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I assent,



EUSTACE JOHN C.M.G.

Deputy Governor-General.

29th May, 2015.

ISLAND OF NEVIS

No. 2 of 2015

An Ordinance to amend the Nevis International Exempt Trust Ordinance, Cap. 7.03 of the Revised Laws of the Federation of St. Christopher and Nevis, to modernize and update the Ordinance and for matters incidental thereto or connected therewith.

[Published 25th June 2015, Official Gazette No. 31 of 2015.]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Nevis Island Assembly and by the authority of the same, as follows:

1. Short title and commencement.

(1) This Ordinance may be cited as the **NEVIS INTERNATIONAL EXEMPT TRUST (AMENDMENT) ORDINANCE, 2015** and shall be read and construed as one with the Nevis International Exempt Trust Ordinance, Cap. 7.03 hereinafter referred to as the Principal Ordinance.

(2) The effective date of this Ordinance is July 1st, 2015.

2. Amendment of Table of Contents.

The Table of Contents of the Principal Ordinance is hereby amended by:

- (a) deleting the Section title "5. Maximum duration of international trusts and accumulation of income" and replacing it with the Section title "5. Unlimited duration of international trusts and accumulation of income";
- (b) adding the following Section title immediately after "8. Trusts for non-charitable purposes":

"8A. Discretionary interests in international trusts"
- (c) adding the following two Section titles immediately after "9. Protector of trust":

"9A. General power of appointment granted to a beneficiary

9B. Right of revocation retained by settlor"

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- (d) deleting the word “Courts” in the title of Section 23 and replacing it with the word “Court’s”.
- (e) adding the following three Section titles immediately after “35. Appointment of new and additional trustees”:
 - “35A. Removal of trustee and protectors
 - 35B. Combination and division of trusts
 - 35C. Effect of provisions of instrument”
- (f) deleting the following Section title “36. Corporate trustees” and replacing it with the Section title “36. Trustee resolutions”;
- (g) deleting the Section title “54. Power to establish advisory bodies” and replacing it with the Section title “54. Power to establish to the Nevis International Exempt Trust Ordinance Advisory Committee”;
- (h) deleting the Section title “56. Community property” and replacing it with the Section title “56. Community property and tenancy by the entireties property”; and
- (i) deleting the Section title “57. Confidentiality, No. 2 of 1985” and replacing it with the Section title “57. Confidential Relationships Act”.

3. Amendment of Section 2.

Section 2 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 2, which shall continue to be titled “**Interpretation**” and shall read as follows:

“2. *Interpretation*

In this Ordinance unless the context otherwise requires –

‘attorney-at-law’ means a person whose name has been entered on the Roll of attorneys at law pursuant to the Legal Professions Act, 2008, as amended;

‘ascertainable standard’ means generally accepted norms or criteria relating to a natural person’s health, education, support, or maintenance;

‘authenticated translation’ means a translation into the English language of an instrument which was drafted in a language other than English and was prepared by a professional translator who is accredited by a court of law, a government agency or an international organization;

‘bankrupt’ means a situation where a person is insolvent and is otherwise unable to pay his debts and obligations, and the term ‘bankruptcy’ shall be construed accordingly;

‘beneficiary’ means any person entitled to the constructive enjoyment of trust property of which a trustee holds legal title, or in whose favour a power to distribute trust property may be exercised;

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‘breach of trust’ means the violation, omission, neglect or failure of any duty imposed on a trustee by this Ordinance or by the terms of the international trust;

‘business entity’ means a corporation, business trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, or any other legal or commercial entity, whether foreign or domestic;

‘charitable purpose’ shall be construed in accordance with the provisions of section 7 of this Ordinance;

‘charitable remainder annuity trust’ means a trust:

- (a) from which a sum certain is to be paid, not less often than annually,*
- (b) to one (1) or more persons (at least one (1) of which is not a charity and, in the case of natural persons, only to a natural person who is living at the time of the creation of the trust),*
- (c) for a term of years or for the life or lives of such natural persons or natural persons (here the ‘lead term’),*
- (d) from which no amount other than the payments described herein and other than qualified gratuitous transfers described herein may be paid to or for the use of any person other than a charity, following the termination of the lead term,*
- (e) the remainder interest in the trust is to be transferred to, or for the use of, a charity or is to be retained by the trust for such a use, and*
- (f) the value of such remainder interest (determined by applying generally accepted actuarial principles) is at least two percent (2%) of the initial net fair market value of all property placed in the trust;*

charitable remainder unitrust’ means a trust:

- (a) from which a fixed percentage of the net fair market value of its assets, valued annually, is to be paid, not less often than annually (the ‘lead payment’),*
- (b) to one (1) or more persons (at least one (1) of which is not a charity and, in the case of natural persons, only to a natural person who is living at the time of the creation of the trust),*
- (c) for a term of years or for the life or lives of such natural person or natural persons (here called the ‘lead term’),*
- (d) from which no amount other than the payments described herein and other than qualified gratuitous transfers described herein may be paid to or for the use of any person other than a charity, following the termination of the lead term,*

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- (e) *the remainder interest in the trust is to be transferred to, or for the use of, a charity or is to be retained by the trust for such a use, and*
- (f) *the value of such remainder interest (determined by applying generally accepted actuarial principles) is at least two percent (2%) of the initial net fair market value of all property placed in the trust;*

Notwithstanding the foregoing, the trust deed may provide that the trustee shall pay the income beneficiary for any year the amount of the trust income, if such amount is less than the amount required to be distributed as the lead payment and any amount of the trust income which is in excess of the amount required to be distributed as the lead payment, to the extent that (by reason of this provision) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

‘Court’ means the High Court of St. Christopher and Nevis;

‘creditor’ means a person to whom an obligation or debt is owed;

‘deputy registrar’ means the person or persons appointed by the Minister to assist the registrar in performing his duties under this Ordinance;

‘Dollars’ or ‘\$’ means Eastern Caribbean Dollars unless expressly stated otherwise in this Ordinance;

‘endorsement’ means the seal, stamp or handwritten signature of the Registrar, or any other method, now known or hereinafter invented or adopted which may be used to indicate the approval of the Registrar;

‘foreign court’ means any court which is located outside of St. Christopher and Nevis, any court other than the Court, or any court which assumes jurisdiction over any person or property which is governed by this Ordinance without the permission of the Court;

‘formalities’ in relation to a disposition of property means documentary evidence and proof of any other actions required generally by the laws of a relevant jurisdiction for all dispositions of like form concerning property of like nature without regard to –

- (a) *the fact that the particular disposition is made in trust;*
- (b) *the terms of the trust*
- (c) *the circumstances of the parties to the disposition; or*
- (d) *any other particular circumstances; but includes any special formalities required by reason that the party effecting the disposition is not of full legal age, is subject to mental or bodily infirmity or is a business entity;*

‘functions’ includes rights, powers, discretion, obligations, liabilities and duties;

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the ‘Gazette’ means the Official Gazette of St. Christopher and Nevis.

‘general power of appointment’ means a power of appointment exercisable in favor of the holder of the power, the power holder’s creditors, the power holder’s estate, or the creditors of the power holder’s estate.

‘governing law’ means the law controlling or directing a trust registered in Nevis or elsewhere;

‘grantor retained annuity trust’ means a trust:

- (a) from which a sum certain is to be paid, not less often than annually,*
- (b) to one (1) or more persons (and, in the case of natural persons, only to a natural person who is living at the time of the creation of the trust), and*
- (c) for a term of years or for the life or lives of such natural person or natural persons;*

‘grantor retained unitrust’ means a trust:

- (a) from which a fixed percentage of the net fair market value of its assets, valued annually, is to be paid, not less often than annually,*
- (b) to one (1) or more persons (and, in the case of individuals, only to an individual who is living at the time of the creation of the trust), and*
- (c) for a term of years or for the life or lives of such individual or individuals;*

‘heirship rights’ means any right claim or interest in, against or to property of a person arising or accruing in consequence of such persons death, other than any such right, claim or interest created by will or other voluntary disposition or resulting from an express limitation in the disposition of the property of such person;

‘insolvency’ includes the making of an administrative order, the appointment of a receiver and the bankruptcy of any person;

‘intent to defraud’ means an intention of a settlor willfully to defeat an obligation owed to a known creditor;

‘interest’ means the legal or financial stake held by a beneficiary in the property of an international trust;

‘international trust’ means a trust registered under this Ordinance and in respect of which:

- (a) at least one (1) of the trustees is either:*
 - (i) a corporation incorporated under the Nevis Business Corporation Ordinance, Cap 7.01;*

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(ii) *a limited liability company formed under the Nevis Limited Liability Company Ordinance, Cap 7.04;*

(iii) *a trust company licensed in Nevis;*

(iv) *an attorney-at-law or firm of attorneys-at-law duly licensed by the Nevis Island Administration to carry on the business of a registered agent; or*

(v) *a multiform foundation established and registered under the Multiform Foundations Ordinance, 2004;*

(b) *the settlor and beneficiaries are at all times nonresident; and*

(c) *the trust property does not include any real property situated in St. Christopher and Nevis;*

‘Minister’ means the Minister for the time being charged with the responsibility of finance in the Nevis Island Administration;

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

‘non-resident’ means

(a) *a natural person not domiciled in St. Christopher and Nevis;*

(b) *a natural person not ordinarily resident in St. Christopher and Nevis;*

(c) *a natural person who obtained citizenship of St. Christopher and Nevis by way of the citizenship by investment program;*

(d) *a corporation incorporated under the Nevis Business Corporation Ordinance, 1984;*

(e) *a limited liability company formed under the Nevis Limited Liability Company Ordinance, 1995; or*

(f) *a business entity incorporated, formed or established under the laws of any jurisdiction other than St. Christopher and Nevis, and which does not ordinarily engage in any trade or business within St. Christopher and Nevis;*

‘person’ means a natural person or business entity;

‘personal representative’ means the executor or administrator of the estate of a deceased natural person;

‘power of withdrawal’ means a presently exercisable general power of appointment other than a power exercisable by: (a) a trustee and limited by an ascertainable standard; or (b) another person only upon consent of the trustee or a person holding an adverse interest;

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‘profit’ means to obtain financial gain, benefit or pecuniary advantage which equals an excess of income over expenses;

‘property’-

(a) means property of any description, wherever situated, including any shares or interest therein, but excluding any real property situated in St. Christopher and Nevis,

(b) includes any rights, whether vested, contingent, defeasible or future;

‘protector’ means a person who is the holder of a power which when invoked is capable of directing, providing consent to or disapproving a trustee’s actual or proposed investment decisions, distribution decisions or other decisions of the trustee in matters relating to the trust and in respect of which matters the trustee has discretion and includes a person who is the holder of a power to appoint or dismiss trustees;

‘provisions of this ordinance’ includes the provisions of any Order hereunder;

‘purpose’ means an aim or goal, charitable or non-charitable which is sought to be achieved under a trust, and in furtherance of which, a power to distribute trust property may be exercised by the trustee;

‘qualified foreign trust’ means a trust described in section 37(3) of this Ordinance;

‘registrar’ means the person appointed by the Minister to perform the duties of registrar under this Ordinance;

‘relatives’ in relation to a natural person means his parents, his spouse, the parents of his spouse, his siblings, his spouse’s siblings, his children and remoter issue and the spouses of such children and issue;

‘revocable,’ means the power of the settlor of an international trust to cancel or withdraw assets from the trust, without the consent of the trustee or a person holding an adverse interest;

‘settlor’ means a person, including a testator, who gratuitously contributes trust property to a trust or makes a testamentary disposition of trust property on trust. If more than one (1) person gratuitously contributes trust property to a trust or makes a testamentary disposition on trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution or testamentary transfer only;

‘spouses’ mean two natural persons (one of whom is male and the other female) who are lawfully wedded together in a union recognized under the laws of the jurisdiction where the marriage took place or the marriage license was issued;

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‘terms’ means the provisions, words or phrases in respect of a trust having exact meaning and limited in use governing a trust, and any other provisions, words or phrases applicable to a trust under the proper law of such trust;

‘trustee’ has the meaning given by section 53 and includes an original, additional and successor trustee, and a co-trustee;

‘trust property’ means real or personal property which is held on trust.”

4. Amendment of Section 3.

Section 3 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 3, which shall continue to be titled “**Validity of International Trusts**” and shall read as follows:

“3. Validity of international trusts

(1) An international trust registered under this Ordinance shall be valid and enforceable notwithstanding that it may be invalid according to the law of the settlor’s domicile or residence or place of current incorporation, formation or establishment.

(2) An international trust shall be invalid and unenforceable to the extent that -

- (a) it purports to do anything contrary to the laws of St. Christopher and Nevis;*
- (b) it purports to confer any right or power or impose any obligation the exercise of which or the carrying out of which is contrary to the laws of St. Christopher and Nevis; or*
- (c) the property of the trust, or any part thereof, are the proceeds of a crime for which the settlor has been convicted.”*

5. Amendment of Section 4.

Section 4 of the Principal Ordinance is hereby amended in subsection (2) (c) by deleting existing subsection (2) (c) and replacing it with the following:

“(c) the place of residence, registration or business of the trustee;”

6. Amendment of Section 5.

Section 5 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 5, and shall read as follows:

“5. Unlimited duration of international trusts and accumulation of income

(1) No rule of law against perpetuities or suspension of the power of alienation of the title to property, any other existing law against perpetuities, or any law restricting or limiting the duration of an international trust shall apply with respect to any interest in real or personal property held in trust

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if the terms of an international trust specifically state that the trustee of the trust has the unlimited power to sell all trust assets or if one or more persons, one (1) of whom may be the trustee, has the unlimited power to terminate the entire trust.

(2) The rule of law known as the rule against perpetuities shall not apply to an international trust and unless otherwise provided in its terms, an international trust shall have an unlimited duration.

(3) Notwithstanding any rule of law or equity to the contrary, where a trust instrument empowers a trustee to accumulate income, or to refrain from making any distribution of capital or income until a specified date or event, or where any provision of the instrument otherwise prevents the making of any distribution of capital or income, notwithstanding that a beneficiary may, but for this section, otherwise be entitled to that accumulation or distribution, the trustee may, in his absolute discretion, subject to any other terms of the instrument, give effect to that direction as he thinks fit notwithstanding that a beneficiary shall request the trustee to immediately distribute the accumulation or distribution and will give a valid discharge to the trustee for such distribution.

(4) The income arising from any international trust may be accumulated in accordance with the terms of the trust for as long a time as is necessary to accomplish the purposes for which the trust was created, notwithstanding any law limiting the period during which trust income may be accumulated.”

7. Amendment of Principal Ordinance.

Section 8A, titled “**Discretionary interests in international trusts**”, is hereby added to the Principal Ordinance immediately following Section 8, and shall read as follows:

“8A. Discretionary interests in international trusts

(1) This section applies to a creditor’s claim with respect to a discretionary interest of any beneficiary (including a settlor) in an international trust unless the trust deed provides explicitly otherwise.

(2) A discretionary interest in an international trust is not a property interest or an enforceable right rather is a mere expectancy that a creditor of a beneficiary (including the settlor) may not attach, garnish or otherwise reach.

(3) A creditor of a beneficiary (including the settlor) may not compel or force a distribution with regard to a discretionary interest in an international trust, nor compel or force a trustee to exercise the trustee’s discretion to make a distribution with regard to a discretionary interest in an international trust.

(4) A creditor of a beneficiary (including the settlor) may not compel or force a protector to exercise a power to direct a trustee to make a distribution to any beneficiary of an international trust.

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(5) In the case of a discretionary interest in an international trust, a trustee who has the authority to pay income or principal to a beneficiary (including the settlor) may pay it to a third party if the payment is for the benefit of the beneficiary (including the settlor), and the trustee of an international trust shall not be liable to any creditor of a beneficiary (including the settlor) for paying income or principal on behalf of such beneficiary.

(6) A creditor of a beneficiary (including the settlor) may not maintain an action or a proceeding in Court that interferes with the trustee's discretion to apply income or principal on behalf of the beneficiary of an international trust.

(7) A creditor of a beneficiary (including the settlor) may not obtain an order of attachment, garnishment or similar relief that would prevent a trustee from making a discretionary payment to a third party on behalf of the beneficiary (including the settlor) of an international trust.

(8) In this section, a beneficiary's entitlement (or lack thereof) to a distribution is within the discretion of a trustee, whether or not the trust deed states the purposes for the distribution, is expressed in the form of a standard of distribution or uses the terms 'may', 'shall', 'sole and absolute', 'uncontrolled', 'unfettered', or similar words and whether or not the trustee has abused the discretion.

(9) Regardless of whether a beneficiary of an international trust has any outstanding creditor, a trustee of a discretionary interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary. No trustee is liable to any creditor for paying the expenses of a beneficiary (including the settlor) who holds a discretionary interest.

(10)(a) In this section, 'discretionary interest' means a beneficiary's interest in an international trust if the beneficiary's entitlement to a distribution is within the discretion of the trustee."

(b) This section shall not prevent a creditor from obtaining relief from under Section 23 of this Ordinance that is not inconsistent with this Section 8A.

8. Amendment of Section 9.

Section 9 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 9, which shall continue to be titled "**Protector of a trust**" and shall read as follows:

"9. Protector of a trust

(1) The terms of an international trust may provide for the office of protector of the trust. Where a person is given authority by the terms of an international trust to direct, consent to or disapprove a trustee's actual or proposed investment decisions, distribution decisions or other decision of the trustee,

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such person shall be considered to be a protector when exercising such authority (unless the terms of the trust shall otherwise provide).

(2) The protector of an international trust shall have the power to

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

(b) exercise such further powers as are conferred on the protector by the terms of the international trust or by the provisions of this Ordinance.

(3) The terms of an international trust may grant the protector the power to

(a) direct the trustee to make distributions from the trust;

(b) consent to or approve any distributions made by the trustee from the trust; and

(c) direct the trustee regarding any or all investment decisions of the trust, which includes the power to direct a trustee to retain, purchase, sell or exchange property held in the trust or to engage in any other transaction affecting the ownership or rights over such property.

(4) If the terms of an international trust provide that a trustee shall follow the direction of the protector and the trustee acts in accordance with such a direction, then except in cases of willful misconduct on the part of the trustee so directed, the trustee shall not be liable for any loss resulting directly or indirectly from any such act.

(5) If the terms of an international trust provide that a trustee shall make decisions with the consent of the protector, then except in cases of willful misconduct or gross negligence on the part of the trustee, the trustee shall not be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of such protector's failure to provide such consent after having been requested to do so by the trustee.

(6) Whenever the terms of an international trust provide that a trustee shall follow the direction of the protector with respect to investment decisions of the trustee, then, except to the extent that the international trust provides otherwise, the trustee shall have no duty to:

(a) monitor the conduct of the protector;

(b) provide advice to the protector or consult with the protector; or

(c) communicate with or warn or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee's own discretion in a manner different from the manner directed by the protector.

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Absent clear and convincing evidence to the contrary, the actions of the trustee pertaining to matters within the scope of the protector’s authority (such as confirming that the protector’s directions have been carried out and recording and reporting actions taken at the protector’s direction), shall be presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee under the governing instrument and such administrative actions shall not be deemed to constitute an undertaking by the trustee to monitor the protector or otherwise participate in actions within the scope of the protector’s authority.

(7) Unless the terms of the trust shall otherwise provide the protector of an international trust may also be a settlor or a beneficiary of the trust.

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

(9) Where there is more than one (1) protector of a trust then, subject to the terms of the trust, any functions conferred on the protectors may be exercised if a majority of the protectors for the time being agree on its exercise.

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

(11) (a) A protector may delegate duties and powers with regard to investment decisions. The protector shall exercise reasonable care, skill, and caution in:

(i) selecting an agent such as an investment advisor;

(ii) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(iii) reviewing the agent’s actions periodically to monitor the agent’s performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the protector/trustee/beneficiary or purpose for which the trust was created to exercise reasonable care to comply with the terms of the delegation.

(c) A protector who complies with subsection (a) and, when investment functions are delegated, is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.”

9. Amendment of Principal Ordinance.

Section 9A, titled “**General power of appointment granted to a beneficiary**”, is hereby added to the Principal Ordinance immediately following Section 9, and shall read as follows:

“9A. General power of appointment granted to a beneficiary

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A creditor shall have no right against the interest of a beneficiary of an international trust or against the beneficiary or trustee of the trust with respect to such interest unless:

(1) The beneficiary (other than the settlor) has a power to appoint all or part of the trust property to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate by will or other instrument such that the appointment would take effect only upon the beneficiary's death and the beneficiary actually exercises such power in favor of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate but then only to the extent of such exercise.

(2) The beneficiary (other than the settlor) has a power, including a power of withdrawal, to appoint all or part of the trust property to the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate during the beneficiary's lifetime and the beneficiary actually exercises such power in favor of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate but then only to the extent of such exercise."

10. Amendment of Principal Ordinance.

Section 9B, titled "**Right of revocation retained by settlor**", is hereby added to the Principal Ordinance immediately following Section 9A, and shall read as follows:

"9B. Right of revocation retained by settlor

A creditor shall have no right against the interest of a beneficiary of an international trust who is the settlor or against the settlor or trustee of the trust with respect to such interest unless the settlor has a power to revoke the trust and appoint all or part of the trust property to the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate during the settlor's lifetime and the settlor actually exercises such power in favor of the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate but then only to the extent of such exercise."

11. Amendment of Section 11.

Section 11 of the Principal Ordinance is hereby amended by:

- (a) adding the word "or" in subsection (1) (g) after the phrase "*common purpose*;"
- (b) deleting subsections (2) and (3) of Section in their entirety and replacing them with the following subsections (2) and (3) which shall read as follows:

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

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(a) *now suitable or expedient; and*

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

(3) *The Court shall not make a declaration under sub-section (1) above or approve an arrangement under sub-section (2) unless it is satisfied that any person with a material interest in the trust has received notice of the application of the trustee, which has been made with the consent of the protector and has had an opportunity of being heard.”*

12. Amendment of Section 12.

Section 12 (1) of the Principal Ordinance is hereby amended by adding the phrase “*or purposes*” after the word “*persons*” and before the word “*entitled*”.

13. Amendment of Section 13.

Section 13 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 13, which shall be titled “**Duress; Termination by beneficiaries**” and shall read as follows:

“13.To the extent any person is granted the power under the terms of a trust to demand or request any act on the part of a settlor, beneficiary, trustee, protector, or other person, or has the authority to approve, veto, or compel any action or exercise any power which affects or will affect an international trust or any interest therein, each such person is directed, to the extent such person would not be subject to personal liability or personal exposure:

(1) to accept or recognize only demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, which are given by or are the result of persons acting of their own free will and not under compulsion or pursuant to any legal process, directive, order, or like decree of any court, administrative body, or other tribunal or like authority; and

(2) to ignore any demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, where the person attempting to demand, request, approve, veto, compel the act, or exercise the power is not a person either appointed or so authorized pursuant to the terms of such trust.”

14. Amendment of Section 15.

Section 15 (2) of the Principal Ordinance is hereby amended by deleting the word “*up*”.

15. Amendment of Section 17.

Section 17 (1) of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 17 (1) that shall read as follows:

“(1) A beneficiary may relieve a trustee of liability for a breach of trust or indemnify a trustee against liability for a breach of trust and the terms of the trust

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may relieve a trustee of liability for a breach of trust or indemnify a trustee against liability for a breach of trust.”

16. Amendment of Section 21.

Section 21 of the Principal Ordinance is hereby amended by:

- (a) adding the phrase “*or registered*” in subsection (b) immediately after the word “*resident*” and before the word “*in*”; and
- (b) adding the word “and” in subsection (b) immediately after the semi-colon that follows the word “Nevis.”

17. Amendment of Section 22.

Section 22 of the Principal Ordinance is hereby amended by adding a new subsection (4) to read as follows:

“(4) No action or proceeding (whether substantive or interlocutory in nature) shall be heard, and no injunction, order of any kind, or any other relief or remedy, whether legal or equitable, shall be made, issued, granted or ordered, by the Court concerning an international trust where the purpose of such action or proceeding would be to detain, inspect, garnish, attach or otherwise interfere in any manner whatsoever or possible with:

- (a) any trust property wherever situated whether in St. Christopher and Nevis or elsewhere, or*
- (b) any right, duty, discretion, obligation or power which a trustee may have in respect of any trust property.”*

18. Amendment of Section 23.

Section 23 of the Principal Ordinance is hereby amended by:

- (a) deleting the word “*court*” in the title of Section 23 and replacing it with the word “*Court*”;
- (b) deleting the phrase “*a settled or established or property disposed to a trust*” and replacing it with the phrase “*a trust settled or established, or property disposed or transferred to a trust,*”;
- (c) deleting the phrase “*in the event that*” in subsection (2) and replacing it with the word “*if*”;
- (d) deleting subsection (3) in its entirety and replacing it with the following subsection (3) to read as follows:

“(3) A trust settled or established, or a disposition or transfer of property to such trust, shall not be fraudulent as against a creditor of a settlor if such settlement, establishment, disposition or transfer occurs after the expiration of one year from the date that such creditor’s cause of action accrued or originated.”

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- (e) deleting subsection (4) in its entirety and replacing it with the following subsection (4) to read as follows:

“(4) A trust settled or established, or a disposition or transfer of property to such trust, shall not be fraudulent as against a creditor of a settlor if such settlement, establishment, disposition or transfer occurred before the creditor’s cause of action against the settlor had accrued or originated.”

- (f) deleting paragraph (b) of subsection (5) in its entirety and replacing it with the following paragraph (b) of subsection (5) that shall read as follows:

“(b) has retained, possesses or acquires any of the powers or benefits referred to in paragraphs (a) to (f) of subsection (1) of section 46”;

- (g) deleting subsection (7) in its entirety and replacing it with the following subsection (7) that shall read as follows:

“(7) For the purpose of this section the burden of proof regarding the settlor’s intent to defraud the creditor is on the creditor.”

- (h) adding the phrase “*action or*” in paragraph (c) of subsection (8) after the word “*any*” and before the word “*proceeding*”; and

- (i) deleting subsection (9) in its entirety and replacing it with the following subsection (9) that shall read as follows:

“(9) The provisions of this section shall apply to all actions and proceedings brought into Court, however described, against the person (whether a party to the action or proceedings or not) with regard to the settlement of an international trust or the disposition of property to such a trust, or receipt of property by or for such a trust and the remedy conferred by subsection (1) shall be the sole remedy available in such an action or proceedings to the exclusion of any other relief of remedy against any party to the action or proceeding.”

19. Amendment of Section 24.

Section 24 of the Principal Ordinance is hereby amended by:

- (a) deleting the phrase “*a settled or established or property disposed to a trust*” and replacing it with the phrase “*a trust settled or established, or property disposed or transferred to a trust,*”;
- (b) deleting the phrase “*in the event that*” in subsection (2) and replacing it with the word “*if*”;
- (c) deleting subsection (3) in its entirety and replacing it with the following subsection (3) to read as follows:

“(3) A trust settled or established, or a disposition or transfer of property to such trust, shall not be fraudulent as against a creditor of a settlor if such settlement, establishment, disposition or transfer occurs after the expiration

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of one year from the date that such creditor's cause of action accrued or originated."

- (d) deleting subsection (4) in its entirety and replacing it with the following subsection (4) to read as follows:

"(4) A trust settled or established, or a disposition of property to such trust, shall not be fraudulent as against a creditor of a settlor if such settlement, establishment or disposition took place before the creditor's cause of action against the settlor had accrued or had arisen."

- (e) deleting subsection (5) (b) in its entirety and replacing it with the following subsection (5) (b) that shall read as follows:

"(b) has retained, possesses or acquires any of the powers or benefits referred to in Subsections (a) to (i) of Section 47;"

- (f) deleting subsection (7) in its entirety and replacing it with the following subsection (7) that shall read as follows:

"(7) The burden of proof regarding the settlor's intent to defraud the creditor shall be borne by the creditor."

- (g) adding the phrase "**action or**" subsection (8) (c) after the word "any" and before the word "**proceeding**"; and

- (h) deleting subsection (9) in its entirety and replacing it with the following subsection (9) that shall read as follows:

"(9) The provisions of this section shall apply to all actions and proceedings brought into the Court, however described, against the person (whether a party to the action or proceedings or not) with regard to the settlement of an international trust or the disposition of property to such a trust, or receipt of property by or for such a trust and the remedy conferred by subsection (1) shall be the sole remedy available in such an action or proceedings to the exclusion of any other relief or remedy against any party to the action or proceeding."

20. Amendment of Section 25.

Section 25 of the Principal Ordinance is hereby amended by deleting the introductory sentence prior to subsection (a) in its entirety and replacing it with the following introductory sentence:

"If a trust shall be declared invalid pursuant to this Ordinance and the Court is satisfied that the beneficiary has not acted in bad faith"

21. Amendment of Section 28.

Section 28 of the Principal Ordinance is hereby amended by

- (a) deleting the introductory sentence prior to subsection (a) in its entirety and replacing it with the following introductory sentence:

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“Notwithstanding the provisions of any treaty or convention; the provisions of any statute; any rule of law or equity, to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgment obtained in a jurisdiction other than St. Christopher and Nevis against”; and

- (b) deleting the phrase *“shall be entertained by any Court in St. Christopher and Nevis if”* immediately following subsection (g) and replacing it with the phrase *“shall be entertained by the Court if”*

22. Amendment of Section 32.

Section 32 of the Principal Ordinance is hereby amended by

- (a) deleting subsections (2) and (3) in their entirety and replacing them with the following subsections (2) and (3) that shall read as follows:

“(2) The terms of a trust may provide for one or both of the following:

- (a) the addition of a person as a beneficiary; or*
- (b) the exclusion, elimination or suspension of any part of all of a beneficiary’s interest in the trust.*

(3) The terms of a trust may impose restrictions, obligations or duties upon a beneficiary as a condition of the beneficiary receiving a benefit or distribution from the trust, including any restrictions, obligations or duties which infringe upon a beneficiary’s basic, essential and fundamental rights.”

- (b) adding new Subsection 32 (5) immediately after the period following the word “trust” in Subsection 32 (4) that shall read as follows:

“(5) A Nevis Company, a corporation, a limited liability company or a multiform foundation may also be a beneficiary of the trust.”

23. Amendment of Principal ordinance.

Section 35A, titled **“Removal of trustee and protectors”**, Section 35B titled **“Combination and division of trusts”** and Section 35C, **“Effect of provisions of instrument”** are hereby added to the Principal Ordinance immediately following Section 35, and shall read as follows:

“35A. Removal of trustee and protector

(1) If, in any action is brought against a trustee of an international trust in a foreign court, such foreign court fails to dismiss such action, or orders such trustee to take any action in regards to such trust, such trustee shall immediately upon such court’s action and without the further order of any court, cease in all respects to be trustee of such trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, the Court, upon the application of any beneficiary of such trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of such trust and this statute. Upon such trustee ceasing to be

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trustee, such trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the Court in accordance with this section. The trustee shall, within fourteen (14) days of its removal, give notice in writing to the Registrar of such removal.

(2) If, in any action is brought against a protector of an international trust in a foreign court, such foreign court fails to dismiss such action, or orders such protector to take any action in regards to such trust, such protector shall immediately upon such court's action and without the further order of any court, cease in all respects to be a protector of such trust. Upon such protector ceasing to be a protector, such protector shall have no power or authority in regards to the trust. The protector shall, immediately following its removal hereunder, give notice in writing to the trustee of the international trust of such removal."

"35B. Combination and division of trusts

(1) Unless otherwise provided in the trust instrument, after notice to the beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trusts or trust, respectively.

(2) Subject to the terms of the trust instrument, the trustee may take into consideration the difference in tax attributes and other pertinent factors in administering the trust property of any separate trust, in making applicable tax elections, and in making applications or distributions.

(3) A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective, including, but not limited to any and all issues related to the liability of a trustee or the trust assets pursuant to a contract, in tort or otherwise.

(4) The effective date of the severance may be retroactive to a date before the date on which the trustee exercises such power and any such action under this provision shall be made only pursuant to a written instrument filed with the records of the trust.

(5) In dividing a trust into two (2) or more separate trusts, a trustee shall accomplish the division by severing the trusts on a fractional basis and funding the separate trusts either (a) with a pro rata portion of each asset held by the undivided trust; or (b) on a non-pro rata basis based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

(6) An international trust may be established to simultaneously benefit beneficiaries and to fulfill a purpose."

*Nevis International Exempt Trust (Amendment) Ordinance, 2015 – 2.**“35C. Effect of provisions of instrument*

(1) Notwithstanding any other provision of this Ordinance or other law, the terms of a governing instrument may expand, restrict, eliminate, or otherwise vary the rights and interests of beneficiaries, including, but not limited to, the right to be informed of the beneficiary’s interest for any period, the grounds for removal of a trustee, the circumstances, if any, in which the trustee must diversify investments, and a trustee’s powers, duties, standard of care, rights of indemnification and liability to persons whose interests arise from that instrument.

(2) Nothing contained in this section shall be construed to permit the exculpation or indemnification of a trustee for the trustee’s own willful misconduct or preclude the Court from removing a trustee on account of the trustee’s willful misconduct.

(3) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this provision.

(4) This section shall give maximum effect to the principle of freedom of disposition and to the enforceability of governing instruments.”

24. Amendment of Section 36.

Section 36 of the Principal Ordinance is hereby amended by deleting Section 36 in its entirety and replacing it with the following new Section 36 which shall read as follows:

“36. Trustee resolutions.

A trustee which is either a Nevis Company, a corporation, a limited liability company or a multiform foundation, may –

- (a) act in connection with a trust pursuant to its board of directors, board of managers, management board or other governing body; and*
- (b) appoint an officer, employee or agent to act on its behalf in connection with the trust.”*

25. Amendment of Section 37.

Section 37 of the Principal Ordinance is hereby amended by:

- (1) deleting the phrase *“company, a barrister or solicitor”* in subsections (6) (c) and (7) and replacing it with the phrase *“or an attorney-at-law”*;
- (2) deleting the word *“mentioned”* in subsection (7) and replacing it with the word *“prescribed”*; and
- (3) deleting the phrase *“hand and seal”* in subsection (9) and replacing it with the word *“endorsement”*.

*Nevis International Exempt Trust (Amendment) Ordinance, 2015 – 2.***26. Amendment of Section 42.**

Section 42 (1) of the Principal Ordinance is hereby deleted in its entirety and replaced by the following subsection (1) that shall read as follows:

“(1) The registered office of an international trust shall be the office of the Nevis Company, attorney-at-law, corporation, limited liability company or multiform foundation which is the trustee.”

27. Amendment of Section 43.

Section 43 of the Principal Ordinance is hereby amended by deleting subsection (c) in its entirety and replacing it with the following subsection (c) that shall read as follows:

“(c) stamp duty with respect to all instruments relating to the trust property or to transactions carried out by the trustee on behalf of the trust; and”

28. Amendment of Section 44.

Section 44 of the Principal Ordinance is hereby amended by:

- (a) deleting the phrase “*High Court of St. Christopher and Nevis*” in subsection (1) and replacing it with the phrase with the word “*Court*”;
- (b) deleting the phrase “*High Court of St. Christopher and Nevis*” in subsection (2) and replacing it with the phrase with the word “*Court*”;
- (c) deleting the phrase “*body corporate, an officer thereof, and every such person or officer as the case may be*” in subsection (4) and replacing it with the phrase “*legal person, a director, a manager or management board member thereof;*”;
- (d) deleting the phrase “*in the event that*” in subsection (5) and replacing it with the phrase with the word “*if*”; and
- (e) adding the words “*action or*” to subsection (5) after the word “*every*” and before the word “*proceeding*”.

29. Amendment of Section 45.

Section 45 (1) of the Principal Ordinance is hereby deleted in its entirety and replaced by the following subsection (1) that shall read as follows:

“(1) A trustee shall not invest any of the trust funds other than in securities, assets, or property authorized expressly or by necessary implication for the investment of the trust funds by and under the instrument by which the trust is established or created or in such securities, assets, or property authorised and approved by the protector pursuant to Section 9 (2) and (6) of this Ordinance.”

30. Amendment of Section 46.

Section 46 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 46, which shall continue to be titled “**Bankruptcy**” and shall read as follows:

*Nevis International Exempt Trust (Amendment) Ordinance, 2015 – 2.**“46. Bankruptcy*

Notwithstanding any provision of the law of the settlor’s domicile or place of ordinary residence or the settlor’s current place of incorporation, formation or establishment and notwithstanding further that an international trust is voluntary and without valuable consideration being given for the same or is made for the benefit of the settlor’s spouse or children, an international trust shall not be void or voidable in the event of the settlor’s bankruptcy, insolvency, or liquidation or in any action or proceeding at the suit of creditors of the settlor; but shall remain valid and subsisting and take effect according to its tenor subject to sections 23 and 24 of this Ordinance.”

31. Amendment of Section 47.

Section 47 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 47, which shall continue to be titled **“Retention of control by settlor”** and shall read as follows:

“47. Retention of control by settlor

(1) An international trust shall not be declared invalid or otherwise be affected in any manner if the settlor, and if more than one (1), any of them either retains, possesses or acquires -

- (a) the power to revoke the trust;*
- (b) the power to veto a distribution of income or principal by the trustee;*
- (c) the power to amend the trust;*
- (d) any benefit, interest or property from the trust, including, but not limited to the following:*
 - (i) the settlor’s potential or actual receipt of income or principal from the trust, including rights to such income or principal retained in the trust deed;*
 - (ii) the settlor’s potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust and the settlor’s right, at any time and from time to time by written instrument delivered to the trustee, to release such settlor’s retained interest in such a trust, in whole or in part, in favor of a charity that has or charities that have a succeeding beneficial interest in such trust;*
 - (iii) the settlor’s potential or actual receipt of income or principal from a grantor retained annuity trust or grantor retained unitrust;*
 - (iv) the settlor’s receipt each year of a percentage (as specified in the trust deed) of the initial value of the trust assets (which may be described either as a percentage or a fixed amount) or the value determined from time to time pursuant to the trust deed;*

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- (v) *the settlor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a trustee acting:*
 - A. *in such trustee's discretion;*
 - B. *pursuant to a standard that governs the distribution of principal and does not confer upon the settlor a substantially unfettered right to the receipt or use of the principal; or*
 - C. *at the direction of a protector who is acting:*
 - 1. *in such protector's discretion; or*
 - 2. *pursuant to a standard that governs the distribution of principal and does not confer upon the settlor a substantially unfettered right to the receipt of or use of principal;*
- (vi) *a settlor's potential or actual use of real property, chattels or tangible assets held either directly or indirectly in the trust;*
- (vii) *the settlor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes or other levies due on income or principal of the trust to any taxing authority located in any jurisdiction if such potential or actual receipt of income or principal is pursuant to a provision in the trust deed that expressly provides for the payment of such taxes and if such potential or actual receipt of income or principal would be the result of a trustee acting in such trustee's discretion or pursuant to a mandatory direction in the trust deed; or at the direction of a protector who is acting in such protector's discretion. Distributions to pay income taxes made under a discretionary or mandatory provision included in a settlement establishing an international trust may be made by direct payment to a taxing authorities;*
- (e) *the power to remove or appoint a trustee or protector;*
- (f) *the power to direct a trustee or protector on any matter;*
- (g) *except as provided in subsection (1) (h), an inter vivos or testamentary power of appointment (other than a power to appoint to the settlor, the settlor's creditors, the settlor's estate or the creditors of the settlor's estate) exercisable by will or other written instrument of the settlor;*
- (h) *the ability, whether pursuant to discretion granted to the trustee, a direction in the trust deed or the settlor's exercise of a testamentary power of appointment, of a trustee to pay, after the death of the*

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settlor, all or any part of the debts of the settlor outstanding at the settlor's death, the expenses of administering the settlor's estate, or any estate or inheritance tax or other levies imposed on or with respect to the settlor's estate; and

(i) the ability to serve as investment adviser to the trust.

(2) An international trust is not invalid even though the settlor may be the only beneficiary of the trust or the settlor is one of multiple beneficiaries. Except as provided in this Section, a settlor shall have no other rights or authority with respect to property held in an international trust or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void and of no effect."

32. Amendment of Section 50.

Section 50 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 50, which shall continue to be titled "**Translations**" and shall read as follows:

"50. Translations

(1) Every instrument which is filed with the Registrar, which was not drafted in the English language, shall be accompanied by an authenticated translation.

(2) An instrument which was not drafted in the English language and is not accompanied by an authenticated translation at the time of filing shall not be accepted for registration by the Registrar."

33. Amendment of Section 52.

Section 52 of the Principal Ordinance is hereby amended by deleting the phrase "*any international trust*" in subsection (1) (b) and replacing the phrase with the phrase "*a trustee*".

34. Amendment of Section 54.

Section 54 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 54, which shall be titled "**Power to establish the Nevis International Exempt Trust Ordinance Advisory Committee**" and shall read as follows:

"54. Power to establish the Nevis International Exempt Trust Ordinance Advisory Committee.

(1) The Minister may establish an advisory body for matters affecting this Ordinance; and such body so established, shall consist of such members as the Minister may from time to time appoint.

(2) In establishing the body under sub-section (1) above, the Minister shall have regard to the desirability of having members who have the expertise and knowledge of the Ordinance and the law of trusts.

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(3) It shall be the duty of the Nevis International Exempt Trust Ordinance Advisory Committee established under this section to:

- (a) advise the Minister on any matter that the Nevis International Exempt Trust Ordinance Advisory Committee believes that the Minister should be aware of, on an annual basis by September 30th or on such more frequent occasions as may be necessary;*
 - (b) provide recommendation regarding possible amendments to this Ordinance; and*
 - (c) advise the Minister on any matter which is referred to it by the Minister.*
- (4) The Minister may defray or contribute towards the expenses of an advisory body established under this section.”*

35. Amendment of Section 55.

Section 55 of the Principal Ordinance is hereby amended by deleting “\$100,000.00” and replacing it with the phrase “Two Hundred Seventy Thousand Dollars (\$270,000)”.

36. Amendment of Section 56.

Section 56 of the Principal Ordinance is hereby deleted in its entirety and replaced by the following Section 56, which shall be titled, “**Community property and tenancy by the entirety property**” and shall read as follows:

“56. Community property and tenancy by the entirety property

(1) Where spouses transfer property to one or more trusts established under an international trust or a trust that subsequently becomes an international trust and, immediately before being transferred, such property or any part thereof or any accumulation thereto is, pursuant to the law of its location or the law of either of the transferring spouses’ domicile or residence, determined to be community property, then notwithstanding such transfer and except where the provisions of the trust deed may provide to the contrary, that property and any accumulation thereto shall, for the purpose of giving effect to that law, be deemed to be community property and be dealt with in a manner consistent with that law but in every other respect shall be dealt with in accordance with the trust deed and the governing law of that deed.

(2) Where spouses transfer property to one or more trusts established under an international trust or a trust that subsequently becomes an international trust and, immediately before such transfer, such property or any part thereof or any accumulation thereto was, pursuant to applicable law, owned by them as tenants by the entirety, then notwithstanding such transfer and except where the provisions of the trust deed may expressly provide to the contrary, that property and any accumulation thereto shall be tenancy by the entirety property while held in trust during the lifetime of both spouses and shall be dealt with in a manner consistent with that applicable law

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however in every other respect shall be dealt with in accordance with the terms of the trust deed. Furthermore, in any action concerning whether a creditor of either or both spouses may recover the debt from the trust, upon avoidance of the transfer, if at all, the sole remedy available to the creditor with respect to trust property that is tenancy by the entireties property shall be an order directing the trustee to transfer the property to both spouses as tenants by the entireties.

(3) Notwithstanding anything to the contrary herein contained, nothing herein shall be construed so as to cause the trust, the trust fund, the trustees or any of them, to be liable or obligated for any debt or responsibility of the settlor merely by reason of this section.”

37. Amendment of Section 57.

The title immediately before Section 57 of the Principal Ordinance is hereby amended its entirety by deleting the phrase “57. Confidentiality, No. 2 of 1985” and replacing it with the phrase “57. Confidential Relationships Act”.

HON. FARREL SMITHEN
President

Passed by the Nevis Island Assembly this 27th day of May, 2015.

SHEMICA MALONEY
Clerk of the Nevis Island Assembly