



TRANSPARENCY IN TRUST

TRUSTEES (AMENDMENT) BILL 2017

A note from Indranee Rajah S.C., Senior Minister of State for Law

I had earlier summarised the amendments to the Companies Act and the Limited Liability Partnerships Act aimed at greater transparency of ownership and control of business entities and LLPs to combat money laundering, terrorist financing and tax evasion. The Note can be found at www.mlaw.gov.sg.

At the same 10 March 2017 sitting, Parliament also passed the Trustees (Amendment) Bill 2017 (“the Bill”) which makes corresponding amendments to the Trustees Act to enhance transparency of beneficial ownership and control of express trusts, for the same reasons.

The Bill can be found at statutes.agc.gov.sg. The full text of my Second Reading speech in Parliament can be found at www.mlaw.gov.sg.

CHANGES TO ENSURE SINGAPORE REMAINS A CLEAN AND TRUSTED FINANCIAL CENTRE

Financial crime has become increasingly sophisticated. It is important to safeguard the integrity of our financial system to ensure Singapore’s continued status as a trusted financial centre. The amendments are aimed at:

- preventing misuse of trusts for illicit purposes;
- deterring illicit funds from entering our financial system; and
- enabling Singapore to be responsive to developments in international standards combating illicit financial transfers and tax evasion.



Singapore is a member of the Financial Action Task Force (“FATF”) and the Global Forum on Transparency and Exchange of Information for Tax Purposes (“GF”).

The Bill empowers the Minister to prescribe regulations to make the ownership and control of trusts more transparent, in line with FATF recommendations and GF requirements concerning beneficial ownership, identity information and trust records.

TRUSTEE’S ROLE IN ENSURING TRUSTS ARE NOT MISUSED FOR ILLICIT PURPOSES

Under the common law, trustees already have certain duties in relation to the administration of trusts. These include the duty to:

- know the terms of the trust;
- safeguard trust assets;
- furnish the accounts of the trust for inspection upon request; and
- ensure that the trust is not used for illegal purposes.

The Bill reinforces these common law duties by empowering the Minister to impose them as statutory duties.

The Minister can through regulations require trustees to:

- identify and keep updated information of relevant trust parties¹ and their effective controller;
- identify and keep updated information of agents or service providers to the trust;
- maintain and keep updated trust accounting records and related accounting documents for a prescribed period; and
- disclose the fact that they are acting as trustees to certain entities when carrying out transactions for the trust in prescribed instances.

¹ Relevant trust parties include a settlor, trustee, protector, beneficiary, or a person who has any power over the disposition of any property that is subject to the trust.

These amendments will:

- provide greater clarity on the standards trustees are expected to meet;
- ensure information relevant to a trust is kept ready and available; and
- allow authorities to obtain trust information quickly for investigative purposes should the need arise.

Overall, these amendments will make it more difficult to abuse trust structures.

Applicability

These amendments apply only to express trusts. They do not apply to trusts that arise by operation of law e.g. resulting trusts and constructive trusts.

The amendments apply to express trusts that:

- are governed by Singapore law;
- are administered in Singapore; or
- have a trustee who is resident in Singapore.



A trust is considered to be administered in Singapore if the control and management of the trust is exercised in Singapore.

A trustee who is a natural person is considered to be resident in Singapore if he/she is ordinarily resident in Singapore.

A trustee which is an entity is considered to be resident in Singapore if it is incorporated, formed or established in Singapore.

Exemptions

Certain categories of express trusts are exempted from these changes. These are trusts which are:

- already subject to regulatory supervision; or
- subject to existing laws which contain similar standards as those that will be prescribed in the regulations.

For example, certain trust companies are presently already subject to the regulatory oversight by the Monetary Authority of Singapore ("MAS"). Under the regulatory notices issued by MAS, these trust companies are already required, when acting as trustees, to discharge duties similar to those prescribed under the amendments. These regulated trust companies would therefore be exempted from the amendments.

Penalties for Breach

Trustees who breach their obligations under the regulations will face fines of up to \$1,000.

Effective Date

The amendments and the regulations have been gazetted to take effect on 31 March 2017.

CONCLUSION

The amendments to the Trustees Act, Companies Act, and the Limited Liability Partnership Act are part of a concerted effort to prevent corporate vehicles and trust structures from being misused to facilitate financial crime and tax evasion. These moves will strengthen our standing as a highly-respected and trusted international financial hub.

– *Indranee Rajah S.C., Senior Minister of State for Law*
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