



## **WHITE PAPER**

### **INDUSTRY CONSULTATION**

### **POLICY CHANGES TO THE TRUSTS ACT, 2021**

*White Papers communicate a decided Government policy or approach on a particular issue. They are chiefly intended as statements of Government policy.*

The Financial Service Authority (FSA) is proposing the following policy changes for the Trusts Act, 2021. This document will be used for consultation with stakeholders before finalization.

## **1. Introduction**

Following consultations with the ESAAMLG secretariat (i.e. FATF's Regional Body subscribing to global standards to combat money laundering and financing of terrorism and proliferation), over the past few months regarding the recommendations made in the Seychelles Mutual Evaluation Report in relation to Recommendation 25, the Seychelles finally managed to understand the issue of the secretariat (i.e. trustees (resident in Seychelles) providing services to other trustees under section 81 of the Trusts Act 2021). The main issue of the secretariat is whether co-trustees of a trust would be able to have access to Beneficial Ownership (BO) information and other relevant information on the trust when requested amongst themselves. Therefore, the aim of the new amendment is to rectify such a deficiency to allow such exchange of information between co-trustees.

Therefore, this paper will focus on the proposed changes to be made in the Trusts Act, 2021 of which will be discussed with the industry before legislative amendments are undertaken.

## **2. Policy intention for the changes**

The new Trusts Act was introduced in 2021 with the aim of modernizing and improving on the Seychelles' existing trust law, the International Trusts Act 1994 ("1994 Act"), and to address the deficiencies highlighted by the FATF and OECD thereby providing a stronger basis for growth of Seychelles as a value-added financial centre.

Consequent amendments were made to the Act in 2021, mainly to address the issues raised by OECD pertaining to the retention of accounting records in Seychelles. However, following a rating of "Partially Complaint" for the FATF Recommendation 25 in its Mutual Evaluation Report, 2018, the Seychelles had further consultation with ESAAMLG secretariat, to understand the deficiency that needed to be rectified in order to improve the rating of this recommendation.

Section 35(2)(c) of the AML/CFT Act requires every reporting entity (including a trustee) to identify and verify BOs in accordance with the BO Regulations. In addition, section 9(1) of the BO Act also requires a trustee to identify and verify their BOs. Regulation 3(6) of the BO Regulations provides that the BOs of a trust shall be the trustees, settlors, protectors, beneficiaries, etc. Despite the trustee having an obligation to identify and verify the trustees of the trust and the duty of co-trustees to act together, the secretariat is of the view that, in cases of a trust being administered by more than one trustee, there should be express provisions in the Act to require the co-trustees to request and provide any relevant information (including beneficial ownership information) amongst themselves, especially when the co-trustee is not a resident of Seychelles.

In this backdrop, we are thus proposing amendments to the Trusts Act to grant power to co-trustees to request any relevant information (including beneficial ownership information) from each other so as to be able to meet the requirements of Recommendation 25.

## **3. Proposed new policy changes**

The first proposal is to insert a new section 30A. (1) in the Trusts Act, to allow request of information between trustees. That is, where a trust is administered by more than one trustee, any trustee may request for any relevant information (including information on Beneficial Owners) in respect of the trust from any of the other trustees of the trust. A trustee shall comply with a request for information within any

reasonable timeframe as may be specified in the request. Failure of a trustee to comply within any specified timeframe will be an offence under Section 91 of Trusts Act.

It is to be noted that a similar provision will also be included in the draft Beneficial Ownership (Amendment) Bill specifically for the sharing of beneficial ownership information.

A proposed draft Trusts (Amendment) Bill is provided in Annex 1.

#### **4. Consultation Period**

In view of urgency of having this amendment through for Seychelles to be able to apply for re-rating in relation to recommendation 25, the FSA would be grateful for any comments on the proposal by 5<sup>th</sup> September 2022.

## Annex 1

### **PROPOSED TRUSTS (AMENDMENT) BILL, 2022**

**AN ACT** to amend the Trusts Act, 2021 (*Act 34 of 2021*).

**ENACTED** by the President and the National Assembly.

#### **Short title**

1. This Act may be cited as the Trusts (Amendment) Act, 2022.

#### **Amendment of section 26 of Act 34 of 2021**

2. Section 26 of the Trusts Act, 2021 (*hereinafter referred to as the “principal Act”*) is amended in subsection (4), by repealing the word “censed”.

#### **Amendment of section 84**

3. Section 84 of the Trusts Act, 2021 (*hereinafter referred to as the “principal Act”*) is amended in subsection (4), by repealing the word “rty”.

#### **Insertion of new section 30A**

4. The principal Act is amended, by inserting after section 30, the following section—

##### **“Request of information between trustees**

**30A.**(1) Where a trust is administered by more than one trustee, any trustee may request for any relevant information in respect of the trust from any of the other trustees of the trust.

(2) A trustee shall comply with a request for information made under subsection (1) within any timeframe as may be specified in the request.”

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