

BELIZE:

TRUSTS (AMENDMENT) BILL, 2023

ARRANGEMENT OF CLAUSES

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BELIZE:

BILL

for

AN ACT to amend the Trusts Act, Chapter 202 of the Substantive Laws of Belize, Revised Edition 2020; to expand the duties of trustees and trust agents; and to provide for matters connected therewith or incidental thereto.

(Gazetted2023).

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority the same, as follows:

1. This Act may be cited as the

Short title.

TRUSTS (AMENDMENT) ACT, 2023,

and shall be read and construed as one with the Trusts Act, which is hereinafter referred to as the principal Act.

CAP. 202.

2. Section 27 of the principal Act is amended by—

Amendment of section 27.

(a) repealing sub-section (7) and substituting the following—

“(7) The trustee of a trust shall keep or cause to be kept—

(a) accurate and adequate accounts and records, inclusive of underlying documentation, of his trusteeship appropriate to the trust and trust property with respect to—

(i) assets;

(ii) liabilities;

(iii) additions to trust and distributions, purchase and sales; and

(iv) income and expenses;

- (b) adequate, accurate and current identification information in respect of—
 - (i) each trustee, settlor, protector, if any, and beneficiary of the trust;
 - (ii) natural persons behind a body corporate, if the beneficial owner is a body corporate; and
 - (iii) any other natural person exercising ultimate effective control over the trust;
- (c) adequate, accurate and current identification information in respect of each—
 - (i) trust agent of the trust;
 - (ii) other agent of the trust that is regulated by law;
 - (iii) service provider of the trust, including each investment advisor, investment manager, auditor, accountant and tax advisor.

- (b) inserting the following new sub-sections immediately after sub-section (7)—

“(7A) Notwithstanding sub-section (7)(b), where all or some of the individuals benefiting from the trust have not been determined, the trustee of a trust shall—

- (a) retain adequate, accurate and current identification information in respect of the class of persons in whose main interest the trust is set up, or operates; and
- (b) keep the information current, accurate and updated on a timely basis.

(7B) All accounts, records and information required to be kept under sub-section (7) shall—

- (a) be kept up to date and be updated on a timely basis;
- (b) be kept in Belize; and

(c) be retained for a minimum period of five years from the date on which they are prepared.

(7C) Notwithstanding sub-section (7B)(b), a reporting entity or other professional trustee which serves as a trustee of a trust shall retain all accounts, records and information required to be kept under sub-section (7) for a minimum period of five years from the date on which the reporting entity or professional trustee's involvement in the trust ceases."

Amendment of section 28.

3. Section 28 of the principal Act is amended by—

(a) repealing sub-section (1) and substituting the following—

“(1) A trustee or trust agent appointed under section 65E shall, within 30 days of a written request being made for information, provide any of the information specified under sub-section (1A) to—

(a) the Court;

(b) the settlor or protector of the trust;

(c) in the case of a trust established for a charitable purpose, the Attorney General;

(d) a competent authority;

(e) subject to the terms of the trust, any beneficiary of the trust who is of full age and capacity; and

(f) subject to the terms of the trust, any charity for the benefit of which the trust was established.”;

(b) inserting the following new sub-section immediately after sub-section (1)—

“(1A)The information required to be provided under sub-section (1) includes—

(a) information required to be kept under sections 27(7A) and 65A(5);

(b) full and accurate information as to the state and amount of the trust property and the conduct of the trust administration;

(c) information on the ultimate beneficial owner of the trust;

- (d) if the ultimate beneficial owner in the case of a trust is a body corporate, information on the identity of the natural persons in control of the body corporate; and
- (e) information of any other legal arrangements on the trust.”.

4. The principal Act is amended by inserting the following new sections immediately after section 30–

Insertion of new section 30A.

“Duty to disclosure.

30A. Before a trustee acting on behalf of a trust–

- (a) establishes a business relationship with a reporting entity; or
 - (b) carries out an occasional transaction with a reporting entity above the threshold established under section 15(2)(b)(i) of the Money Laundering and Terrorism (Prevention) Act,
- the trustee shall disclose his status as a trustee to the reporting entity.

CAP. 104.

Duty to submit attestation report.

30B.–(1) A trustee or trust Agent shall submit annually an attestation report to the Commission on beneficial ownership and control of the trust corporation, which shall include the following–

- (a) the names and addresses of the trustees;
 - (b) the name and address of the settlor;
 - (c) the names and addresses of the beneficiaries;
 - (d) the name and address of the Protector, if any; and
 - (e) the name and address of any other natural person exercising ultimate effective control over the trust.
- (2) The annual attestation report on beneficial ownership and control of the trust shall be filed by March 31 each year for the period ending December 31 of the previous year.
- (3) Notwithstanding sub-section (2), the Commission may, at any time, request a trustee to file information on beneficial ownership and control.

- (4) A trustee or trust agent that willfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of five thousand dollars and for a further penalty of five thousand dollars for each day that the default continues.”.

Insertion of new section 63D.

5. The principal Act is amended by inserting the following new section immediately after section 63C–

“Inspection of records of Domestic Trusts.

63D. The Registrar may from time to time either personally or through inspectors appointed by him, inspect and audit the record of Domestic Trusts maintained by a settlor or trustee, to verify the contents of the record and ensure its compliance with the law.”.

Amendment of section 64.

6. Section 64(1) of the principal Act is amended by repealing the definition of “international trust or offshore trust” and substituting the following–

““international trust or offshore trust” means a trust of which–

- (a) at least one of the trustees is either–
 - (i) a corporation incorporated under the Belize Companies Act; or
 - (ii) a licensed trust company doing business in Belize or carrying on business in Belize;
- (b) the settler is not resident in Belize;
- (c) none of the beneficiaries is resident in Belize;
- (d) the trust property does not include any land situated in Belize;
- (e) the law of Belize is or is not selected as the proper law of the trust;
- (f) in case of a purpose trust, the purpose or object of the trust is to be pursued or performed outside of Belize; and
- (g) any other trust that is not a domestic trust as defined under section 63(3).

Act No. 11 of 2022.

Amendment of section 65A.

7. Section 65A of the principal Act is amended by inserting the following new sub-section immediately after sub-section 5–

“(5A)A Trust Agent shall, within thirty days, provide the Registrar with any amendment to any information required to be maintained under this section.”.

8. Section 65H of the principal Act is amended by deleting the word “Commissioner” and substituting the word “Commission”. Amendment of section 65H.

9. Section 67 of the principal Act is amended by inserting the following new terms and their corresponding definition in the proper alphabetical order– Amendment of section 67.

““beneficial owner” means–

(a) the natural person who ultimately owns or controls a customer, the natural person on behalf of whom a transaction is conducted or the natural person who exercises ultimate control over a legal person or legal arrangement;

(b) in the case of a body corporate, any individual who–

(i) in respect of a body, other than a company whose securities are listed on an appointed stock exchange, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body;

(ii) otherwise exercises control over the management of the body; or

(iii) is a senior manager of the body corporate, if there is no natural person who ultimately owns or exercises control over the management of the body corporate;

(c) in the case of a partnership, any individual who–

(i) ultimately is entitled to or controls, whether the entitlement or control is direct or indirect, the capital or profits of the partnership or the voting rights in the partnership;

(ii) otherwise exercises control over the management of the partnership;

(d) in the case of a trust–

(i) any natural person who is entitled to a specified interest in the trust property;

- (ii) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within paragraph (a), the class of persons in whose main interest the trust is set up or operates;
- (iii) any natural person who has control over the trust;
- (iv) the settlor of the trust,

provided that for the purposes of sub-paragraph (i) where a natural person is the beneficial owner of a body corporate which is entitled to a specified interest in the trust property or which has control over the trust, that person is to be regarded as entitled to the interest or having control over the trust; or
- (v) the protector (if any);

“competent authority” includes—

- (a) the Financial Services Commission established under the Financial Services Commission Act;
- (b) the Financial Intelligence Unit established under the Financial Intelligence Unit Act;
- (c) the Registrar;
- (d) any other authority established under any other Act; or
- (e) any authority designated or recognized as the competent authority for another country;”

“professional trustee” means a person paid to act as a trustee in the course of his business;

“reporting entity” has the meaning assigned to it under the Money Laundering and Terrorism (Prevention) Act;”.

Amendment of
section 68.

10. Section 68 of the principal Act is amended by—

- (a) renumbering the section as sub-section (1); and
- (b) inserting the following new sub-section after sub-section (1)—

“(2) Without limiting the generality of the foregoing, regulations made under sub-section (1) may provide for procedure for issuance and payment of an administrative fine imposed under this Act.

11. The principal Act is amended by inserting the following new section immediately after section 68–

Insertion of new section 68A.

“General offence and penalty.

68A.–(1) Any person who contravenes any of the provisions of this Act commits an offence.

(2) Any person who contravenes any of the provisions of this Act for which no penalty is specifically provided is liable on summary conviction to a fine not exceeding one thousand dollars for each day or part thereof for which the contravention continues.

(3) In addition to any penalty for an offence under this Act, the Registrar may impose an administrative fine up to \$100,000.00”.