BANKS AND TRUST COMPANIES (PRIVATE TRUST COMPANIES) REGULATIONS

S.I. 1/2007

(SECTION 24)

[Commencement 8th January, 2007]

Citation.

1. These Regulations may be cited as the Banks and Trust Companies (Private Trust Companies) Regulations.

Interpretation.

2. (1) In these Regulations —

"Financial and Corporate Service Provider" means a licensee under the Financial and Corporate Service Providers Act; Ch. 369.

"Special Director" means a person (who need not necessarily be resident in The Bahamas) of good reputation who also possesses at least five years' experience in a discipline relevant to the administration of trusts, which, in this context shall include one or more of law, finance, commerce, investment management or accountancy;

"the Act" means the Banks and Trust Companies Regulation Act; Ch. 316.

"transaction" has the same meaning as in the Financial Transactions Reporting Act. Ch. 368.

(2) Any terms used in these regulations without definitions shall unless the context indicates otherwise, have the same meaning ascribed to those terms in the Act.

Exemption.

3. (1) A private trust company is exempt from the requirements of section 3(2) of the Act if —

(a) it complies with the definition of "private trust company" in section 2 of the Act;

(b) it has a single Designating Instrument in the form specified in the First Schedule which designates the individual or individuals who shall be the Designated Person or Designated Persons in relation to that company; and

(c) it does not solicit trust business.

(2) A trust company which is exempt pursuant to sub-regulation 3(1) shall not be required to obtain a licence under section 4 of the Business Licence Act.

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(3) A trust company which is exempt pursuant to subregulation 3(1) shall, for the purposes of these Regulations, be referred to as a "private trust company" and such company shall also be exempt from the requirements of sections 5, 8, 10, 12, 14, 15 and 20 of the Act.

(4) Upon being appointed a Registered Representative of a private trust company, the Registered Representative shall:

(a) within six months of the date of coming into force of these Regulations; or

(b) in the case of a company which has been incorporated under the Companies Act, or the International Business Companies Act after the date of coming into force of these Regulations, within three months of its incorporation,

Ch. 309.

certify to the Governor that the trust company qualifies for an exemption by virtue of the restriction specified in sub-regulation (1):

Provided that the Governor may extend the time for such certification for such further period not exceeding twelve months as he thinks expedient.

(5) If a private trust company ceases at any time to meet the requirements of sub-regulation 3(1), its Registered Representative shall within seven days of such change, notify the Inspector in writing of such change.

Requirements for Private Trust Companies.

4. (1) A private trust company shall, at all times:

(a) have a Registered Representative in The Bahamas;

(b) have at least one Special Director, except where an officer of a licensee serves as a Registered Representative;

(c) maintain, at the offices of the Registered Representative, a copy of the Designating Instrument pertaining to such company; and

(d) where possible, be in possession of a settlor's acknowledgement in the form appearing in the Second Schedule in respect of each trust for which it serves as trustee.

(2) A private trust company shall notify the Inspector of any change in the name or address of its Registered Representative.

(3) A private trust company shall have a paid up share capital of not less than five thousand dollars and shall so long as it is a private trust company maintain such minimum paid up share capital.

(4) A private trust company shall within ten (10) days, or such shorter period pursuant to section 35 of the Central Bank of the Bahamas Act, of being so requested by its Registered Representative provide to it all information, which such Registered Representative requires in order to enable that Registered Representative to discharge its obligations under these Regulations. Ch. 351.

(5) A private trust company shall not —

(a) amend its Memorandum or Articles of Association in any manner, which would cause them to be or become inconsistent with its definition in section 2 of the Act;

(b) conduct its operations in any manner inconsistent with these Regulations.

Fees.

5. A private trust company shall pay such fees as may be prescribed in the Third Schedule to the Act.

Application to act as Registered Representative.

6. (1) No person, other than a licensee may act as a Registered Representative of a private trust company unless that person's business is limited to acting as a Registered Representative only and, that person —

(a) holds a valid Financial and Corporate Service Provider's licence issued pursuant to the Financial and Corporate Service Provider's Act; and

(b) has obtained the prior written approval of the Governor.

(2) A Financial and Corporate Service Provider who desires to act as a Registered Representative for a private trust company shall, before proceeding to act as such Registered Representative, apply to obtain the prior written approval of the Governor to perform the functions of a Registered Representative and shall provide the following information to the Governor:

(a) a certified copy of the applicant's current Financial and Corporate Service Providers licence;

(b) evidence, such as the Governor may require, of the nature and sufficiency of the financial resources of the applicant which are to be used to fund the business of acting as a Registered Representative;

(c) two character references;

(d) such other particulars as the Governor may require.

(3) In determining whether or not to grant approval, the Governor shall consider the following factors —

(a) whether the Financial and Corporate Service Provider is a fit and proper person to act as a Registered Representative for private trust companies;

(b) whether the Financial and Corporate Service Provider has sufficient human and physical resources to discharge its duties as Registered Representative of a private trust company;

(c) the business record and relevant experience of the applicant or of the beneficial owner(s) of the applicant; and

(d) the best interests of the financial system in The Bahamas,

and, if satisfied, may grant approval for such Financial and Corporate Service Provider to act as Registered Representative subject to such terms and conditions, if any, as the Governor may deem necessary.

(4) Whenever the Governor considers it to be in the public interest, the Governor may refuse to grant approval for a Financial and Corporate Service Provider to act as Registered Representative and shall not be required to give reasons for such refusal.

(5) In respect of an approval granted under Regulation 5, the Governor may at any time —

(a) make the approval subject to such conditions or limitations as the Governor considers necessary;

(b) revoke any condition or limitation to which the approval is subject;

(c) withdraw the approval:

Provided that before taking any action under paragraphs (a),(b) or (c), the Governor shall provide the Financial and Corporate Service Provider with an opportunity to make representations regarding any proposed action.

(6) A Registered Representative shall be exempt from the requirements of sections 4, 11 and 21 of the Act.

Fees.

7. A Registered Representative shall pay such fees as are prescribed in these regulations and all such fees shall be payable to the Treasurer and placed in the Consolidated Fund.

Share capital for Registered Representative.

8. A Registered Representative shall have and maintain a minimum paid up share capital of not less than fifty thousand dollars.

Approval valid for one year.

9. (1) An approval granted under Regulation 6 is valid until the 31st December of the year in which it is granted but is renewable as of the 1st January in each year thereafter for a further period of one year.

(2) The Governor shall, before renewing approval take into consideration those matters referred to in sub-regulation 6(3).

Notification of Change.

10. Where any of the particulars provided in the application of a Registered Representative change, such Registered Representative shall within thirty days of such change notify the Governor in writing of the change.

Approvals to be displayed.

11. Approvals granted by the Governor pursuant to regulations 6 and 9 shall be prominently displayed on the premises where the Registered Representative conducts its business.

Requirements for providing private trust services.

12. No Registered Representative shall act for a private trust company unless such Registered Representative —

(a) is in possession of a Designating Instrument identifying the Designated Person or Designated Persons in respect of the private trust company;

(b) has been reasonably satisfied by the private trust company that the private trust company is being established for lawful purposes;

(c) has been reasonably satisfied that the company shall operate as a private trust company as defined in section 2 of the Act.

Documents to be kept in The Bahamas.

13. (1) A Registered Representative shall, except in relation to paragraph (e) where he may, at all times maintain in The Bahamas copies of the following documents in relation to each private trust company for which it provides private trust services —

(a) Memorandum and Articles of Association;

(b) Designating Instrument;

(c) *curriculum vitae* of the Special Director of each private trust company, if any, from time to time acting in such capacity; and

(d) trust instruments for each trust (including any sub-trusts or appointed trusts) administered by the private trust company;

(e) an acknowledgement in the form set out in the Second Schedule; and

(f) a list of all private trust companies for which he acts as Registered Representative.

(2) Every Registered Representative shall, on or before 31st December of each year, obtain from the directors of each private trust company for which it provides private trust services, a duly completed Compliance Certificate in the form set out in the Fourth Schedule.

(3) Where a Registered Representative acts as a Bahamas Agent of a private trust company, he shall enter into a service agreement with the company to provide administrative services to the company including —

(a) if requested, the preparation of the resolutions and minutes of the company's Board of Directors meetings;

(b) maintenance of the resolutions and of the minutes of the company's Board of Directors meetings.

(4) A Registered Representative is required in relation to each private trust company for which it acts as Registered Representative:

(a) to verify the identities of the following persons in accordance with the Financial Transactions

Reporting Act and the Financial Transactions Reporting Regulations and to maintain in The Bahamas, information and documents relating to such verification:

(i) the settlor and any person providing the funds or assets which are subject to the trust or trusts administered by the private trust company;

(ii) a Designated Person;

(iii) the protector of any trusts of which the private trust company is trustee;

(iv) a person who has a vested interest under any trust of which the private trust company is trustee;

(b) to report to the Financial Intelligence Unit any transaction or proposed transaction which the Registered Representative knows, suspects or has reasonable grounds to suspect —

(i) involves proceeds of criminal conduct as defined in the Proceeds of Crime Act; or Ch. 93.

(ii) the Anti-Terrorism Act. Ch. 107.

Offences.

14. (1) Any person who —

(a) with intent to deceive, by any act or omission contravenes any provision of these Regulations, commits an offence and is liable on summary conviction to a fine not exceeding $25,000;

(b) with intent to deceive, for any purposes of these Regulations, makes any representation that he knows to be false or does not believe to be true, commits an offence and is liable on summary conviction to a fine not exceeding $25,000;

(2) Where a limited liability company is convicted of an offence under sub-regulation 14(1), every director and every officer concerned with the management of the company is also liable to be convicted for that offence unless he satisfies the court that the offence was committed without his knowledge or consent or that he took all reasonable steps to prevent the commission of the offence.

Penalty for Non Compliance.

15. The Governor may impose a fine not exceeding $5,000 where a Registered Representative unreasonably

fails to comply with any of the provisions of these Regulations.

FIRST SCHEDULE

(Regulation 3)

DESIGNATING INSTRUMENT

[INSERT COMPANY NAME]

I, [DIRECTOR], hereby confirm that in relation to [INSERT COMPANY NAME] a Company [incorporated/to be incorporated] under the laws of The Bahamas, the Designated Person or Designated Persons for the purposes of Section 2 of the Act shall be: [INSERT INDIVIDUAL (S) NAME (S)].

Signed:
.....
DIRECTOR

Acknowledged
by:.....
[INSERT COMPANY NAME]

SECOND SCHEDULE

(Regulation 4)

FORM OF ACKNOWLEDGEMENT TO BE EXECUTED BY SETTLOR OF TRUST

I, [INSERT SETTLOR'S NAME), hereby acknowledge that in relation to [INSERT COMPANY NAME] (the "Company") a company [incorporated/to be incorporated] under the laws of The Bahamas:

(i) that the Company's directors are not required by law to possess or exhibit expertise in trust administration and, therefore, said directors may, in fact, not be possessed of or exhibit such skill,

(ii) that Company is not required by law to provide any fidelity bond;

(iii) that the capital of the Company is not required by law to exceed Five Thousand Dollars and may, therefore, be minimal; and

(iv) that Company is not required by law to perform an annual audit.

Accordingly, accepting the foregoing and fully understanding the legal implications hereof, I hereby waive any and all rights of complaint in respect of these matters.

Signed:
.....
Settlor

Acknowledged
by:.....
[INSERT COMPANY NAME]

THIRD SCHEDULE

(Regulation 7)

FEES

The following shall be fees under these Regulations, that is to say —

Matters in respect of which fee is payable	Amount of fee $
(a) Grant of approval to act as a Registered Representative of a private trust company.	2,500
(b) Continuance in being on the first day of January in any year as a Registered Representative as mentioned in sub-paragraph (a) of this paragraph.	2,500

FOURTH SCHEDULE

(Regulation 13)

COMPLIANCE CERTIFICATE

We, the undersigned directors (the "Directors") of [COMPANY NAME], a Private Trust Company established under the laws of the Commonwealth of The Bahamas pursuant to the Banks and Trust Companies Regulation Act, (the "Company") hereby declare that between [DATE] and [DATE]:

1. The Company has served only as trustee for trust or trusts for a Designated Person or Designated Persons or an individual or individuals who are related by consanguinity or other family relationships to the Designated Person or Designated Persons and has not carried on any business or activity which was prohibited; and

2. The Directors have acted honestly and in good faith with a view to the best interest of the Company.

And we each make this solemn declaration conscientiously believing it to be true.

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.....

Director Director