

Trustees (Amendment) Bill

Bill No. 12/2017.

Read the first time on 28 February 2017.

A BILL

i n t i t u l e d

An Act to amend the Trustees Act (Chapter 337 of the 2005 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Trustees (Amendment) Act 2017 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 New Part VII

2. The Trustees Act is amended by inserting, immediately after section 82, the following Part:

“PART VII

TRANSPARENCY AND EFFECTIVE CONTROL

Interpretation of this Part

83.—(1) In this Part —

“effective controller”, in relation to a relevant trust party of a relevant trust, means —

15 (a) the individual who ultimately owns or controls the relevant trust party; or

 (b) the individual on whose behalf a transaction is being conducted by the relevant trust party in the relevant trust party’s capacity as such,

20 and includes an individual who exercises ultimate effective control over the relevant trust party;

“FATF” means the intergovernmental body known as the Financial Action Task Force;

25 “FATF Recommendations” means the recommendations issued by the FATF from time to time relating to the prevention of money laundering and the financing of terrorism;

30 “Global Forum” means the international body known as the Global Forum on Transparency and Exchange of Information for Tax Purposes;

“protector”, in relation to a trust, means a person who, under the instrument creating the express trust, has any control over how a trustee of the trust administers the trust;

“relevant trust” means a trust to which this Part applies;

“relevant trust party”, in relation to a trust, means all or any of the following: 5

(a) a settlor;

(b) a trustee;

(c) a protector;

(d) a beneficiary; 10

(e) a person who has any power over the disposition of any property that is subject to the trust.

(2) For the purposes of the definition of “effective controller”, subject to regulations made under section 84A, the references to “ultimately owns or controls” and “ultimate effective control” 15 refer to situations in which an individual ultimately owns or controls, or exercises ultimate effective control, over a relevant trust party, including where the individual’s ownership or control (as the case may be) of the relevant trust party is exercised through a chain of ownership or by means of indirect control. 20

Application of this Part

84.—(1) This Part applies to any express trust —

(a) that is governed by the law of Singapore;

(b) that is administered in Singapore; or

(c) in respect of which any of the trustees is resident in Singapore. 25

(2) Despite subsection (1), this Part does not apply to any trust or class of trusts as may be prescribed under section 84A.

(3) For the purposes of this section —

(a) a trust is administered in Singapore if the control and management of the trust is exercised in Singapore; and 30

(b) a trustee is resident in Singapore if —

- (i) the trustee, being an individual, is ordinarily resident in Singapore; or
- (ii) the trustee is incorporated, formed or established in Singapore.

Regulations

84A.—(1) The Minister may make such regulations as the Minister considers necessary or desirable for or in respect of any relevant trust —

- (a) to give effect to the FATF Recommendations concerning transparency and beneficial ownership; and
- (b) to give effect to the Global Forum requirements concerning information on ownership and identity, the keeping of accounting records, and access to such information and records.

(2) Without limiting subsection (1), such regulations may —

- (a) provide that a trustee of a relevant trust must obtain information on the identity and particulars of each person who is —
 - (i) a relevant trust party of the relevant trust or an effective controller of the relevant trust party; and
 - (ii) an agent of, or a service provider to, the trust, including any investment adviser or manager, accountant or tax adviser;
- (b) provide that a trustee of a relevant trust must maintain and keep up-to-date, for such period as may be prescribed, a record of the identities and particulars of the persons mentioned in paragraph (a)(i) and (ii);

- (c) provide that a trustee of a relevant trust must maintain and keep up-to-date, for such period as may be prescribed, such accounting records relating to the relevant trust, and such information on the assets of the relevant trust, as may be prescribed; 5
 - (d) prescribe the measures that must be taken by a trustee of a relevant trust for or in respect of all or any of the matters in paragraphs (a), (b) and (c);
 - (e) provide that a trustee of a relevant trust must when acting for the trust in any prescribed transaction, disclose to any other party to the transaction the fact that the trustee is acting for the trust; 10
 - (f) for the purposes of section 83(2), set out the circumstances in which —
 - (i) an individual is considered as ultimately owning a relevant trust party through a chain of ownership; and 15
 - (ii) an individual is considered as ultimately controlling a relevant trust party, or as exercising ultimate effective control of a relevant trust party, through indirect control; 20
 - (g) provide that any contravention of any provision of the regulations shall be an offence punishable with a fine not exceeding \$1,000;
 - (h) prescribe such matters as may be required or permitted by this Part to be prescribed; and 25
 - (i) contain such transitional and other supplementary and incidental provisions as appear to the Minister to be appropriate.”.
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EXPLANATORY STATEMENT

This Bill seeks to amend the Trustees Act (Cap. 337) to enable the Minister to make regulations for or in respect of certain trusts to give effect to certain recommendations of the intergovernmental body known as the Financial Action Task Force and certain requirements of the international body known as the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Clause 1 relates to the short title and commencement.

Clause 2 inserts a new Part VII on “Transparency and Effective Control”. The new Part VII consists of new sections 83, 84 and 84A.

The new section 83 defines the terms “effective controller”, “FATF”, “FATF Recommendations”, “Global Forum”, “protector”, “relevant trust” and “relevant trust party” for the purposes of the new Part VII.

The new section 84 provides that the new Part VII applies to any express trust that is governed by the law of Singapore, that is administered in Singapore, or in respect of which any of the trustees is resident in Singapore. A trust or class of trusts may be prescribed by the Minister (through regulations) as excluded from the application of Part VII.

The new section 84A empowers the Minister to make regulations for or in respect of any relevant trust to give effect to the FATF Recommendations concerning transparency and beneficial ownership and the Global Forum on Transparency and Exchange of Information for Tax Purposes requirements concerning information on ownership and identity, the keeping of accounting records and access to such information and records.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
