS

Existence of Labuan trust.

7. (1) The settlor of a Labuan trust may be a qualified person or a resident.

(2) The trust property shall not include any Malaysian property unless prior approval of the Authority is obtained or the trust is a trust for charitable purposes.

(3) The beneficiaries of a Labuan trust may be a qualified person or a resident.

(4) A Labuan trust company shall be one of the trustees of a Labuan trust.

(5) Where the trust property includes Malaysian property, any income derives from the trust property shall be subject to the Income Tax Act 1967 [Act 53].

(6) Where the trust property does not include Malaysian property, any income derives from the trust property shall be subject to the Labuan Business Activity Tax Act 1990 [Act 445].

(7) For the purposes of this section, “Malaysian property” means any property which is situated in Malaysia.”.

[Subs. Act A1368:s.9]

Creation of Labuan trust.

8. (1) A Labuan 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 a Labuan 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.

[Am. Act A1368:s.10]

(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.

Secrecy.

8A. (1) Subject to subsection (3), no person who has by any means access to any record, book, register, correspondence, document, material or information, relating to the business and affairs of a Labuan trust shall give, divulge, reveal, publish or otherwise disclose to any person such record, book, register, correspondence, document, material or information.

(2) All proceedings (other than criminal proceedings) relating to a Labuan trust commenced in any court under the provisions of this Act and any appeal therefrom, 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.

(3) Subsection (1) shall not apply where disclosure is required—

(a) pursuant to an order by any court of competent jurisdiction in any proceedings;

(b) for the purpose of the performance of the Authority's supervisory functions as may be provided for under the Labuan Financial Services Authority Act 1996;

(c) pursuant to section 22 of the Labuan Business Activity Tax Act 1990; or

(d) with the consent of the Labuan trust.

(4) Where an order referred to in paragraph (3)(a) has been obtained by an ex-parte application, the trustee may notify the person affected by the order and upon receipt of such notification, the affected person may file in the necessary application to the court to contest the order or otherwise comply with the order accordingly;

(5) A person who contravenes subsection (1) commits an offence.

Penalty: Imprisonment for three years or one million ringgit or both.

(6) Nothing in this section shall prevent any court from exercising its discretion to require any person to produce any document or to give any evidence in any proceedings before the court which is relevant to those proceedings.

[Ins. Act A1368:s.11]

Retention of certain rights by settlor.

8B. (1) The reservation or grant by a settlor of a trust of any beneficial interest in the trust property or any of the powers mentioned in subsection (2), shall not affect the validity of the trust or the trust instrument.

(2) The powers referred to in subsection (1) are as follows:

(a) to revoke, vary or amend the terms of a trust or powers arising wholly or partly under the trust;

(b) to advance, determine, pay or apply income or capital of the trust property or to give directions for the making of such advancement, determination, payment or application;

(c) to act as, or to give binding directions as to the appointment or removal of, a director or officer of any corporation wholly or partly owned by the trust;

(d) to give binding directions to the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property;

(e) to appoint or remove any trustee, enforcer, protector or beneficiary;

(f) to appoint or remove an investment manager or investment adviser;

(g) to change the proper law of the trust; and

(h) to restrict the exercise of any powers or discretions of a trustee by requiring that the powers shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust.

[Ins. Act A1368:s.11]

Validity of a Labuan trust.

9. (1) A Labuan 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) A Labuan 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 a Labuan 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 a Labuan 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 a Labuan trust may also request for directives from the Court as to matters referred to in subsection (4).

[Am. Act A1368:s.12]

Unenforceability of foreign claim or judgment.

10. (1) Where a Labuan 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;

(d) the claims of creditors in an insolvency subject to the provisions of section 11;

[Am. Act A1368:s.13]

(e) any claims with regard to the validity of any transfer or disposition of property into the Labuan trust;

(f) any claims with regard to the capacity of the settlor; or

(g) any claims by reason that the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust;

[Ins. Act A1368:s.13]

(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.

(3) Where the settlor of a Labuan trust is a resident, this section shall only apply in so far as it is consistent with any written law in Malaysia.

[Ins. Act A1368:s.13]

Fraudulent Labuan trust or disposition.

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

[Am. Act A1368:s.14]

(6A) Where the settlor of a Labuan trust is a resident, this section shall apply only in so far as it is consistent with any written law for the time being in force in Malaysia.

[Ins. Act A1368:s.14]

(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.

Purpose trusts.

11A. (1) Notwithstanding any law to the contrary, a trust may be created or established under this Act for a particular purpose or purposes, whether charitable or not.

(2) Without prejudice to subsection (1), the objects of a trust may be—

- (a) persons of any number;
- (b) purposes of any number or kind; or
- (c) both the person or persons and purpose or purposes,

provided that the purposes are lawful and not contrary to public policy.

(3) A purpose trust shall be enforceable by the enforcer appointed in accordance with section 11C.

(4) Notwithstanding subsection (3), where the objects of a purpose trust include a person, such person shall be entitled to enforce the purpose trust as regard the person and not a purpose.

(5) Any instrument creating or evidencing a purpose trust may—

- (a) specify an event or date upon the occurrence of which the trust ceases to be a purpose trust;
- (b) provide for the disposition of the property of the trust when the trust ceases to be a purpose trust; and
- (c) provide that, for so long as the trust is a purpose trust, the trustees owe no duty—
 - (i) to any person entitled to such property when the trust ceases to be a purpose trust; or
 - (ii) in relation to any purposes for which such property are then to be applied.

[Ins. Act A1368:s.15]

Charitable trusts.

11B. (1) A trust shall be regarded as a trust for charitable purposes under this Act where the trust is made for any one or more of the following purposes and where the fulfillment 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.

[Ins. Act A1368:s.15]

Enforcers.

11C. (1) The terms of a purpose trust shall provide for the appointment of an enforcer or such number of enforcers whose duty shall be to enforce the trust in accordance with its terms and purposes.

(2) Without prejudice to subsection (1), the Court may, on the application of a trustee, the settlor or any other person whom the Court considers has sufficient interest in the enforcement of the trust, appoint an enforcer or such number of enforcers if it deems fit.

(3) No person shall at any time act as both trustee and enforcer of the same trust.

(4) The settlor or his personal representatives may also be appointed as an enforcer of the purpose trust.

(5) An enforcer shall not—

- (a) place himself in a position which may conflict with his duties to enforce the purposes of the trust;
- (b) derive directly or indirectly any profit by reason of his appointment other than any reasonable fee for his service and for any reasonable expenses which he may have incurred in the discharge of his duties; or

- (c) enter on his own account into any dealing with the trustee of the purpose trust or in relation to the trust property of the purpose trust of which he is an enforcer.
- (6) An enforcer shall be provided with—
- (a) the accounts, including the annual accounts of the purpose trust;
 - (b) copies of the trust instrument setting up the purpose trust and any deed or documents referred to in the instrument;
 - (c) any legal opinions and advice received by the trustees; and
 - (d) any other documents or information to which he may be entitled to under the terms of the purpose trust.
- (7) An enforcer has the same rights as a person with a beneficial interest under an ordinary trust to take administrative actions and other actions, including making an application to the Court for its direction, for the good of the trust.
- (8) An enforcer has the rights of a trustee of an ordinary trust to protection, indemnity and payment of expenses out of trust property, and to make applications to the Court under section 49.
- (9) An enforcer has, on behalf of the trust, the same personal and proprietary remedies for breach of trust against a trustee and against third parties as a beneficiary of an ordinary trust.
- (10) An enforcer may resign his office by notice in writing and his resignation shall take effect on the delivery of the notice to the trustee of the purpose trust.
- (11) The resignation of an enforcer shall not release the enforcer from any liability in relation to the trust arising before his resignation.

[Ins. Act A1368:s.15]

Purpose trust not rendered void merely by uncertainty.

- 11D.** (1) A purpose trust shall not be rendered void merely by any uncertainty as to its objects or mode of execution.
- (2) The terms of a purpose trust may give the trustee or any other person power to resolve any uncertainty as to its objects or mode of execution.
- (3) If a purpose trust has more than one object and the trust instrument does not allocate the trust property among them, then if and so far as a contrary intention is not expressed

in the trust instrument, and subject to the terms of that instrument, the trustees of the trust have power in their absolute discretion to allocate capital and income among the different purposes of the trust.

(4) If any uncertainty as to objects or mode of execution of a purpose trust or as to the allocation of trust property among its objects cannot be resolved, or has not been resolved pursuant to the terms of the trust, the Court—

(a) may resolve the uncertainty—

(i) by reforming the trust;

(ii) by settling a plan for its administration; or

(iii) in any other way which the Court considers appropriate; or

(b) in so far as the objects of the trust are uncertain and the general intent of the trust cannot be found from the admissible evidence as a matter of probability, may declare the trust void.

[Ins. Act A1368:s.15]

Spendthrift or protective trust.

11E. (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).

[Ins. Act A1368:s.15]

Registration of Labuan trust.

12. (1) Every Labuan 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 a Labuan trust shall be responsible for registering the offshore trust and any subsequent changes in connection therewith under this Act, if the Labuan trust is registered pursuant to subsection (1).

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

(a) a statement containing-

(i) the name of the Labuan 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 Labuan trust;

(v) the proper law of the Labuan trust; and

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

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

(4A) A Labuan trust shall not be registered where the name of the Labuan trust to be registered is, in the opinion of the Authority, in any way misleading or otherwise undesirable.

[Ins. Act A1368:s.16]

(5) Any subsequent change in the particulars of the registered Labuan 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 Labuan 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 Labuan 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.

[Am. Act A1368:s.16]

Registration of trust instrument.

13. The trustee of a registered Labuan 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.

[Am. Act A1368:s.17]

Name and registered office of Labuan trust.

14. (1) Every trust instrument shall include the name by which the Labuan 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 a Labuan 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.

[Am. Act A1368:s.18]

Register and restriction on disclosure.

15. (1) The Authority may keep and maintain a register of all Labuan 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 Labuan 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.

[*Am. Act A1368:s.19*]

Duration of Labuan trust.

16. (1) The terms of a Labuan trust may expressly provide that the Labuan trust shall exist for a fixed duration.

(2) A Labuan trust shall, unless otherwise stated in the terms of a trust, continue to exist for an unlimited period or be terminated in accordance with the provisions of this Act.

(3) Notwithstanding subsections (1) and (2), the terms of a Labuan trust may authorize the trustee to—

(a) appoint a fixed duration to a Labuan trust;

(b) convert a Labuan trust with fixed duration to a Labuan trust for unlimited period; or

(c) alter, by limiting or extending, the duration of a Labuan trust.

[*Subs. Act A1368:s.20*]

Variation and revocation of Labuan trust.

17. (1) A Labuan 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 a Labuan 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 a Labuan trust or revocation of a Labuan trust or a power exercisable under a Labuan trust shall prejudice anything lawfully done by a trustee in relation to a Labuan trust prior to his receiving notice of such variation or revocation.

(4) Subject to the terms of the trust, where a Labuan 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.

[Am. Act A1368:s.21]

Failure or lapse of interest.

18. (1) Subject to the terms of a Labuan 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-

[Am. Act A1368:s.22]

(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 Labuan trust.

19. (1) Without prejudice to the powers of the Court under subsection (4) and notwithstanding anything to the contrary in the terms of the trust, where all the

beneficiaries of a Labuan trust are in existence and have been ascertained and none of them is a minor or a person under any legal disability, the Court may, on the application of any beneficiary or the trustee, order the trustee to terminate the trust and distribute the trust property among the beneficiaries if the Court is satisfied that such termination is not contrary to any material purpose or object of the trust;

[Subs. Act A1368:s.23]

(2) On the termination of the trust, pursuant to subsection (1) 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.

[Am. Act A1368:s.23]

(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.

21. Migration of Labuan trust from Labuan.

(1) Subject to the provisions of this Act and the terms of the trust and its proper law, a Labuan 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) A Labuan 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 a country in accordance with this section.

**PART III
BENEFICIARIES OF LABUAN TRUSTS**

Beneficiaries.

22. (1) Subject to sections 11A and 11B, a beneficiary shall be-

[Am. Act A1368:s.26]

(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 a Labuan trust may also be a beneficiary of the trust, but if he is the sole trustee, he shall not also be a beneficiary thereunder.

[Am. Act A1368:s.26]

(4) The terms of a Labuan trust may include--

(a) the addition of a person as a beneficiary;

(b) the exclusion of a beneficiary from a benefit;

(c) the imposition on a beneficiary of an obligation as a condition for a benefit; or

(d) the power to declare that any person shall cease to be a beneficiary.

[Subs. Act A1368:s.26]

Disclaimer.

23. (1) Notwithstanding the terms of the trust, a beneficiary may disclaim, either permanently or for such period as he may specify, the whole or any part of his interest under a Labuan trust whether or not the beneficiary has received any benefit from the interest.

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

(3) A disclaimer made under subsection (1) may, subject to the terms of the trust, be revocable and it shall be exercisable in the manner and under the circumstances so expressed.

(4) A disclaimer made under subsection (1) shall not prejudice the rights and interests of the beneficiary prior to the disclaimer.

[Subs. Act A1368:s.27]

Interest of beneficiary and dealings thereof.

24. (1) [*Deleted Act A1368:s.28*].

(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 LABUAN 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 Labuan trust company; and

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

[Am. Act A1368:s.29]

(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.

(1A) In addition to subsection (1), unless otherwise provided in the terms of the trust, a trustee shall, in the execution of his duties and the exercise of his powers and discretion, exercise such reasonable care and skill, having regard in particular—

(a) to any special knowledge or experience that he has or holds himself out as having such special knowledge or experience; and

(b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that may reasonably be expected of a person acting in the course of that kind of business or profession;

[Ins. Act A1368:s.31]

(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.

(7) Where a power mentioned in subsection 8B(2) has been reserved or granted by the settlor, a trustee who acts in accordance with the exercise of the power is not acting in breach of trust.

[*Ins. Act A1368:s.31*]

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 trustee who dissents from a decision of the majority of the trustees shall cause his dissent to be recorded in writing;

[*Subs. Act A1368:s.32*]

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 and the provisions of this Act;

[*Am. Act A1368:s.33*]

(3) A trustee may, unless otherwise provided in the terms of the trust—

(a) insure any property which is subject to the trust against risks of loss or damage due to any event; and

(b) pay the premiums out of any income or capital funds of the trust.

[*Ins. Act A1368:s.33*]

Trustee's power of investment.

33A. (1) In exercising any power of investment, a trustee shall observe the standard investment criteria under subsection (3).

(2) A trustee shall, from time to time, review the investments of the trust and consider whether, having regard to the standard investment criteria, the investments should be varied.

(3) The standard investment criteria, in relation to a trust are as follows:

(a) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind; and

(b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.

(4) The application of this section shall apply in so far as it is consistent with the terms of the Labuan trust.

[*Ins. Act A1368:s.34*]

Advice in relation to investment.

33B. (1) Except as otherwise provided by subsection (2), a trustee shall, before exercising any power of investment, obtain and consider proper advice relating to the way in which the power should be exercised, having regard to the standard investment criteria.

(2) Except as otherwise provided by subsection (3), a trustee shall, when reviewing the investments of the trust, obtain and consider proper advice on whether the investments should be varied, having regard to the standard investment criteria.

(3) A trustee need not obtain the proper advice required under subsection (1) or (2), if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to obtain the proper advice.

(4) In this section, "proper advice" means the advice of a person who is reasonably believed by the trustee to be qualified to give such advice by his ability in, and practical experience of, financial and other matters relating to the proposed investment.

(5) This section shall apply in so far as it is consistent with the terms of the Labuan trust.

[Ins. Act A1368:s.34]

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.

(1A) Any person of full age and of sound mind or any body corporate, any firm, partnership or group of persons, whether incorporated or unincorporated, may be appointed as a protector.

[Ins. Act A1368:s.35]

(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 and unless otherwise provided under the terms of

the trust, shall not be liable to the beneficiaries or the trustees for the bona fide exercise of the power;

[*Am. Act A1368:s.35*]

(3) The terms of a trust may confer on the protector the power—

(a) to remove a trustee and to appoint a new or additional trustee, but if the protector removes a trust company as a trustee, the protector shall appoint another trust company as a new trustee in its place;

(b) to determine the law of which jurisdiction shall be the proper law of the trust, in the event it is not provided in the trust deed or by the settlor;

(c) to change the place of administration of the trust; and

(d) to withhold consent from specified actions of the trustees either conditionally or unconditionally;

[*Subs. Act A1368:s.35*]

(4) The protector of a trust may also be a settlor or a beneficiary of the trust.

(5) Where there is more than one protector of a trust, any functions conferred on the protectors may be exercised, subject to the terms of the trust, by a majority of the protectors.

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

(7) A protector exercising any one or more of the powers conferred by the terms of the trust shall not by virtue only of such exercise be deemed to be a trustee.

(8) A person may charge reasonable remuneration for his services as a protector unless otherwise provided by the trust instrument.

[*Ins. Act A1368:s.35*]

Delegation of powers by trustee.

36. (1) Subject to the provisions of this Act, a trustee may delegate any or all of his delegable powers and functions to any person as their agent on such terms as to remuneration and other matters as he may determine.

(2) In the case of a trust other than a charitable trust, the trustee may delegate any of the powers or functions under this Act and the trust except—

(a) any function relating to the manner in which any property of the Labuan trust should be distributed;

(b) any power to decide whether any fees or other payment due to be made out of the trust funds should be made out of income or capital;

(c) any power to appoint a person to be a trustee of the trust; or

(d) any power conferred by the trust instrument which permits the trustee to delegate any of their functions or to appoint a person to act as a nominee or custodian.

(3) In the case of a charitable trust, the trustee may delegate the following functions:

(a) any function relating to carrying out a decision that the trustee has taken;

(b) any function relating to the investment of property subject to the trust (including, in the case of land held as an investment, managing the land and creating or disposing of an interest in the land); and

(c) any function relating to the raising of funds for the trust otherwise than by means of profits of a trade which is an integral part of carrying out the trust's charitable purpose.

(4) For the purposes of paragraph (3)(c), a trade shall mean an integral part of carrying out a trust's charitable purpose if the profits are applied solely to the purposes of the trust and either—

(a) the trade is exercised in the course of the actual carrying out of a primary purpose of the trust; or

(b) the work in connection with the trade is mainly carried out by beneficiaries of the trust.

(5) A trustee shall not delegate his functions to any person as his agent on any of the following terms unless it is reasonably necessary to do so:

(a) a term permitting the agent to appoint a substitute;

(b) a term restricting the liability of the agent or his substitute to the trustee or any beneficiary; or

(c) a term permitting the agent to act in circumstances capable of giving rise to a conflict of interest.

(6) A trustee who in good faith and without neglect makes an appointment or a delegation in accordance with the provisions of this Act 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.

[Subs. Act A1368:s.36]

Delegation of powers in relation to property management functions.

36A. (1) This section shall apply to every trust unless otherwise expressly excluded by the terms of the trust.

(2) A trustee may not delegate his property management functions to any person as his agent except by an agreement which is in writing or evidenced in writing and unless—

(a) the trustee has provided that person with a statement that gives guidance in writing as to how the functions should be exercised (hereinafter referred to as “policy statement”); and

(b) the agreement under which the agent is to act includes a term to the effect that he will secure compliance with—

(i) the policy statement; and

(ii) if the policy statement is revised or replaced, the revised or replacement policy statement.

(3) The trustees shall formulate any guidance given in the policy statement with a view to ensuring that the functions will be exercised in the best interests of the trust.

(4) For the purposes of this section, the property management functions of trustees are their functions relating to—

(a) the investment of assets subject to the trust;

(b) the acquisition of property which is to be subject to the trust; and

(c) the management of property which is subject to the trust and the disposal of, or the creation or disposal of an interest in, such property.

[Ins. Act A1368:s.37]

Review of agents.

36B. (1) This section shall apply to every trust unless otherwise expressly excluded by the terms of the trust.

(2) Where an agent is appointed to exercise any delegable functions of the trustee, it shall be the duty of the trustee—

(a) to keep under review the arrangements under which the agent acts and the manner in which such arrangements are being put into effect; and

(b) to exercise any power of intervention that he has, if the circumstances make it appropriate to do so.

(3) If the agent has been authorized to exercise property management functions, the duty under subsection 36A(2) shall include—

(a) a duty to consider whether there is any need to revise or replace the policy statement made for the purposes of section 36A;

(b) if the trustees consider that there is a need to revise or replace the policy statement, a duty to do so; and

(c) a duty to assess whether the policy statement is being complied with.

(4) In this section, “power of intervention” includes—

(a) a power to give directions to the agent; and

(b) a power to revoke the delegation of powers and functions to the agent or appointment of the agent.

[Ins. Act A1368:s.37]

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.

Right to information.

41. (1) A trustee shall, on receipt of a request, provide accurate information as to the state and amount of the trust property and the administration of the trust—

(a) to the Court;

(b) to the settlor, the enforcer or the protector of the trust, unless the trustee has reason to believe that such person is making the request under duress; or

(c) where the terms of the trust so authorize—

(i) to any beneficiary having a vested interest in the trust; or

(ii) to the charity referred to by name in the trust instrument as a beneficiary under the trust.

(2) Subject to the terms of the trust and to any order of the Court given on special and exceptional grounds, a trustee or other person shall not be required to disclose to any person not legally entitled to it under subsection (1) 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.

(3) Notwithstanding the terms of the trust—

(a) the Court may, on application made to it, declare that in particular circumstances of the trust its terms do not render the trustee sufficiently or appropriately accountable to the beneficiaries or any of them; and

(b) the Court may, pursuant to such declaration, extend or restrict the rights of all or any beneficiaries to information relating to the trust or may make such other order as it thinks fit.

(4) 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.

(5) 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 commits an offence.

Penalty: Imprisonment for five years or one million ringgit or both.

[Subs. Act A1368:s.38]

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) [*Deleted Act A1368:s.39*].

(3) [*Deleted Act A1368:s.39*].

(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.

(9A) A term of a trust relieving a trustee from liability for breach of trust is unenforceable to the extent that it—

(a) relieves the trustee from liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(9B) Subject to subsection (9C), a trustee is not liable to a beneficiary for breach of trust if the beneficiary—

(a) consented to the conduct constituting the breach;

(b) relieved the trustee from liability for the breach as provided in subsection (9);
or

(c) ratified the transaction constituting the breach, unless—

(A) the consent, release or ratification by the beneficiary was induced by improper conduct of the trustee; or

(B) at the time of the consent, release or ratification, the beneficiary has no knowledge of the beneficiary's rights or of the material facts relating to the breach.

(9C) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from his own fraud, willful misconduct or gross negligence;

[Ins. Act A1368:s.39]

(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) *[Deleted Act A1368:s.39]*.

Prevention of breach of trust.

42A. The Court may, in preventing a breach of trust from occurring, make an order to—

(a) compel the trustee to perform the trustee's duties;

(b) restrain the trustee from committing a breach of trust;

(c) appoint a special fiduciary to take possession of the trust property and administer the trust;

(d) suspend the trustee; or

(e) remove the trustee.

[Ins. Act A1368:s.40]

Remedies for breach of trust.

42B. The Court may, to remedy a breach of trust that has occurred, make an order to—

(a) compel the trustee to perform the trustee's duties;

- (b) compel the trustee to redress a breach of trust by paying money, restoring property or other means;
- (c) order a trustee to account to such breach of trust;
- (d) appoint a special fiduciary to take possession of the trust property and administer the trust;
- (e) suspend the trustee;
- (f) remove the trustee;
- (g) reduce or deny compensation to the trustee;
- (h) subject to section 44, invalidate an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (i) grant any other appropriate relief.

[Ins. Act A1368:s.40]

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.

(1A) Unless a co-trustee remains in office or the Court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or has been removed shall continue to have the duties of a trustee and the powers necessary to protect the property.

[Ins. Act A1368:s.41]

(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 IVA LABUAN SPECIAL TRUST

Application of this Part.

46A. This Part shall apply only if the terms of the trust expressly provide and declare the trust as a Labuan Special Trust.

[Ins. Act A1368:s.42]

Interpretation.

46B. (1) In this Part, unless the context otherwise requires—

“appointed enquirer”, in relation to a trust, means any person who by the terms of the trust is appointed to make intervention calls;

“business”, in relation to a company, includes the holding of shares or other assets and non-commercial activities;

“business risk”, in relation to a company, includes—

(a) any risk attached to any business of the company, or any connected company, when conducted in the manner in which it has in fact been conducted; or

(b) any risk which can be expected to be attached to any projected business of the company;

“company”, in relation to designated shares, means a Labuan company or a Labuan limited liability partnership established under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 that has issued the designated shares;

“designated shares” means shares in a Labuan company or partnership interests in a Labuan limited liability partnership established under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 comprised in a trust fund and in respect of which a valid direction under subsection 46D(1) has been made;

“designated trustee” means a company registered as a Labuan trust company under Part V of the Labuan Financial Services and Securities Act 2010 to carry on business as a trust company in Labuan;

“disposal”, in relation to designated shares, includes—

(a) the exercise of voting powers leading, or capable of leading, to the liquidation of the company or the cancellation of the shares or of any rights attached to them; and

(b) the creation of any legal or equitable interest in the shares;

“interested person”, in relation to a trust, means—

(a) a beneficiary of the trust;

(b) an object of a discretionary power over any of the capital or income of the trust;

(c) a parent or legal guardian of any minor falling within paragraphs (a) or (b);

(d) an enforcer;

(e) a protector; or

(f) an appointed enquirer;

“intervention call” means a call by an interested person under subsection 46H(1) for a trustee to intervene in the affairs of a company;

“legal guardian”, in relation to a minor, means a person legally recognised as his guardian in any jurisdiction with which the minor has a substantial connection;

“office of director rules” means rules referred to in subsection 46G(1) and any amendments made to the rules for the time being in force;

“trust”, in relation to designated shares, means the trust on which the designated shares are held;

“trust fund”, in relation to a trust, means property for the time being subject to the trust.

(2) In this Part—

(a) a reference to voting powers in respect of shares shall be taken to include a reference to powers to direct the voting of shares held by a nominee;

(b) a reference, in relation to a trust, to a protector includes a person or a committee whose consent is requisite for the exercise of any powers;

(c) a reference to the memorandum and articles of a company is a reference to the memorandum of association and articles of association of the company;

(d) a company shall be taken to be connected with another corporation if—

(i) that other corporation holds, directly or through a nominee, shares in that other corporation;

(ii) it is controlled directly or indirectly by that other corporation; or

(iii) it is connected with a corporation which is itself connected with that other corporation;

(e) a ground for complaint concerning the conduct of a company's affairs is permitted if it is specified as such in the trust instrument, and the expression "permitted ground for complaint" shall be construed accordingly;

(f) a reference to "shares", "director", "dividends" and "memorandum and articles of association" in relation to designated shares shall, where the designated shares are with respect to a Labuan limited liability partnership, be a reference to "partnership units", "designated partner", "distributions" and "partnership agreement" respectively and the provisions in this Part shall then be construed accordingly.

[Ins. Act A1368:s.42]

Primary purpose of this Part.

46C. The primary purpose of this Part is to enable a trust of company shares to be established under which—

(a) the shares may be retained indefinitely; and

(b) the management of the company may be carried out by its directors without any power of intervention being exercised by the trustee.

[Ins. Act A1368:s.42]

Designated shares.

46D. (1) Subject to subsection (3), where a trust fulfils the conditions specified in subsection (4), the terms of the trust may direct this Part shall apply—

(a) to all shares comprised in the trust fund; or

(b) to such shares comprised in the trust fund as may be specified in the direction.

(2) For the purposes of subsection (1), shares comprised in the trust fund shall be taken to include shares becoming so comprised at any time after the creation of the trust, whether added to the trust fund by way of additional settlement by the original settlor or any other person, acquired on a new issue by the company or in the course of management or administration of the trust fund, or acquired in any other manner.

(3) A direction under subsection (1) shall not be made in respect of shares added to the trust fund by a trustee of another trust in the exercise of a power in that other trust.

(4) The conditions referred to in subsection (1) are as follows:

(a) the trust is created by or on the terms of a written testamentary or inter vivos instrument;

(b) a designated trustee is the sole trustee of the trust;

(c) the terms of the trust require that any successor trustee (mediate or immediate) is a designated trustee acting as the sole trustee; and

(d) the trust is not created in the exercise of a power conferred by another trust.

(5) A direction under subsection (1) may identify the shares to which it relates either specifically or by any general description.

(6) Subject to subsection (7), where a person is a settlor in relation to a trust of designated shares and additional property is settled on the terms of the trust by another person, the former person shall be considered for the purposes of this Part as the settlor in relation to the trust of the additional property.

(7) If the trust instrument provides that subsection (6) shall not apply, then, in the case of a trust comprising property which has been provided by more than one person, this Act shall apply as if each person had created a separate trust in relation to the property which he has provided.

[Ins. Act A1368:s.42]

Trustee's duties in relation to designated shares.

46E. (1) Subject to section 46I, designated shares shall be held by the trustee on trust to retain the designated shares.

(2) The trustee's duty to retain designated shares shall have precedence over any duty to preserve or enhance the value of the trust fund.

(3) Without prejudice to subsection (2), the trustee shall not be accountable for losses arising directly or indirectly from holding designated shares, including losses arising from any of the following circumstances:

(a) the absence or inadequacy of financial return from any designated shares;

(b) a decrease in value of any designated shares;

(c) any act or omission of the directors of the company, regardless of whether it is made or carried out in good faith;

(d) liquidation or receivership of the company;

(e) share market fluctuation;

(f) the loss of opportunity to make gains from reinvestment of the proceeds of designated shares; or

(g) the liabilities and expenses of the company, including directors' remuneration and expenses.

(4) Every reference in subsection (3) to the company shall include a reference to any corporation connected to it.

[Ins. Act A1368:s.42]

Restrictions on trustee's powers.

46F. (1) Subject to the terms of the trust and to sections 46G and 46H, the obligations specified in subsections (2) and (3) shall apply to a trustee of designated shares.

(2) The power of voting or other powers in respect of designated shares shall not be exercised by the trustee so as to interfere in the management or conduct of any business of the company, and in particular, the trustee—

(a) shall leave the conduct of every such business, and all decisions as to the payment or non-payment of dividends, to the directors of the company; and

(b) shall not require the declaration or payment of any dividend by the company or exercise any power the trustee may have of compelling any such declaration or payment.

(3) A trustee of designated shares shall not—

(a) instigate or support any action by the company against any of its directors for breach of duty to the company;

(b) procure the appointment or removal of any of the directors;

(c) subject to section 46I, wind up the company; and

(d) subject to the provisions of this Part, apply to the Court for any form of relief or remedy in relation to the company.

[Ins. Act A1368:s.42]

Provisions relating to directors.

46G. (1) The trust instrument may contain rules for determining the manner in which the power of voting and other powers attributable to designated shares should be exercised by the trustee in relation to—

(a) the appointment of directors of the company;

(b) the removal of directors;

(c) the remuneration of directors; or

(d) any of the matters referred to in subsection (2),

and may make provision for those rules to be amended.

(2) The office of director rules may, in particular—

(a) require the trustee to ensure that a particular person holds or retains office as a director;

(b) require any person to be appointed to the office of director at a future date or upon a future event;

(c) require the removal of a director in specified circumstances;

(d) prescribe, subject to the requirements of the memorandum and articles of the company and any written law applicable to the company, the minimum and maximum number of directors to hold office at any time;

(e) require the trustee, in relation to the appointment and removal of directors, to act generally or in any specified circumstances on the decision of a third person or a committee;

(f) provide for the conferral of fiduciary duties on a person or a committee referred to in paragraph (e); or

(g) provide for the establishment, continuance, and procedures of a committee referred to in paragraph (e).

(3) Subject to subsection (9) and section 46H, the trustee shall at all times use its power of voting and other powers, so far as those powers allow, to ensure—

(a) that the company has at least the minimum number of directors to meet the requirements of its memorandum and articles and any written law applicable to the company; and

(b) that, except in an exempted case, the identity of the directors of the company conforms with the office of director rules, if any, for the time being applicable.

(4) No person becoming or remaining a director of the company, whether in consequence of the office of director rules or otherwise, shall, in the capacity of director, owe fiduciary or other obligations under the trust, or have any fiduciary or other obligations to the trustee, but nothing in this subsection shall affect any duty which that person owes, as director, to the company.

(5) A person for whose appointment the office of director rules may provide include—

(a) a settlor or protector of the trust; and

(b) both ascertained and ascertainable persons.

(6) A trustee shall incur no liability for securing, sanctioning or not opposing the appointment of a director where that appointment is in conformity with the office of director rules.

(7) Where there is no office of director rules, and in an exempted case, a trustee shall incur no liability for securing, sanctioning, or not opposing, the appointment of a director of the trustee's own selection, if—

(a) the trustee concludes in good faith that the appointment in question is consistent with the wishes of the settlor; and

(b) the selection is not motivated by a desire on the part of the trustee to reduce business risk, except to the extent, if at all, that the trustee in good faith concludes that a reduction would be consistent with the wishes of the settlor.

(8) For the purposes of this section, an exempted case is any case in which either—

(a) the office of director rules make no provision in that case; or

(b) the rules make provision but the trustee concludes in good faith that it would be impossible, unlawful, impracticable, or plainly inconsistent with the wishes of the settlor, to ensure compliance with the rules in that case.

(9) A trustee shall have no duty—

(a) to act pursuant to subsection (3) unless and until it receives actual notice that circumstances requiring such action have arisen; or

(b) to enquire as to whether circumstances requiring action pursuant to subsection (3) exist.

(10) Where, on any question concerning the appointment of a director, a trustee makes an application to the Court under section 49, the Court, in giving its directions, shall not seek to reduce business risk, except to the extent, if at all, that the Court concludes that a reduction would be consistent with the wishes of the settlor.

[Ins. Act A1368:s.42]

Intervention by trustee in management in prescribed circumstances.

46H. (1) Where, in relation to a trust of designated shares, an interested person has a complaint concerning the conduct of the company's affairs, and the ground for that complaint is permitted, he may, in writing, call upon the trustee to intervene in the affairs of the company to deal with the complaint.

(2) A trust instrument may specify one or more permitted grounds for complaint.

(3) Upon receiving an intervention call, the trustee shall, if satisfied that the complaint is substantiated, take such, if any, action as the trustee considers appropriate to deal with the complaint in the interests of the trust and may include the following:

(a) making or procuring changes in the directorship of the company in accordance with the provisions of its memorandum and articles and any written law applicable to the company, but otherwise on such terms as the trustee thinks fit, provided that in making, procuring or maintaining any such change, the trustee

may disregard paragraph 46G(3)(b) if and in so far as, in the opinion of the trustee, it is expedient to do so for the purposes of dealing with the complaint;

(b) procuring action by the company to recover any losses caused by the conduct that giving rise to the complaint; or

(c) seeking such advice on the complaint and the manner of addressing it as the trustee considers appropriate.

(4) In considering and taking action under subsection (3), the trustee shall—

(a) have regard to—

(i) any wishes of the settlor; and

(ii) the efficient functioning of the company; and

(b) disregard business risk, except to the extent that—

(i) the ground for complaint consists of or arises from any disagreement among the directors as to business risk; or

(ii) any wishes of the settlor require business risk to be considered.

(5) After acting pursuant to subsection (3), or after deciding not to act, the trustee's obligation to intervene shall be at an end unless and until another intervention call is made.

(6) It shall be a ground for declining to act on an intervention call if, apart from any other reason for declining, the call is made on substantially similar ground that has been made previously, and there appears to the trustee to be no reason to alter, or act further on, the decision previously taken by it.

(7) Where a trust instrument specifies one or more permitted grounds for complaint, the following provisions shall apply:

(a) an interested person may request the trustee to provide such information concerning the affairs of the company and any connected company as is reasonably required for that person to consider whether an intervention call is necessary, and the trustee shall use all reasonable endeavours to provide that information and may, if considered necessary for this purpose, procure the replacement of any of the directors with the trustee's own representative;

(b) where there is an appointed enquirer he shall be under the following duties:

(i) a duty to make reasonable enquiries as to whether there is a permitted ground for complaint as often as appears appropriate in the circumstances, and not less than once in a period of twelve months; and

(ii) a duty to make an intervention call under this section, and provide the trustee with evidence of the relevant ground for complaint, whenever it appears to him to be appropriate;

(c) where there is no appointed enquirer, the trustee shall use all reasonable endeavours to ensure that at all times at least one interested person of full capacity is given the following documents and information concerning the trust, but without prejudice to any right of that person to documents and information apart from this paragraph:

(i) a copy of the trust instrument and other trust documents;

(ii) the name and address of the trustee;

(iii) the name, registered office and principal place of business of the company;

(iv) the names and addresses of all directors of the company; and

(v) the nature of the current activities of the company,

provided that, where practicable, any person to whom information is given under this paragraph shall be a person who, in the reasonable opinion of the trustee, has acquired, or is likely to acquire, by appointment or otherwise, a substantial equitable interest in some or all of the designated shares or their proceeds or is the parent or legal guardian of such a person.

(8) All expenses incurred in dealing with an intervention call or considering the complaint on which it is based, including trustee remuneration where applicable, and the cost of any advice, shall be payable out of the trust fund and its income in such proportions as the trustee decides, and if there is any deficiency in liquid funds the trustee may take such steps as are available to the trustee under the memorandum and articles of the company and any written law applicable to the company, to make up the shortfall out of dividends from the company and may, if considered necessary for this purpose, procure the replacement of any of the directors with the trustee's own representative.

(9) The trustee shall, where practicable, procure the removal from office of a director appointed for the purpose specified in paragraph (7)(a) or subsection (8) when the purpose for which the director was appointed is achieved, if removal is appropriate for the purpose of any action decided upon by the trustee pursuant to subsection (3) or, subject to such action, for the purpose of compliance with the office of director rules.

Power to dispose designated shares.

46I. (1) Subject to subsection (2) and to the terms of the trust instrument, the trustee shall have power, in the management or administration of the trust fund, to sell or otherwise dispose of designated shares, but the existence of this power—

(a) shall not carry an implied duty to exercise the power for the purpose of preserving or enhancing the value of the property of the trust or to consider its exercise for that purpose; and

(b) shall not render the trustee liable, in consequence of not exercising such power, for losses of the kind referred to in subsection 46E(3).

(2) Subject to section 46K, the trustee shall not, unless the trust instrument otherwise provides, sell or dispose of the designated shares in the management or administration of the trust fund without—

(a) the consent of the directors of the company or of a majority of them if more than one; and

(b) such consents, if any, are made requisite by the trust instrument.

(3) The power to sell or dispose of the designated shares under subsection (1) shall be made in such manner, and upon such terms and conditions, as the trustee, acting in its fiduciary capacity, thinks fit.

(4) Section 48 shall not apply to the trust to the extent that the section permits the Court to confer upon the trustee any power of sale or other disposal.

Enforcement.

46J. (1) Where in the case of a trust of designated shares there is a breach of a duty or obligation imposed by this Part on its trustee, any of the persons specified in subsection (3) may, subject to the terms of the trust, apply to the Court for relief.

(2) The Court shall, if satisfied that the application under subsection (1) is well founded, grant relief by—

(a) making such order as it considers appropriate to attain, as nearly as may be, the outcome that the Court considers would have been, or would most likely have been, attained in respect of the trust, the company, its directors and generally if the breach had not occurred; and

(b) making such, if any, supplementary or incidental order as the Court deems, in the circumstances of the case, reasonably required having regard to the primary purpose of this Part,

provided that no order shall be made under this subsection to prejudice any interest in property which was acquired from the trustee in good faith, for value and without actual or constructive notice of the trust, or from the company in good faith and for full consideration, or to prejudice any interest deriving from such an interest.

(3) The persons referred to in subsection (1) are as follows:

(a) an interested person;

(b) a director of the company; and

(c) a person who, under the applicable office of director rules, would be a director if the trustee had complied with its obligations under section 46G.

(4) Without prejudice to subsections (1) to (3), but subject to subsection (5), where in the case of a trust there is a breach of a duty or obligation imposed by this Act on its trustee, the breach shall be, and be actionable in civil proceedings as, a breach of the trust which shall be taken to include references to a prospective breach.

(5) Where civil proceedings are instituted in relation to a breach of a duty or obligation, the Court shall, in granting any remedy, take into account of any relief granted or available in respect of the breach on an application under subsection (1).

(6) Subject to the terms of the trust and to sections 46G and 46H, where designated shares are held on trust, no act or omission of a director of the company shall be a ground for any person to seek intervention by the Court in the affairs of the trust.

[Ins. Act A1368:s.42]

Power of Court to order disposal.

46K. (1) Where it appears to the Court that the retention of the designated shares is no longer compatible with the wishes of the settlor, the Court shall have power, on the application of any interested person, to order or authorize a sale or other disposal of the designated shares, and a sale or other disposal so ordered or authorized shall not require any consent referred to in subsection 46I(3).

(2) In making an order or authorization under subsection (1), the Court may impose such, if any, terms and conditions in relation to the sale or other disposal as it thinks fit.

[Ins. Act A1368:s.42]

Beneficiaries not entitled.

46L. (1) Notwithstanding any rule of equity or practice of the Court to the contrary, but subject to subsection (2), neither a beneficiary who is solely interested in any designated shares, nor all the beneficiaries who together are the persons interested in any designated shares, shall be entitled, although in existence and ascertained and of full capacity, to call for or direct a transfer of those shares or to terminate or modify the trust relating to the shares, if and so far as that entitlement is, without offending any rule of perpetuity or remoteness, excluded by the trust instrument.

(2) No such exclusion of entitlement shall have effect, or continue to have effect, after the expiration of twenty years from the creation of the trust.

(3) Where a person who receives designated shares, or an interest in the designated shares, is a person who, by virtue of such an exclusion of entitlement, has no present right to receive the shares or that interest, he shall, without prejudice to the generality of subsection (1), hold those shares or that interest on trust to transfer the shares or that interest to the trustee, and the Court shall order him to do so on the application by the trustee or any person specified in subsection 46J(3).

(4) During any such exclusion of entitlement, section 47 shall not apply to the trust

[Ins. Act A1368:s.42]

Disqualification of trustee as a director.

46M. A trustee of designated shares shall not be, or become, a director of the company.

[Ins. Act A1368:s.42]

Ascertaining wishes of settlor.

46N. (1) Where it is necessary under this Act for the Court or a trustee to ascertain the wishes of the settlor, the provisions of this section shall apply.

(2) Where the settlor is alive, the settlor shall, where possible and practicable, be consulted as to his wishes.

(3) Where the settlor is dead, or it is not possible or practicable to consult him, his wishes shall be taken to be—

(a) such wishes as he has most recently communicated to the trustee; or

(b) where no wishes have been communicated, such as the Court, or the trustee in good faith, believes most likely to have been his wishes from the evidence available in respect of the wishes.

[*Ins. Act A1368:s.42*]

Limitation of trustee's duties.

46O. (1) A trustee of designated shares shall have no fiduciary responsibility or duty of care in respect of the property of, or the conduct of the affairs of, the company, except when acting, or required to act, on an intervention call.

(2) Without prejudice to the generality of subsection (1), a trustee of designated shares—

(a) shall not be required to make any enquiry as to whether any facts exist which would, or may, whether with or without any other information, form the basis of an intervention call;

(b) shall not be obliged to inform any interested person of any fact of which it becomes aware, or which it suspects, concerning the property of the company or the conduct of its affairs; and

(c) shall not incur liability as accessory to a director's breach of duty by reason of any omission on the part of the trustee to take action where the trustee is aware, or suspects, that there has been or will be such a breach, or by reason of any act or omission in compliance with the provisions of section 46G.

[*Ins. Act A1368:s.42*]

Restrictions on Labuan trust to apply.

46P. The restrictions in section 7 shall apply to a Labuan Special Trust constituted under this Part.

[*Ins. Act A1368:s.42*]

**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. (1) 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 Labuan 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.

[Am. Act A1368:s.43]

(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 three years-

[Am. Act A1368:s.44]

(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 a Labuan trust shall not accept-

[Am. Act A1368:s.45]

- (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 three million ringgit or both.

[Subs. Act A1368:s.45]

- (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.

Power to compound.

56. (1) The Authority may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Authority of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in the written offer.

(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 if the amount specified in the offer is not paid within the time specified in the offer or such extended time as the Authority may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

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

(4) Any document or thing seized in connection with the compounded offence may be released or forfeited by the Authority, subject to such terms and conditions as the Authority deems fit to impose in accordance with the conditions of the compound.

(5) All sums of money received by the Authority under this section shall be paid into the Fund established under section 29 of the Labuan Financial Services Authority Act 1996.

[Subs. Act A1368:s.46]

Power of the Minister to make regulations.

57. (1) The Minister may, on the recommendation of the Authority, make regulations as may be necessary or expedient for the better carrying out of the provisions of this Act.

(2) The regulations made under this Act may provide for any act or omission in contravention of the regulations to be an offence and may provide for penalties of a fine not exceeding twenty-five thousand ringgit.

[Subs. Act A1368:s.47]

Power of the Minister to grant exemptions.

58. The Minister may, on the recommendation of the Authority, exempt any Labuan trust or Labuan Special Trust from any of the provisions of this Act and may, in granting such exemption, impose such terms and conditions as the Minister thinks fit.

[Subs. Act A1368:s.48]

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 Labuan 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.

[Am. Act A1368:s.49]

(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, the Trustee (Incorporation) Act 1952 and section 9 of the Government Proceedings Act 1956 shall not apply to a Labuan trust validly created or enforced or registered under this Act.

[Am. Act A1368:s.50]

63. Application of the Labuan Financial Services Authority Act 1996.

In the event of any conflict or inconsistency between the provisions of this Act and the Labuan Financial Services Authority Act 1996, the provisions of the Labuan Financial Services Authority Act 1996 shall prevail.

[Ins. Act A1368:s.51]

NOTE: Savings.[Act A1368:s.52]

All references to the Labuan Offshore Trusts Act 1996 in any written law or document shall, on the coming into operation of this Act, be construed as references to the Labuan Trusts Act 1996.

[Act A1368:s.52]

LIST OF AMENDMENTS

| Amending law | Short title | In force from |
|---------------------|---|---------------------------------|
| Act A1368 | Labuan Offshore Trusts (Amendment) Act 2010 | 11-02-2010 [P.U.(B) 65/2010] |