CHAPTER 176A

PURPOSE TRUSTS

LIST OF AUTHORISED PAGES

1 – 13 LRO 1/2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.
3. Authorised purpose trusts.
4. Allocation among purpose.
5. Uncertainty.
6. Authorised applicants.
7. Trustees.
8. Reformation cy-pres.
9. Termination.
10. General law regarding trusts to apply.
11. Saving for ordinary trusts.

CHAPTER 176A

PURPOSE TRUSTS

An Act to provide for the creation of purpose trusts; and for connected purposes.

17 of 2004
S.I. 85/2004.
14 of 2005
30 of 2007
56 of 2011
57 of 2011

[Assent 17th August, 2004]
[Commencement 15th October, 2004]

Short title.

1. This Act may be cited as the Purpose Trusts Act.

Interpretation.

2. (1) In this Act —

"authorised applicant" means a person who is for the time being an authorised applicant for the purposes of section 6;

"authorised purpose trust", "authorised purpose" and "authorised purposes" have the meanings assigned by subsection (2) of section 3;

"charitable purpose" means an exclusively charitable purpose and "non-charitable purpose" means a purpose that is not charitable or is not exclusively charitable;

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

"Minister" means the Minister responsible for the administration of this Act;

"ordinary trust" means a trust that is not an authorised purpose trust;

"property" means property of any kind, real or personal, movable or immovable, and includes any thing in action and any interest (including an undivided share) in any kind of property;

56 of 2011, s. 3.

"the rule against perpetuities"[1] includes the rule of law prohibiting trusts of excessive duration and any rule of law restricting the period during which income may be accumulated;

[1] Applies to purpose trust existing on 30 December 2011 with effect from the date of creation of that trust *(Act 56 of 2011)*

"trust instrument" means the written testamentary or other instrument by or on the terms of which a trust is settled or declared.

(2) For the purposes of this Act, "trust instrument" includes such an instrument executed before or after the commencement of this Act which has been amended pursuant to the provisions of the instrument after the commencement of this Act.

Authorised purpose trusts.

3. (1) A trust may be declared by trust instrument for a non-charitable purpose, including, exclusively or otherwise, the purpose of holding, or investing in shares in a company or any other assets constituting the trust property if —

(a) the purpose is possible and sufficiently certain to allow the trust to be carried out;

(b) the purpose is not contrary to public policy or unlawful under the laws of The Bahamas;

56 of 2011, s. 4.

(c) the trust instrument specifies the event upon the happening of which the trust may or will terminate and provides for the disposition of surplus assets of the trust upon such termination.[2]

(2) In this Act, a trust satisfying the conditions in subsection (1) is referred to as "an authorised purpose trust", the purpose of an authorised purpose trust is referred to as "an authorised purpose" and "authorised purposes" is to be construed accordingly.

30 of 2007, s. 2.

(3) The trust instrument may create an authorised purpose trust of capital or income of any property which may have —

(a) a fixed interest;

(b) a discretionary interest; or

(c) any combination of a fixed or discretionary interest as mentioned in (a) and (b).

30 of 2007, s. 2.

(3A) The capital or income of the authorised purpose trust referred to in subsection (3) may be disposed of in the following manner —

(a) to persons who may be of any number; or

(b) for purposes which may be of any number or kind, charitable or non-charitable; or

[2] Applies to purpose trust existing on 30 December 2011 with effective from the date of creation of that trust *(Act 56 of 2011*

(c) to any combination of persons or purposes as mentioned in paragraphs (a) or (b).

(4) The rule against perpetuities (also known as the rule against remoteness of vesting) shall not apply to an authorised purpose trust.

(5) A trust may not be regarded as a charitable trust, or an ordinary trust if it complies with this Act and is specified in the trust instrument to be an authorised purpose trust.

(6) No land nor any interest in land in The Bahamas shall be subject, directly or indirectly, to an authorised purpose trust, but an authorised purpose trust may lease office premises for the purposes of its business.

(7) Nothing in this Act affects the creation, termination or validity of any trust created under any other law, but save as aforesaid, purpose trusts which do not comply with this Act are invalid.

Allocation among purpose.

4. (1) If the trust instrument of an authorised purpose trust has more than one purpose, and 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 an authorised purpose trust shall have power in their absolute discretion —

(a) to allocate capital and income among the different purposes of the trust; and

(b) to devise and determine the methods to be used to pursue the purposes of the trust.

(2) If the trust instrument of an authorised purpose trust has more than one purpose and if the trust instrument does not allocate capital or income among the different purposes of the trust and the trustees do not do so, the Court may make such allocations as in its opinion best fulfill the intent of the trust instrument.

Uncertainty.

5. (1) Subject to subsection (3), an authorised purpose trust is not rendered void by uncertainty as to the administration of the trust.

(2) The trust instrument of an authorised purpose trust may empower the trustee or any other person to resolve an uncertainty as to the administration of the trust.

(3) If an uncertainty as to the administration of an authorised purpose trust arises and either the trust instrument does not empower the trustee or any other

person to resolve it, or the trust instrument does, but the trustee or other person (as the case may be) fails to resolve it, the Court may —

(a) resolve the uncertainty by reforming the trust, by settling a plan for its administration or in any other way which the Court deems appropriate, in each case which, in its opinion, best fulfill the intent of the trust instrument in relation to that purpose, as can be ascertained from admissible evidence; or

(b) if and to the extent the intent of the trust instrument in relation to that purpose cannot be found from admissible evidence, declare the trust void for that purpose.

Authorised applicants.

6. (1) The authorised applicants specified in subsection (2) shall have in relation to an authorised purpose trust —

(a) standing to make application by originating summons to the Court under subsection (2) of section 4, subsection (3) of section 5 and subsection (2) of section 8;

(b) the same rights as beneficiaries of an ordinary trust to bring and prosecute for the benefit of the trust —

(i) administration proceedings;

(ii) proceedings for breach of trust;

(iii) proceedings for the recovery of trust property; and

(iv) other proceedings, against the trustees and other persons;

(c) the right in any proceedings under this section to such accounts and inquiries and such other personal and proprietary remedies and relief, in each case for the benefit of the trust, as could be obtained by a beneficiary of an ordinary trust;

(d) standing to make any application to the Court for an opinion, advice or direction or otherwise in connection with the trust;

(e) in connection with any application or proceedings authorised by this section, the same rights as a trustee of an ordinary trust to protection and indemnity and to make application to the Court for relief from personal liability;

(f) in addition to any documents, information or other rights specifically provided for in the trust instrument, the right, whether or not any litigation is contemplated or in progress, to inspect and make copies of —

(i) the instruments, registers and documents of the trust kept by the trustees pursuant to subsection (2) of section 7;

(ii) all other records and documents of the trust; and

(iii) opinions and legal advice of counsel and attorneys received by the trustees in the general administration of the trust, save those opinions or advice received by the trustee in his personal capacity in contemplation of a lawsuit;

(g) all such other rights except those, if any, that may be expressly excluded by the settlor in the trust instrument in respect of a named beneficiary, to information and access to documents as the authorised applicant would have under section 83 of the Trustee Act, if the authorised applicant were a beneficiary with a vested interest under the trust; and Ch.176.

(h) an indemnity against all costs and expenses properly incurred as an authorised applicant. *30 of 2007, s. 3.*

(2) Subject to subsection (3), the following are authorised applicants in relation to an authorised purpose trust for the purpose of subsection (1) —

(a) any person appointed by or under the trust instrument of the trust or under paragraph (b) of subsection (4) to be an authorised applicant for the purposes of this section;

(b) the settlor of the trust, unless the trust instrument provides otherwise;

(c) any other person whom the Court declares (on an application being made for such a declaration) to have a pecuniary or non-pecuniary interest in advancing the purpose or purposes of the trust such as to make it appropriate in the opinion of the Court for that person to make applications and take proceedings under subsection (1) regarding the trust.

(3) A trustee of an authorised purpose trust and any person or class of persons specified in the trust instrument to be prohibited from acting as an authorised applicant shall not be eligible to be declared an authorised applicant of that authorised purpose trust under paragraph (c) of subsection (2) or appointed an authorised person of that authorised purpose trust under paragraph (b) of subsection (4).

(4) If the Attorney-General certifies in writing that an application or proceedings under subsection (1) is requisite in respect of an authorised purpose trust and that the Attorney-General is not aware of any person within subsection (2) who is able and willing to pursue such an application or proceedings then the Attorney-General —

(a) shall be empowered to make an application or take proceedings for the purposes of subsection (1); and

(b) may also apply to the Court for the appointment of an authorised applicant in relation to the trust and the Court may by order appoint a person who is able and willing to act as an authorised applicant for the purposes of this section in relation to the trust and authorise such newly authorised applicant to charge such remuneration payable from the trust property or its income as the Court may think fit.

(5) If the Court is satisfied that there is no such person as is specified under subsection (2) who is able and willing to make an application under that section and it is impossible or impracticable to appoint a new authorised applicant, who is willing and able to do so, then the Court shall declare that the trust has terminated and dispose of the surplus assets, if any, as it deems fit unless provided otherwise in the trust instrument. An application for such a declaration may be made by the Attorney-General or a trustee of the authorised purpose trust or an authorised applicant of the authorised purpose trust.

(6) The Court may make such orders as it considers just for the payment out of the capital or income of the trust property of all or any costs (including but not limited to fees, charges, disbursements and remuneration) of or incidental to any application or proceedings authorised by this section that may be paid or incurred by —

(a) the Attorney-General;

(b) a trustee;

(c) any authorised applicant; or

(d) any applicant for a declaration under paragraph (c) of subsection (2).

Trustees.

14 of 2005, s. 2.

7. (1) A person who carries out trust business in or from within The Bahamas shall not act as trustee of an authorised purpose trust unless that person is —

(a) a bank or trust company licensed under the Banks and Trust Companies Regulation Act; or Ch. 316.

(b) an individual who is licensed as a service provider under the Financial and Corporate Service Providers Act. Ch. 369.

(2) The trustees that administer an authorised purpose trust shall keep in The Bahamas —

(a) a copy of the trust instrument which created or evidenced each authorised purpose trust of which he is a trustee, copies of amending and supplemental instruments and all other written instruments executed pursuant to any of them;

(b) a register of each such trust specifying in respect of each trust, the name of the person who created the trust, a summary of the purpose or purposes of the trust and the name and address of any authorised applicants named as such in the trust instrument; and

(c) such documents as are sufficient to show the true financial position of each such trust at the end of the trust's financial year together with details of all applications of principal and income during that financial year.

(3) A trustee that administers an authorised purpose trust shall permit the Attorney-General in the exercise of his powers under subsection (4) or (5) of section 6 of this Act to make copies of the instruments, registers and documents referred to in subsection (2).

(4) Subsections (2) and (3) do not create an obligation to make the instruments, registers and documents referred to in subsection (2) available for public inspection.

(5) A person who, in The Bahamas or elsewhere, knowingly administers an authorised purpose trust while there is a breach of subsection (1) (apart from actions intended to bring the trust in compliance with subsection

(1) as soon as possible and actions intended to preserve the trust property pending compliance with subsection (1)) is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000.

(6) Where a trustee —

(a) fails to comply with any of the provisions of subsection (2), he is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000;

(b) makes or authorises the making of an untrue statement in an instrument, register or document referred to in subsection (2), he is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000;

(c) refuses to permit a person mentioned in subsection (3) to inspect and take copies of an instrument, register or document referred to in subsection (2), the trustee is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 and to a further fine of $100 for every day on which the refusal continues.

(7) In proceedings against a trustee for an offence under paragraphs (a) and (b) of subsection (6) it shall be a defence for him to satisfy the Court that he took all reasonable steps and exercised all due diligence to avoid committing the offence. A person shall not be entitled to rely on this defence by reason of his reliance on information given by another person unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to the steps which he took and which might reasonably have been taken, for the purpose of verifying the information, and to whether he had any reason to disbelieve the information.

(8) Where an offence under subsections (5) and (6) committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to willful default or gross negligence on the part of, a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be prosecuted and punished accordingly. Where the affairs of the body corporate are managed by its members, this subsection will also apply in relation to the acts and default of a member in

connection with his functions of management as if he were a director of the body corporate.

(9) The trustees that administer an authorised purpose trust shall have in relation to that trust —

(a) standing to make application by originating summons to the Court under subsection (2) of section 4, subsection (3) of section 5, subsection (5) of section 6 and subsection (2) of section 8;

(b) standing to make any application to the Court for an opinion, advice or direction or otherwise in connection with the trust; and

(c) in connection with any application authorised by this section, the same rights as a trustee of an ordinary trust to protection and indemnity and to make application to the Court for relief from personal liability.

Trustee accounting records.
57 of 2011, s. 2.

7A. (1) For the purposes of paragraph (c) of subsection (2) of section 7, the documents kept by the trustees of an authorised purpose trust shall include reliable accounting records in relation to —

(a) all sums of money received and expended by each such trust and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions;

(b) the assets and liabilities of each such trust.

(2) For the purposes of subsection (1), accounting records shall —

(a) correctly explain all transactions;

(b) enable the financial position of the trust to be determined with reasonable accuracy at any time;

(c) allow financial statements to be prepared; and

(d) include the underlying documentation, including invoices, contracts and receipts, necessary to facilitate (a), (b) and (c).

(3) Accounting records maintained pursuant to this section shall be kept for a minimum period of five years from the date of the transaction to which such records relate.

Reformation cy-pres.

8. (1) The trust instrument of an authorised purpose trust may empower the trustees or any other

person to reform the trust in the event that it becomes in whole or in part —

(a) impossible or impracticable;

(b) unlawful or contrary to public policy; or

(c) obsolete in that, by reason of changed circumstances it fails to achieve the general intent of the trust.

(2) If the execution of an authorised purpose trust in accordance with its terms is or becomes (otherwise than by the fulfillment of any purpose) in whole or in part —

(a) impossible or impracticable;

(b) unlawful or contrary to public policy; or

(c) obsolete in that, by reason of changed circumstances it fails to achieve the general intent of the trust,

the trustees of the trust shall, and any authorised applicant may, unless the trust is reformed pursuant to its own terms; apply to the Court to reform the trust cy-pres.

(3) On such an application the Court may reform the trust in accordance with the general intent of its trust instrument or insofar as the Court finds that the trust cannot be so reformed then the Court shall declare that the trust has terminated and dispose of the surplus assets, if any, as it deems fit unless provided otherwise in the trust instrument.

Termination.

9. Upon the Court declaring under subsection (5) of section 6 or subsection (3) of section 8 that an authorised purpose trust has terminated —

(a) if the trust instrument provides for further trusts to take effect subject to, or on the termination of, the authorised purpose trust then such further trusts shall take effect accordingly; or

(b) otherwise the trust property and its income shall be dealt with in accordance with the provisions of the trust instrument regarding surplus assets.

General law regarding trusts to apply.

Ch. 176.

10. Save as otherwise provided by this Act, the law relating to authorised purpose trusts is the same in every respect as the law relating to ordinary trusts from time to time and for this purpose the law relating to ordinary trusts includes (without limitation) the Trustee Act.

11. Nothing in this Act shall prejudice (whether directly or by implication) the validity of any ordinary trust.

Saving for ordinary trusts.