

**BANKS AND TRUST COMPANIES (PRIVATE
TRUST COMPANIES) REGULATIONS**

S.I. 1/2007

(SECTION 24)

[Commencement 8th January, 2007]

1. These Regulations may be cited as the Banks and Trust Companies (Private Trust Companies) Regulations. Citation.
2. (1) In these Regulations — Interpretation.
- “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.
3. (1) A private trust company is exempt from the requirements of section 3(2) of the Act if — Exemption.
- (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.

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(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.

(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:

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- (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,

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.

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

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 — Application to act as Registered Representative.

- (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.

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.

Fees.

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

Share capital for Registered Representative.

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.

Approval valid for one year.

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

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.

Notification of Change.

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.

Approvals to be displayed.

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

Requirements for providing private trust services.

- (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;