

Trusts

BELIZE:

No. 9 of 2007

I assent,

(SIR COLVILLE N. YOUNG)
Governor-General

30th May, 2007

AN ACT to amend the Trusts Act, Chapter 202 of the Laws of Belize, Revised Edition 2000-2003, to provide for compulsory registration of international trusts; to provide for the establishment of an International Trusts Registry; and to provide for matters connected therewith or incidental thereto.

(Gazetted 2nd June, 2007).

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

Short title.

1. This Act may be cited as the

TRUSTS (AMENDMENT) ACT, 2007,

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

Amendment of
Part X.

2. Part X of the principal Act is hereby amended as follows:

(i) in the caption to that Part, by deleting the words
“**and Exempt Trusts**” occurring therein;

(ii) by repealing sections 64 and 65 thereof.

Addition of
Part XA.

3. The principal Act is hereby amended by the addition of
the following as new Part XA immediately after section 63: -

“ **PART XA**

International Trusts

Interpretation. 64. (1) In this Part, unless the context
otherwise requires —

“Commission” means the International Financial
Services Commission established under the
CAP. 272 International Financial Services Commission Act;

“dollar” means dollar in the currency of the United
States of America;

“international trust” or “offshore trust” means a
trust where —

(a) the settlor is not resident in Belize;

(b) none of the beneficiaries is resident in
Belize;

- (c) the trust property does not include any land situated in Belize;
- (d) the law of Belize is selected as the proper law of the trust ; and
- (e) in case of a purpose trust, the purpose or object of the trust is to be pursued or performed outside of Belize.

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“IFS Practitioner” shall have the meaning assigned to it in section 2 of the International Financial Services Commission Act;

“Minister” means the Minister for the time being responsible for international financial services;

“Protector” means the person appointed by the settlor to intercede between the trustees, settlor and beneficiaries;

“Register” means the Register of International Trusts maintained under section 65A of this Act;

“Registrar” means the Registrar of International Trusts;

“Trust Agent” means Trust Agent of an international trust appointed under section 65E of this Act by the trustee of an International Trust.

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(2) In this section, “resident” shall mean resident for the purposes of the Income and Business Tax Act.

(3) Where there is a conflict between the provisions of this Part and any other provision of this Act, the provisions of this Part shall prevail.

Creation of
International
Trusts.

65. (1) Notwithstanding any other provision of this Act, an international trust may be created only by an instrument in writing.

(2) Every deed of settlement creating an international trust shall be signed by the settlor and the trustees, and every declaration of trust shall be signed by the trustees, and such signatures, if made outside Belize, shall be authenticated before a notary public or other authority authorised by the law of that jurisdiction to administer oaths.

International
Trusts
Registry.

65A. (1) There shall be established under the jurisdiction and control of the Commission an

International Trusts Registry (hereinafter referred to in this Part as “the Registry”).

(2) The Director General of the Commission shall act as the Registrar of International Trusts.

(3) The Registrar may, with the approval of the Minister, appoint one or more persons to be Deputy Registrar(s) of International Trusts.

(4) The Registrar shall maintain a Register of International Trusts containing the following information: -

- (i) Name of the trust.
- (ii) Date of settlement of the trust.
- (iii) Date of registration of the trust.
- (iv) Name(s) of the trustee(s).
- (v) Name of the protector (if any).
- (vi) Name and address of the trust agent.
- (vii) Any other information as may from time to time be specified by Regulations.

(5) Every Trust Agent shall maintain a record of International Trusts containing the following information:

- (i) Name of the trust.
- (ii) Date of settlement of the trust.
- (iii) Date of registration of the trust.
- (iv) Name(s) of the trustee(s).
- (v) Name of settlor.
- (vi) Name of protector (if any).
- (vii) Names and addresses of all the beneficiaries.
- (viii) Initial funds settled.
- (ix) Additional funds settled.
- (x) Changes in beneficiaries.
- (xi) Change of protector.
- (xii) Original trust instrument and any amendments thereto.

(6) The Registrar may from time to time either personally or through inspectors appointed by him, inspect and audit the record of International Trusts maintained by the Trust Agents under subsection (5) above, to verify the contents of the record and ensure its compliance with the law.

Compulsory
registration of
international
trusts.

65B. (1) The settlor or a trustee or the trust agent of an international trust shall apply to the Registrar to enter the trust on the Register within 90 days of the date of creation of the trust.

(2) On an application for registration of an international trust, the Registrar may extend the period of 90 days on being satisfied that the failure to register the trust was as a result of inadvertence on the part of any intended party to the trust.

(3) An application for entry on the Register shall contain the information required to be kept on the Register under section 65A(4) and shall be accompanied by -

- (a) an affidavit from the Trust Agent verifying that all the information required to be kept by the Trust Agent under section 65A (5) is duly held and recorded by him in the appropriate record in his office; and
- (b) such fee as may be prescribed by Regulations made under this Part.

(4) The Registrar shall, on receipt of an application for registration, an affidavit from the Trust Agent referred to in section 65B(3)(a) above, and the required fee -

- (a) enter on the Register the name of the trust, the names of the trustees, the name of the protector (if any), the date of the trust settlement or declaration of trust (as the case may be), the purpose for which the trust is established, and any other information required under section 65A(4) above; and
- (b) assign a number and issue to the trustee and the trust agent (if they are different persons) a numbered certificate of registration.

(5) Where the terms of a trust which has been registered are varied, the trustee or the trust agent shall send to the Registrar a notification of such variation together with the prescribed fee and the Registrar shall amend the entry on the Register accordingly, assign a number and issue a numbered amended certificate of registration.

(6) Where a trust which has been registered terminates, the trustee or the trust agent shall notify the Registrar and return the certificate of registration and the Registrar shall then cancel the entry on the Register and the certificate of registration.

(7) The provisions of section 7 of this Act (relating to the validity of a trust) shall only apply to an international trust where such trust is duly registered in accordance with this Part XA. An international trust which is not so registered shall be invalid and unenforceable.

(8) The Registrar shall refuse to register a trust, if -

- (a) the application contains information which is incomplete, incorrect, misleading or intended to deceive; or
- (b) the application for registration is not in conformity with this Act or the Regulations; or
- (c) he determines that, having regard to the contemplated activities of the trust and the persons connected with the trust as disclosed in the application

for registration, it would not be in the public interest that the trust should be registered in Belize.

(9) The Registrar shall cancel the registration of a trust, if -

- (a) he is satisfied that a certificate of registration issued by him in respect of the trust has been obtained by or on account of any fraud or mistake;
- (b) he determines that, having regard to the activities of the trust and the persons connected with the trust as disclosed in the application and other trust documents, it is not in the public interest that the trust should continue to be registered in Belize;
- (c) the trust ceases to comply with the provisions of this Act or the Regulations; or
- (d) there is any other fit and proper cause.

(10) Any document required or desired to be filed or registered with the Registrar under any provision of this Part may be filed or registered in

any language other than the English language, provided that it is accompanied by a certified English translation, and every such English translation shall be treated as the authoritative text.

(11) It shall be the duty of every Trust Agent or IFS Practitioner to ensure that every international trust in respect of which he is the trust agent or the service provider, is duly registered under the provisions of this Part.

Confidentiality
of Trusts
Register.

65C. (1) The Register shall not be open for public inspection except that the trustee or the trust agent of a trust may in writing authorise a person to inspect the entry of that trust on the Register.

(2) The Registrar shall not disclose any information contained in the Register to any person without the trustee's or trust agent's written authorisation, except where a written request is made to him by the Director of Public Prosecutions, the Director, Financial Intelligence Unit, the Commissioner of Police or other regulatory or enforcement authority, certifying that such information is reasonably required to facilitate a criminal investigation, prosecution or

proceeding, whether in Belize or elsewhere, including an investigation into locating the proceeds of crime and any proceedings for the enforcement of a confiscation or forfeiture order made in Belize or elsewhere.

(3) The Registrar may by notice in writing to the trustee or the trust agent or the protector (if any), require the trustee or the trust agent or the protector (if any), to provide to the Registrar, at a time as may be specified, any information or documentation which the Registrar may reasonably require for ensuring that the trust complies with the provisions of this Act or for any other fit and proper cause.

(4) Any power conferred by virtue of subsection (3) to require a trustee or the trust agent or the protector (if any), to produce any document or information shall include a power to take copies thereof or extracts therefrom.

(5) Where a trustee or the trust agent or the protector (if any), fails to supply the information or to produce any document when required to do so by the Registrar, the Registrar may, in accordance with subsection (8) of section 65B above, cancel the registration of the trust.

Exemption
from taxes
and duties
and exchange
control.

65D. (1) Where an international trust is duly registered and continues to be so registered under the provisions of this Part, then, notwithstanding any provision to the contrary in any enactment –

(a) the trust shall be exempt from the provisions of the Income and Business Tax Act;

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(b) no estate, inheritance, succession or gift tax or duty shall be payable with respect to the trust property by reason of any death of any person; and

(c) all instruments relating to the trust property or to transactions carried out by the trustee on behalf of the trust shall be exempt from stamp duty.

S.I. 30/76

(2) The trustees of a registered international trust shall be regarded as not resident in Belize for the purpose of the Exchange Control Regulations 1976 with regard to the trust property and to all transactions carried out by the trustee on behalf of the trust.

Trust
agents.

65E. (1) An international trust shall at all times have a trust agent resident in Belize who shall be appointed by the trustee of the trust.

(2) The trust agent shall accept service of all legal process on behalf of the trustee(s) and protector (if any), and shall be responsible for ensuring that the trust at all times complies with the provisions of this Act as to registration or the Regulations.

(3) No person shall act or hold himself out as a trust agent unless he is the holder of a valid licence to engage in trust business issued by the Commission, and every person who contravenes this provision commits an offence and shall be liable to the penalties prescribed under the International Financial Services Commission Act.

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(4) Every trust agent or IFS Practitioner who contravenes the provisions of this Act shall, without prejudice to the IFS Practitioners (Code of Conduct) Regulations, be guilty of an offence and shall be liable on summary conviction to a penalty of \$500.00 for each day or part thereof during which the contravention continues.

S.I. 94/2001

65F. (1) The Registrar shall maintain a Register of Trust Agents containing the following details: -

- (a) Name of the trust agent;
- (b) Address of the trust agent;
- (c) Names of the individuals authorised to sign on behalf of any firm or corporation that is a trust agent;
- (d) Where a trust agent ceases to be a trust agent, the date on which the trust agent ceased to be a trust agent; and
- (e) The names of those trusts registered in Belize for which the trust agent acts as such agent.

(2) The Registrar shall, during the month of January in each year, publish in the *Gazette* a list of trust agents as appeared on the Register of Trust Agents on 31st December in the preceding year.

(3) Any change in the details kept by the Registrar in the Register of Trust Agents pursuant to subsection (1) shall be notified immediately by

the trust agent or the trustee to the Registrar, and, upon payment of such fee as may be prescribed by Regulations, the Registrar shall record the change in the Register of Trust Agents.

Resignation or
change of trust
agent and its
effect.

65G. (1) Where the trust agent of a trust desires to cease to act as trust agent and the trust agent is unable to reach an agreement with the trustees of the trust for which he is the trust agent concerning his replacement, the following provisions shall apply: -

- (a) the trust agent shall give not less than 90 days written notice to any trustee or protector of the trust of which he is the trust agent at the trustee's or protector's last known address, or if the trust agent is not aware of the identity of any trustee or protector then the person from whom the trust agent last received instructions concerning the trust, specifying the wish of the trust agent to resign as trust agent and shall together with the notice provide a list of all trust agents in Belize with their names and addresses;

- (b) the trust agent shall submit to the Registrar a copy of the notice referred to in paragraph (a);
- (c) if, at the time of expiry of the notice, the trustees of the trust have not taken a decision to change the trust agent, the trust agent shall inform the Registrar in writing that the trustees have not changed the trust agent whereupon the Registrar shall publish a notice in the *Gazette* that the name of the trust will be struck off the Register, unless the trustees, within 30 days from the date of the publication of the notice in the *Gazette*, register with the Registrar a copy of a resolution or other Memorandum changing its trust agent; and
- (d) if the trustees fail within 30 days from the date of the publication of the notice referred to in paragraph (c) to register with the Registrar a copy of a resolution or other written memorandum evidencing the appointment of a new trust agent, the

Registrar shall strike the name of the trust off the Register and shall publish in the *Gazette* a notice that the name of the trust has been struck off the Register.

(2) The trustees of the trust that has been struck off the Register under this Part remain liable for all claims, debts, liabilities and obligations of the trust, and the striking-off shall not affect the liability of any person to whom the trustees have lawfully delegated their functions.

(3) Notwithstanding the foregoing provisions of this section, the trustees may apply to the Court for restoration of the trust to the Register.

Regulations. 65 H. (1) The Commission may, with the approval of the Minister from time to time, make regulations for the better carrying out of the provisions of this Part.

(2) Without prejudice to the generality of subsection (1) above, such regulations may provide for all or any of the following matters: -

- (a) fees to be charged for the registration or restoration of international trusts or for any other matter relating to such trusts;
- (b) application form for registration of international trusts;
- (c) details to be entered on the Register of Trusts or the Register of Trust Agents;
- (d) duties to be performed by the Registrar, Deputy Registrars or the Trust Agents;
- (e) information on the trust to be kept by the Trust Agents;
- (f) place or places where the International Trusts Registry shall be located.

(3) All regulations made by the Commission under this section shall, as soon as may be after the making thereof, be placed before the National Assembly and shall be subject to negative resolution.

Fees and penalties.

65 I. (1) All registration fees, and other fees and penalties paid under this Part or any regulations made thereunder shall be credited into the General Fund of the Commission established under section 18 of the International Financial Services Commission Act.

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(2) The Registrar may refuse to take any action required of him under this Act or the Regulations for which a fee is prescribed until such fee has been duly paid.

Transitional provision.

65 J. Any trust which is an exempt trust at the date of commencement of this Act shall apply to the Registrar for registration under the provisions of this Part and obtain such registration within twelve months of such commencement, failing which it shall cease to be a valid and enforceable trust under the laws of Belize and no trust agent or IFS Practitioner shall service or otherwise deal with such trust in any manner whatsoever.”

Commencement.

4. This Act shall come into force on a day to be appointed by the Minister responsible for international financial services by Order published in the *Gazette*.