ANALYSIS

Title

PART I - PRELIMINARY AND REGISTRATION OF TRUSTEE COMPANIES

1. Short Title
2. Interpretation
3. Application of this Act
4. Registration on acting as a trustee company
5. Application for Registration as a Trustee Company
6. Registration fee
7. Publication in the Gazette
8. Cancellation of Registration
9. Temporary continuation for winding-up
10. Transfer of Shares

PART II POWERS OF TRUSTEE COMPANIES

11. Trustee Company's power under the International Companies Act, 1982
12. Trustee Company's power to act as Executor and obtain Probate
13. Trustee Company's power to act as Administrator
14. Trustee Company's power to act as trustee, receiver etc.
15. Additional powers of a Trustee Company
16. Trustee Company's power to act as sole trustee
17. Trustee Company's power to act as joint trustee with another
18. Delegation to a Trustee Company
19. Delegation of functions by a Trustee Company

PART III - MISCELLANEOUS

20. Removal from office
21. Restrictions on a Trustee Company's activities
22. Taxation
23. Right to decline
24. Affidavit of Officer
25. A Trustee Company may act under power of attorney by Managing Director
26. Power to declare trusts
27. Audit
28. Returns
29. Examination of Books and Accounts of a Trustee Company
30. Money paid to a Trustee Company to be held in trust
31. A Trustee Company may Obtain Advice
32. Commission fees, charges and expenses levied by a Trustee Company
33. Management fees
34. Director's fees
35. Assets may be applied in discharge of expenses of administration
36. Charge for remuneration
37. Common Trust Funds
38. Valuation
39. Land trusts
40. Statutory Purpose Trust
41. Bond not required of a Trustee Company
42. Shares and Stock
43. Insurance
44. Application of other Acts to Trustee Companies
45. Secrecy
46. Regulations
47. Dealings by a Trustee Company with itself or a related company

Schedule

Price $4.50

1981-82, No. 27

An Act to provide for the registration of companies as trustee companies in the Cook Islands and to prescribe their powers and duties and for purposes consequent thereon and incidental thereto.

(13 May 1982

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by authority of the same, as follows:

PART I

PRELIMINARY AND REGISTRATION OF TRUSTEE COMPANIES

1. Short Title - This Act may be cited as the Trustee Companies Act 1981-82.

2. Interpretation - In this Act, unless the context otherwise requires -

"Carrying on business" means carrying on any economic activity pursuant to the objects of the company and without limiting the generality of the foregoing includes -

(a) establishing or using a share transfer office or share registration office;

(b) administering, managing or otherwise dealing with property as an agent, legal personal representative or trustee, whether by servant or agent or otherwise;

(c) maintaining an agent for the purpose of soliciting or procuring business whether or not the agent is continuously resident in the Cook Islands;

(d) maintaining an office, agency or branch whether or not that office, agency or branch is also used for any purpose by another company;

(e) the provision of -

(i) management and accounting services to; and

(ii) directors, secretaries and registered offices for, international companies incorporated under the International Companies Act 1982 and to foreign companies registered under that Act;

(f) incorporating or registering companies under the International Companies Act 1982 and generally acting as a lodging agent for any document required to be lodged by a company or person under that Act; and

(g) doing all things capable of being done by a trustee company under the International Companies Act 1982;

"Court" means the High Court of the Cook Islands;

"Company" means a company limited by shares and -

(a) incorporated under the Companies Act 1970-71 or registered as an overseas company under that Act; or

(b) incorporated under the International Companies Act 1981-82 or registered as a foreign company under that Act;

"Estate" means any property, whether real or personal, which is committed to the administration or management of a trustee company as executor, administrator, trustee, receiver, committee, guardian or agent;

"Judge" means any Judge of the High Court;

"Minister" means the Minister of Finance;

"Monetary Board" or "Board" means the Cook Islands Monetary Board established pursuant to the Cook Islands Monetary Board Act 1981;

"Registered" means registered pursuant to this Act and "registration" shall have a corresponding meaning;

"Registrar" means the Registrar of Companies appointed pursuant to the provisions of the Companies Act, 1970-71;

"Trustee Company" means any company registered as a trustee company under this Act.

(2) Whenever in this Act any person holding or occupying a particular office or position is mentioned or referred to, such mention or reference shall, unless the contrary intention appears, include all persons who shall at any time thereafter occupy for the time being the said office or position.

3. Application of this Act - Registration of a company to carry on business as a trustee company does not relieve that company from compliance with the Companies Act 1970-71.

4. Restriction on acting as a trustee company - No company shall carry on business in the Cook Islands as a trustee company unless that company is registered so to do under this Act.

5. Application for registration as a trustee company - (1) Any company, that is incorporated under the Companies Act, 1970-71, or that is registered as an overseas company under that Act, may apply to the Board for registration to carry on business as a trustee company, and upon application shall pay such fee as may be prescribed by regulation.

(2) No company shall be entitled as of right to be registered and the Board may accept or reject any application for registration.

6. Registration fee - Any company granted registration by the Board shall pay to the Registrar a fee to be fixed by regulation.

7. Publication in the Gazette - The Registrar shall cause to be published in the Cook Islands Gazette the name of any company registered as a trustee company pursuant to this Act.

8. Cancellation of registration - (1) If the Board is of the opinion that any trustee company -

(a) has contravened or failed to comply with any condition or term of its registration; or

(b) is in breach of any of the provisions of this Act; or

(c) has contravened any other statute which imposes duties or obligations upon it; or

(d) has committed a criminal offence,

and the Board considers that, having regard to the nature of the contravention, failure, or offence it is undesirable that the company should continue to be registered, it shall notify the company of its opinion and of the reasons therefor and shall require the company to make representations within a prescribed period being not less than 28 days, as to why the company should continue to be so registered.

(2) On receipt of any representations made under subsection (1) of this section, and after due consideration of those representations or, on expiry of the prescribed period if no such representations are made, the Board shall decide whether -

(a) to cancel the registration of the trustee company; or

(b) to take no further action; or

(c) to issue a rebuke to the trustee company.

(3) Where the Board decides to cancel the registration of a trustee company under subsection (2)(a) of this section, then -

(a) the Board shall inform the trustee company of its decision and of the reasons therefor; and

(b) the trustee company, not later than 31 days after being informed of the Board's decision, may appeal to the Court which may confirm, vary or reverse the decision of the Board.

(4) Where the Court has confirmed a decision to cancel the registration of a trustee company under subsection (3)(b) of this section, or where a trustee company has been informed of the Board's decision to cancel its registration and has not appealed within the time prescribed in that subsection, the Board shall notify that cancellation in the Cook Islands Gazette, and the cancellation, subject to section 9 of this Act, shall take effect from the date specified in that notice.

9. Temporary continuation for winding-up - The Board, at its discretion, may fix a date later than the date referred to in subsection (4) of section 8 of this Act, for the purpose only of enabling the company to wind-up its affairs consequent upon the cancellation of its registration. If a later date is so fixed then that date shall be specified in the notice referred to in subsection (4) of section 8 of this Act.

10. Transfer of shares - No transfer of shares, whether legal or equitable, in any trustee company shall be valid or of any effect, unless the approval of the Board to such transfer has first been obtained but that approval shall not be unreasonably withheld by the Board.

PART II

POWERS OF TRUSTEE COMPANIES

11. Trustee Company's power under the International Companies Act, 1981-82 - A trustee company shall have the power to do all things capable of being done by a trustee company under the International Companies Act 1981-82.

12. Trustee Company's power to act as Executor and obtain Probate - Where any trustee company is appointed either alone or jointly with any other person as executor in the last will or in a codicil thereto of any testator (whether the will or any codicil thereto was made before or after the commencement of this Act) the trustee company may act as executor and may apply in the Cook Islands or elsewhere for probate of such will and any codicil thereto, and may perform and discharge all the acts and duties of an executor as fully and effectively as any other executor.

13. Trustee Company's power to act as Administrator - (1) In any case in the Cook Islands or elsewhere in which a person may apply for a grant of letters of administration of the estate of a deceased person (whether with or without the will annexed), that person may -

(a) join with a trustee company in an application for a grant of letters of administration of the estate to himself and the trustee company jointly; or

(b) instead of himself applying, authorise a trustee company to apply for a grant of letters of administration of the estate.

(2) Where administration of any estate, with or without the will annexed, is granted to a trustee company either alone or jointly with any other person the company may do and perform all acts and duties which belong to the office of administrator or joint administrator, as the case may be, notwithstanding its incorporation.

14. Trustee company's power to act as trustee, receiver, etc - Where the Court or any judge or other person has power to appoint any person as -

(a) trustee; or

(b) receiver; or

(c) committee of the estate of a mentally ill person or manager of the estate of an incapable person; or

(d) guardian of the estate of a minor,

a trustee company may be so appointed.

15. Additional powers of a trustee company - A trustee company may be appointed as an agent or as trustee under any settlement or other instrument creating a trust, or to perform any trust or duty which it is authorised by this Act or by its charter to undertake, and may be so appointed whether the settlement or instrument creating the trust or imposing the duty was made or came into operation before or after the commencement of this Act and either as an original or a new trustee or as an additional trustee and may perform and discharge all the acts and duties of a trustee as fully and effectively as any other trustee.

16. Trustee Company's Power to Act as Sole Trustee - (1) Subject to subsection (3) of this section , a trustee company may be appointed or continue to act as sole

trustee notwithstanding that it is provided by the terms of the instrument creating the trust or of any power or otherwise that there shall be more than one trustee to perform the trust.

(2) For the purposes of subsection (1) of this section, where a trustee company is appointed or continues to act as sole trustee in the circumstances referred to in that subsection, the trustee company shall be deemed to be equivalent to 2 trustees.

(3) A trustee company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly -

(a) forbids the appointment of a trustee company; or

(b) provides that there shall be another trustee in addition to a trustee company; or

(c) provides that a trustee company shall not be appointed to act as sole trustee.

17. Trustee Company's power to act as joint trustee with another - (1) A trustee company may act as trustee, executor or agent jointly with another trustee company or person if the instrument under which it acts so provides or if authorised or required to do so by law or if the Court so orders.

(2) A trustee company shall not be liable for breach of trust or loss resulting from any act or omission of a joint trustee, executor or agent with whom it is acting, unless the company has itself actively participated in, or assented to, such breach of trust knowing it to be a breach of trust.

18. Delegation to a Trustee Company - It shall be lawful for any executor or administrator, trustee or agent to delegate by deed or writing to a trustee company either alone or jointly with any other corporation or person, as his attorney all such trusts and powers as may be lawfully delegated by him. All acts done by the trustee company as such delegate shall, as against any person dealing with the trustee company without notice of the revocation of such authority by such executor, administrator, trustee or agent, be valid and effectual notwithstanding such revocation.

19. Delegation of Functions by a Trustee Company - (1) A trustee company may from time to time by resolution of its board of directors delegate to any director or to a secretary of the company either generally or in any particular case or class of cases such of the powers, authorities, duties and functions of the company as are specified in the resolution.

(2) A director or secretary of the company, when acting within the scope of any such delegation to him, shall be deemed to be the company.

(3) The board of directors may by resolution revoke or vary any such delegation.

(4) In relation to any particular matters or class of matters, a trustee company may by writing delegate any of its powers or functions, except this power of delegation, to any officer or employee of the company, so that the delegated powers or functions may be exercised by the delegate with respect to the powers or functions or class of matters specified in the instrument of delegation.

(5) Every such delegation shall be revocable in writing at will, and no delegation shall prevent the exercise of any power or function by the trustee company.

PART III

MISCELLANEOUS

20. Removal from Office - Where a trustee company has been appointed executor, administrator, trustee, agent or attorney, whether before or after the commencement of this Act, it shall be subject in all respects to the same control and to removal or restraint from acting and generally to the jurisdiction of the Court, in the same manner as any other executor, administrator, trustee, agent or attorney.

21. Restrictions on a Trustee Company's Activities - A trustee company shall not carry on any business other than is permitted by its Articles or Memorandum of Association, nor do any act contrary to its Articles or Memorandum of Association.

22. Taxation - Subject to Section 44 of this Act, a trustee company shall be subject to the general laws of the Cook Islands imposing income tax, turnover tax, stamp duty or other tax, or impost or deductions of any kind whatsoever.

23. Right to Decline - A trustee company may decline, either absolutely or conditionally, to accept any trust or to act in any of the capacities specified in its Memorandum or Articles of Association.

24. Affidavit of Officer - In all cases in which, if it were a natural person, a trustee company would be obliged or authorised to make any affidavit, declaration or statement, it may do so by any of its officers appointed for the purpose.

25. A Trustee Company May Act Under Power of Attorney by Managing Director - It shall be lawful for a trustee company to act, either alone or jointly with any other person, under any power of attorney by which the company is appointed attorney and all the powers conferred, and the duties imposed, upon the company by such power of attorney may be exercised and carried into execution by the managing director, manager or secretary or by such other officer of the company as may from time to time be appointed by the board of directors for the purpose or by any two directors of the company; but in all cases the capital, both paid and unpaid, and all other assets of the company shall be liable for the due execution of the powers so conferred upon the company.

26. Power to Declare Trusts - A trustee company shall have the power to declare or create trusts of property by an instrument in writing, including trusts of property to be held upon the statutory purpose trusts or upon such trusts as varied in accordance with the provisions of section 40(2) of this Act.

27. Audit - (1) Every trustee company shall, at least once in every year, have its accounts audited by a person registered as an accountant with a professional body of accountants and approved by the Registrar.

(2) Within 6 months of the end of the trustee company's financial year the auditor so appointed shall report in writing to the trustee company as to the result of the audit and shall forthwith supply a copy of that report to the Registrar.

(3) The Registrar shall certify to the Board that he has received the auditor's report and whether or not that report is satisfactory.

28. Returns - (1) The managing director, manager or secretary of a trustee company, in every year during which the trustee company

carries on business, shall make a statutory declaration as to the affairs of the trustee company and in a form prescribed by regulation.

(2) That declaration shall within 7 days after the making thereof be filed with the Registrar.

29. Examination of Books and Accounts of a Trustee Company - (1) Any person who -

(a) can demonstrate to the satisfaction of the Court an interest under any trust which is for the time being under the control or management of a trustee company; and

(b) objects to an act or decision of the trustee company on the basis that there was some irregularity or impropriety by the trustee company in doing that act or making that decision;

may make application to the Court to have examined such entries in the books and accounts of the trustee company as relate to that act or decision.

(2) Where the Court receives an application under subsection (1) of this section, which it believes to be bona fide and not frivolous or vexatious, the Court may appoint a person trained in accounting to examine such entries in the books and accounts of the trustee company as relate to the act or decision to which objection is made.

(3) Where it is established by such an examination of the books and accounts of a trustee company that there has been an irregularity or impropriety by the trustee company or by an officer or servant of the trustee company, the Court may make such order as it thinks fit.

30. Money Paid to a Trustee Company to be Held in Trust - Subject to this Act, any money or other valuable consideration paid or given to a trustee company pursuant to any instrument creating a trust, shall be held by the trustee company, separate from its own moneys and other valuable consideration, in trust for the purposes for which it was paid or given and the trustee company shall account for them separately.

31. A Trustee Company May Obtain Advice - (1) A trustee company shall be entitled to obtain and act upon advice from any person permitted to practise as a lawyer in any country the law of which may have to be applied or taken into account in respect of any trust, or from any barrister or solicitor or attorney-at-law and the trustee company shall not be liable for any breach of trust or loss resulting from acting in accordance with such advice.

(2) Notwithstanding that a trustee company is not liable for any breach of trust or loss, it shall hold any money or property recovered, whether by action or otherwise, in respect of any loss upon the same trusts as the trusts upon which the property was held in respect of which that loss was suffered: Provided that the company shall be entitled to retain or pay out of moneys recovered, or to raise and retain or pay out of any property recovered, the costs, charges and expenses of and incidental to the recovery.

(3) If a trustee company has available sufficient funds the subject of trusts for beneficiaries who have suffered loss as a result of the company acting on advice of the type referred to in subsection (1) of this section or if sufficient funds for the purpose of bringing or continuing a claim or action against the person responsible for giving such advice are made available to the trustee company, the trustee company shall, subject to the following subsections of this section, take all reasonable steps to recover the loss.

(4) For the purposes of the preceding subsection "sufficient funds" means that amount of money which will be sufficient to provide for the payment of the costs and expenses of the company likely to be expended in attempting to obtain recovery of the loss and all costs and expenses which the company may be ordered to pay in attempting to obtain recovery of the loss.

(5) A trustee company is hereby empowered to expend trust moneys in payment for legal costs and expenses on behalf of beneficiaries who have suffered loss notwithstanding that such trusts do not permit such expenditure.

32. Commission fees, charges and expenses levied by a Trustee Company - (1) A trustee company shall be entitled -

(a) where it holds an estate on behalf of any person, to receive out of the estate, in addition to all moneys properly expended by the company and fees payable to it, and chargeable against the estate, a commission to be fixed from time to time by the directors of the trustee company;

(b) in all other cases to levy fees, charges and expenses in respect of any work performed by the trustee company for or on behalf of any person, but where the fee, charge or expense is prescribed by regulation the trustee company shall charge the prescribed amount. Where no fee, charge or expense is prescribed the directors of the trustee company shall determine the appropriate fee, charge or expense according to the circumstances of each case.

(2) Where the Court is of the opinion that any commission, fee, charge or expense levied in respect of any estate or in respect of any work performed by the company is excessive, the Court may, on the application of any person on whose behalf the work was performed, review that commission, fee, charge or expense, and may, reduce it as it thinks fit.

(3) The commission, fee, charge or expense, which a trustee company is entitled to receive under this section, shall not in any way be affected or diminished by the fact that any other person may be entitled to a commission, fee, charge or expense in respect of the work performed.

(4) A trustee company shall have the right to share the commission, fee, charge or expense to which it is entitled under this section with any other person.

33. Management Fees - (1) A trustee company shall be entitled to receive out of any estate in respect of any service provided by the company in its administration or management of that estate such management fee as is reasonable having regard to the work involved in providing that service.

(2) The company shall be entitled to receive out of any estate in respect of any service of an unusual nature provided by the company in its administration or management of that estate such management fee as is reasonable having regard to the work involved in providing that service or such fee as has been agreed to by a majority of the persons interested in the estate.

34. Director's Fees - Where an estate has an interest in a company and an officer of the trustee company, in his capacity as such an officer, acts as a director of that company for the purposes connected with the administration or management of the estate -

(a) the trustee company shall be entitled to receive from the company and to retain any director's fees which would be payable to the officer had he so acted otherwise than in his capacity as such an officer; and

(b) neither the officer nor the estate shall be entitled to receive the fees which the trustee company is entitled to receive under paragraph (a) of this section.

35. Assets May be Applied in Discharge of Expenses of Administration Notwithstanding Notice - Notwithstanding the receipt of actual notice, a trustee company shall be entitled to apply assets of any estate in discharge of the expenses of administration thereof and in payment of any debts incurred by it in the administration of the estate and in payment or appropriation of any commission due to it and shall not be under liability except to the extent of assets of the estate remaining in its hands from time to time after making such applications, payments or appropriations.

36. Charge for Remuneration - A trustee company shall have a first charge upon the assets of any estate administered by it for any commission, fees or remuneration due to it and any disbursements made by it in the administration of the estate.

37. Common Trust Funds - (1) A trustee company may, if authorised by the Board to do so, establish and keep in its books one or more funds to be known as common trust funds.

(2) The manner in which common trust funds are to be established, the classes of investment which may be made in respect of such funds and the computation of the interests in such funds, may be prescribed by regulation.

38. Valuation - (1) Where for any purpose a trustee company has to value any shares in companies whether incorporated in the Cook Islands or elsewhere, it may adopt as the value of a share such sum as in the opinion of the trustee company the holder of that share would receive in respect of that share in the event of the company being voluntarily wound up on the date in respect of which the value of the share is to be ascertained and shall record the manner in which the value has been calculated and that record shall be available for inspection by any settlor, co-executor, co-administrator, co-trustee, beneficiary or such other person as the Court may order.

(2) Any person aggrieved by a valuation made under subsection (1) of this section may apply to the Court within 3 months of the valuation for the Court to review the valuation; and the Court may thereupon, after giving an opportunity to the person aggrieved and the trustee company to be heard, confirm or vary the valuation as it thinks fit and make such order as to costs of the application as it thinks fit and every order of the Court made upon such review shall be final.

39. Land Trusts - A trustee company shall not accept any trust of land in the Cook Islands or of any interest in land in the Cook Islands without the prior consent of the Board.

40. Statutory Purpose Trust - (1) Where the instrument under which property is held by a trustee company requires such property to be held upon the statutory purpose trust, such property shall, subject to the provisions of subsection (2) of this section, be held upon the trusts set out in the Schedule to this Act and the trustee company shall have the powers in respect thereof which are set out in the Schedule.

(2) The trusts set out in the Schedule of this Act may be varied at the time of creation of the trusts.

41. Bond Not Required of a Trustee Company - No bond, recognizance or other security for the proper discharge of duties of a trustee company shall be required to be given by or on behalf of the trustee company.

42. Shares and Stock - Where a trust fund administered by a trustee company consists wholly or partly of shares, stock or property in any body or corporation, then, notwithstanding any law or contract to the contrary, the company shall be entitled to be registered as the proprietor of such shares, stock or property and the liability of the company in respect of such shares, stock or property shall not exceed the value of the other assets held by the company upon the same trusts as the shares, stock or property are held at the time when actual notice in writing of the amount of the liability is received by the company.

43. Insurance - (1) A trustee company shall take out such insurance against its liabilities for any breach of trust, for such amount of indemnity as is prescribed by regulation.

(2) Notwithstanding subsection (1) of this section, a trustee company shall not be obliged to insure its liabilities as required thereby if it transfers to, and maintains in, a Liability Reserve Fund established by it under subsection (3) of this section such sum of money as is prescribed by regulation. If a lesser amount than the sum prescribed is maintained in the Fund, the amount of the indemnity for which insurance is required by those regulations shall be reduced by the same proportion as the amount maintained in the Fund bears to the sum prescribed.

(3) A trustee company may establish a Liability Reserve Fund, which shall be the property of the company. The assets of the Fund shall be kept apart and accounted for separately from the other assets of the company and shall not form part of the general assets of the company. Subject to the provisions of subsections (5) and (6) of this section, the fund shall not be used by the company for any purpose other than the discharge of any liability to a beneficiary of a trust administered by the company for any breach of trust, and such assets shall not be available to the general creditors of the company or the members of the company, nor shall any judgement be executed against the assets of the Fund, except as provided in this section.

(4) The assets of the Liability Reserve Fund shall be available to any beneficiary of a trust in respect of any liability of a trustee company to him for any breach of such trust and a judgement obtained, or a foreign judgement registered in the Cook Islands in respect of any such liability may be executed against those assets.

(5) Where at any time the assets of the Liability Reserve Fund exceed the sum required by regulation to be maintained in the Fund, those assets which are surplus to such requirement may be transferred out of the Fund so as to become part of the general assets of a trustee company and may thereafter be used by the company for any lawful purpose and be available to creditors and members of the company. The Board may direct the company to transfer out of the Liability Reserve Fund any such surplus assets but such direction shall require a transfer out of the Fund only to the extent that such surplus exceeds the aggregate of amounts which were transferred to the Fund in accordance with the regulations.

(6) A trustee company shall maintain a bank account at a bank approved by the Board in writing into which the amount standing to the credit of the Liability Reserve Fund shall be paid: Provided that the Board may authorise the investment of the whole or any part of the amount standing to the credit of the Fund in such manner as it may approve and the value of such investments shall, for the purpose of determining whether the provisions of this section are being complied with by the trustee company, be their market value from time to time.

(7) Any income earned from investment of the Liability Reserve Fund shall not accrue to the Fund but shall form part of the general income of the trustee company.

(8) For the purpose of ascertaining the nett profits of a trustee company in any accounting period the transfers to the credit of the Liability Reserve Fund shall be deemed to be expenditure and transfers of amounts from the Fund to the general assets of the company shall be deemed to be income.

(9) The Board, by notice in writing may require every trustee company to satisfy the Board that the company has complied with the regulations made under this section and, if any company fails so to satisfy it, the Board shall direct that company to comply forthwith. If within 60 days after any such direction has been given the company has failed to comply with the regulations the Board may apply to the Court for an order appointing a receiver and manager of the company.

(10) A receiver and manager appointed under subsection (9) of this section shall cause the company to comply with the regulations made under this section and shall retire upon having done so.

(11) If a trustee company is persistently in breach of regulations made under this section or the receiver and manager appointed under subsection (9) of this section reports that there is no reasonable prospect that the company will be able to comply with the regulations, the Court may order that the company be wound up.

44. Application of Other Acts to Trustee Companies - (1) The provisions of subsection (2) of section 249 of the International Companies Act 1981-82 shall apply, mutatis mutandis, to a trustee company, as if the trustee company were an international company or a foreign company, where that trustee company is acting for or on behalf of an international company or a foreign company, to the extent of the trustee company's dealings on the international company or foreign company's behalf provided that nothing in this sub-section shall affect the liability for income tax and other taxes in respect of any of the income of a trustee company.

(2) The provisions of subsection (3) of section 249 of the International Companies Act 1981-82 shall apply, mutatis mutandis, to a trustee company, as if the trustee company were an international company or a foreign company and, for the purposes of interpreting that subsection, the trustee company shall be deemed not to be a domestic company.

45. Secrecy - A trustee company and the officers, servants and agents thereof, and every person appointed under section 29(2) of this Act to examine the books and accounts of a trustee company shall not, without leave of the Board, make any disclosure as to the existence of any particular trust or estate nor the identity of any executor, settlor, appointor, guardian, trustee or beneficiary of any particular trust or estate except as is necessary for the purposes of administering such trust or estate or investing or recovering or getting in the assets thereof or as authorised by this Act.

46. Regulations - The Queen's Representative may from time to time by Order in Executive Council make such regulations as may be deemed necessary or expedient for the purpose of giving full effect to the provisions of this Act and for the due administration thereof.

47. Dealings by a Trustee Company with Itself or a Related Company - (1) For the purposes of this section a company shall be deemed to be related to another company if it would be deemed to be related to that other company under section 4 of the International Companies Act 1981-82.

(2) A trustee company shall not, by reason of its fiduciary position, whether pursuant to this Act or otherwise, be in any way precluded from -

(a) making contracts;

(b) entering into transactions in the ordinary course of business; or

(c) undertaking any insurance, financial or agency services, including investing and borrowing funds,

with itself or a related company.

(3) Subject to subsection (4), a trustee company shall not be accountable to any estate or trust for any profit arising from contracts or transactions with or services provided by, itself or a related company.

(4) This section shall not be deemed to empower the trustee company to do anything in addition to what it could otherwise do if the contract, transaction or service had been with any person or company other than itself or a related company.

SCHEDULE

STATUTORY PURPOSE TRUSTS

For the purposes of this Schedule:

"the transferor" means the person transferring the property to the trustee or making the disposition thereof in favour of the trustee;

"the nominee" means such other person as may be nominated, from time to time, by the transferor.

Where property is held upon the statutory purpose trusts -

(1) that property and any income or accretions thereto shall be held upon trust to be applied for such purposes as the transferor or nominee, from time to time, may direct;

(2) the trustee may invest the trust property by lending the same to any government statutory body of the Cook Islands upon such terms as to interest and to date of repayment as it sees fit or by investing the same in any other investment for the time being declared by any Act or regulations made thereunder to be trustee investments or by investing the same in accordance with the directions of the transferor or the nominee;

(3) the trust of the property, unless the transferor otherwise directs, shall cease and determine upon, and the property then comprising the same shall be paid in accordance with, the direction of the transferor or the nominee named by the transferor for that purpose; and

(4) any directions given by the transferor or the nominee may be given to take effect immediately or at a future date or upon a future event and may be made by or under a deed delivered to the trustee or by or under a will admitted to probate in the Cook Islands or in respect of which letters of administration have been granted in the Cook Islands.

This Act is administered by the Cook Islands Monetary Board.

RAROTONGA, COOK ISLANDS: Printed under the authority of the Cook Islands Government, by T. KAPI, Government Printer - 1982