

OBJECTS AND REASONS

This Bill would provide for the operation of private trust companies in Barbados.

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BARBADOS

A Bill entitled

An Act to provide for the operation of private trust companies in Barbados.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Private Trust Companies Act, 2012*.

Interpretation

2. In this Act,

“beneficial interest” has the meaning section 92 (2) of *International Financial Services Act, Cap. 325*;

“connected person” means a person whose relationship to another is established in the manner set out in the *First Schedule*;

“connected trust business” means trust business in respect of trusts where the contributors of that trust are connected persons;

“Minister” means Minister responsible for International Business;

“private trust company” means a company that conducts no trust business other than connected trust business;

“Registered Agent” means

(a) a trust company licensed under Part III of the *Financial Institutions Act, Cap. 324A*; and

(b) a licensee under the *International Corporate and Trust Service Providers Act (Act 2011-5)*;

“resident of Barbados” has the meaning assigned to it by section 92 (1) of *International Financial Services Act, Cap. 325*;

“Special Director” means a person appointed under section 8;

“trust business” means the business of a trust company as described under section 23 of *Financial Institutions Act, Cap. 324A*.

General Prohibition

3.(1) A private trust company shall not conduct any trust business other than connected trust business.

(2) A private trust company that conducts trust business other than connected trust business is guilty of an offence and is liable on summary conviction to a fine of \$25,000.

Registration of a private trust company

4.(1) A company that is desirous of operating as a private trust company under this Act shall apply for registration by

- (a) submitting to the Minister
 - (i) an Application Form for Registration as a Private Trust Company, the form of which is set out in the *Second Schedule*.
 - (ii) a copy of the certificate of incorporation under the *Companies Act*, Cap. 308 in respect of that company; and
- (b) paying to the Minister the first registration fee specified in the *Third Schedule*.

(2) Where the Minister is satisfied that all the requirements of this Act in respect of the registration of a private trust company have been complied with he shall register the private trust company and issue a Certificate of Registration in respect of that private trust company.

(3) A company shall apply to the Minister annually to renew its registration as a private trust company and the Minister shall renew the registration of that company as a private trust company on the payment of the annual registration fee specified in the *Third Schedule*.

Renewal and revocation.

5.(1) The Minister may by notice in writing

- (a) refuse to renew; or
- (b) revoke

a company's registration as a private trust company where that company is found to be in contravention of the requirements of this Act.

(2) A person who is aggrieved by any decision made by the Minister under subsection (1) may appeal to a Judge in Chambers.

Operational requirements of private trust companies

6.(1) A private trust company shall

- (a) have a Registered Agent;
- (b) maintain its registered office at the office of the Registered Agent; and
- (c) have a Special Director.

(2) A private trust company shall maintain at its registered office, in relation to each relevant trust, up-to-date copies of the trust deed or other document containing or recording the trust and any deed or document varying the trust.

Registered Agent

7.(1) The Registered Agent of a private trust company shall take all reasonable steps to ensure that the company complies with the requirements of this Act and shall submit annually a declaration of compliance in the form set out in the *Fourth Schedule*.

(2) Where the Registered Agent of a private trust company discovers that the private trust company has contravened this Act, the Registered Agent shall submit a report on such non-compliance to the Minister.

(3) The Minister may on examination of the report submitted by the Registered Agent pursuant to subsection (1), revoke a company's registration as a private trust company under section 4 where that company is found to be in contravention of this Act.

(4) A person who is aggrieved by any decision made by the Minister under subsection (3) may appeal to a Judge in Chambers.

(5) The declaration of compliance shall include a statement to the effect that the company satisfies the requirements of the *Money Laundering and Financing*

of Terrorism (Prevention and Control) Act (Act 2011-23) and that it operates only as a private trust company.

Special Director

8.(1) The Directors of the private trust company shall appoint from among their number a Special Director who shall be resident of Barbados and shall be responsible for the general administration of the private trust company.

(2) A Special Director shall be a person of good character who has at least 5 years' experience in a discipline related to the administration of trusts including one or more of the following disciplines:

- (a) law;
- (b) finance;
- (c) accounting;
- (d) investment management; or
- (e) trust and estate planning.

Contributions

9. A private trust company shall not in any manner solicit or receive contributions in respect of trusts of which it is a trustee, from

- (a) the public; or
- (b) persons other than those who are, in relation to each other, connected persons.

Use of the words "Private Trust Company"

10.(1) A private trust company shall use the words "Private Trust Company" or the letters "PTC" in the name by which the company is registered under the *Companies Act*, Cap. 308.

(2) A company shall not be registered under the *Companies Act* with the words "Private Trust Company" or the letters "PTC" in the name of the company unless that company is a private trust company.

(3) Where a private trust company seeks to change the name of the company it shall apply to the Minister to do so and the Minister may, subject to any conditions he may impose and on payment of the fee specified in the *Third Schedule*, change the name of the private trust company.

Exemption from registration under certain enactments

11. Notwithstanding the provisions of any other Act, a private trust company that is registered under this Act is not required to be licensed under the

(a) *Financial Institutions Act*, Cap. 324A;

(b) *International Financial Services*, Cap. 325;

(c) *International Corporate and Trust Services Providers Act (Act 2011-5)*;

(d) *Financial Services Commission Act (Act 2010-21)*,

in order to carry on connected trust business.

Disclosure of information

12.(1) A person shall not disclose any information relating to any application of a prospective private trust company or to the affairs of a private trust company except when authorised by the prospective private trust company or the private trust company to do so or when lawfully required to do so by a court of competent jurisdiction.

(2) Subsection (1) does not apply to a person carrying out any duty imposed on him by the *Income Tax Act*, Cap. 73 or otherwise acting in pursuance of any international agreement to which Barbados is a party.

Tax exemptions

13.(1) A private trust company shall not be subject to tax under this section or under the *Income Tax Act*, Cap. 73 on the profits and gains of that company if it is managed by a trust licensed under the *International Financial Services Act*, Cap. 325 and if its activities are restricted to engaging exclusively in the business of buying, selling, holding or managing securities.

(2) No tax, duty or other impost shall be levied on a private trust company, its shareholders or transferees in respect of any transfer of any securities or assets of the company, other than a transfer of taxable assets, to a person who is not a resident of Barbados or a resident of Barbados who holds a licence under the *International Financial Services Act* to carry on international business.

(3) For the purposes of subsection (2), the following assets are taxable assets in the hands of a private trust company, namely:

- (a) real property situated in Barbados and held by or on behalf of the company; and
- (b) all office equipment, supplies, furnishings and fixture, machinery, vehicles and equipment used in Barbados in carrying on the business and affairs of the company.

(4) Where a private trust company is established by a settlor who is not a resident of Barbados in favour of another person who is not a resident of Barbados, the trust is exempt from any tax, duty or impost in Barbados if the funds of the trust consist solely of foreign currency or foreign securities and the trust is under the management of a licensee under the *International Financial Services Act*.

Offences

14. A person who contravenes any of the provisions of this Act is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to a term of imprisonment of 2 years or to both.

Regulations

15. The Minister may make regulations generally to give effect to this Act.

Amendment of Schedules

16. The Minister may amend the Schedules by Order.

Commencement

17. This Act shall come into operation on a date fixed by Proclamation.

FIRST SCHEDULE*(Section 2)**CONNECTED PERSONS*

1. For the purposes of this Act, the following persons would be considered to be a "connected person" in relation to an individual:

- (a) spouse;
- (b) the descendants of the individual and their spouses;
- (c) parents, including step-parents'
- (d) grandparents;
- (e) parents-in-law, including step-parents-in-law;
- (f) brother, step-brother, sister, step-sister and their spouses;
- (g) spouse's grandparents;
- (h) spouse's brother, step-brother, sister, step-sister and their spouses and children;
- (i) parent's brother, step-brother, sister, step-sister and their spouses;
- (j) children of the brother, step-brother, sister or step-sister of the individual's parents, both present and future, including step-children, and their spouses; and
- (k) children of the individual's brother, step-brother, sister or step-sister, both present and future, including step-children, and their spouses.

2. For any of the relationships listed in paragraph 1 that may be established by blood, that same relationship may also be established by adoption.

3. In paragraph 1(b), the term “descendants of the individual” means the individual’s children, the children of his children, the children of those children, and so on.

SECOND SCHEDULE

(Section 4)

*APPLICATION FORM FOR REGISTRATION
OF A PRIVATE TRUST COMPANY*

1. Name of the private trust company:.....
2. Address of the registered office of the private trust company:
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3. Phone number of the private trust company:
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4. Names of the Directors of the private trust company:
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5. Addresses of the Directors of the private trust company:
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6. Phone numbers of the Directors of the private trust company:
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- 7. Name of the Special Director of the private trust company:
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- 8. Address of the Special Director of the private trust company:
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- 9. Phone number of the Special Director of the private trust company:
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- 10. Name of the Registered Agent of the private trust company:
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- 11. Address of the Registered Agent of the private trust company:
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- 12. Phone number of the Registered Agent of the private trust company:
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INSTRUCTIONS

This Application Form should be accompanied by

- (a) a copy of the certificate of incorporation under the *Companies Act*, Cap. 308 in respect of the private trust company; and**
- (b) proof of payment of the appropriate registration fee.**

THIRD SCHEDULE

(Sections 4 and 10(3))

FEES

	\$
1. First registration fee as a private trust company	3000.00
2. Annual registration fee	3000.00
3. Change of name of private trust company	500.00

FOURTH SCHEDULE

(Section 7(1))

DECLARATION OF COMPLIANCE

I, _____, Registered Agent for the Private Trust Company,
(PLEASE PRINT NAME)
_____, (the "Company"), pursuant
(PLEASE PRINT NAME OF PRIVATE TRUST COMPANY)
to section 7(1) of the *Private Trust Companies Act* (Act 2012-), hereby declare
that:

1. The Company is being established only to conduct connected trust business and will not conduct trust business.
2. The Directors and the Special Director will act honestly and in good faith and in the best interests of the Company.
3. The Company shall comply with all the requirements of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act* (Act 2011-23).

I, _____, on the _____ day of _____, 20____, make this
(PLEASE PRINT NAME)
solemn declaration conscientiously believing it to be true.

Signature of the Registered Agent

PRIVATE TRUST COMPANIES BILL, 2012

EXPLANATORY MEMORANDUM

- Clause 1:** Clause 1 states that the Act may be cited as the *Private Trust Companies Act, 2012*.
- Clause 2:** Clause 2 provides definitions for the key terms which are used through out the Bill.
- Clause 3:** Clause 3 makes it an offence for a private trust company to conduct any business other than connected trust business as defined under clause 2 of the Bill.
- Clause 4:** Clause 4 makes provision for the application and renewal procedures applicable to private trust companies.
- Clause 5:** Clause 5 empowers the Minister by notice in writing to refuse to renew or to revoke a company's registration as a private trust company where that company contravenes the provisions of the Act. Clause 5 also provides an appeal procedure for a persona who is aggrieved by the Minister's decision to refuse to renew or to revoke the registration of the company as a private trust company.
- Clause 6:** Clause 6 requires private trust companies to have a Registered Agent and a special director and maintain a registered office at the office of the Registered Agent. Clause 6 also stipulates that the private trust company maintain at it registered office up-to-date copies of the trust deed or other document containing or recording the trust and any deed or document varying the trust relevant to that private trust company.
- Clause 7:** Clause 7 makes provision for the duties and functions of a Registered Agent of a private trust company.

- Clause 8:** Clause 8 makes provision for the duties and functions of a special director of a private trust company.
- Clause 9:** Clause 9 prohibits private trust companies from soliciting or receiving contributions from the public or a person who is not “connected person” as defined under clause 2 of the Bill.
- Clause 10:** Clause 10 provides the use of the words “Private Trust Company” or the letters “PTC” in the name of a company.
- Clause 11:** Clause 11 exempts a private trust company from registration under certain enactments.
- Clause 12:** Clause 12(1) provides generally that information on the application of a company as a private trust company or the affairs of a private trust company cannot be disclosed unless authorisation is given by the company or in compliance with a court of competent jurisdiction. Clause 12 (2) provides for an exception to Clause 12(1) by providing that Clause 12(1) does not apply to a person who is carrying out a duty under the *Income Tax Act*, Cap. 73 or acting in pursuance of an international agreement to which Barbados is a party.
- Clause 13:** Clause 13 grants certain tax exemptions to private trust companies under the *Income Tax Act*, Cap. 73 and the *International Financial Services Act*, Cap. 325.
- Clause 14:** Clause 14 is a general offences clause that provides that the contravention of the Act is an offence. Clause 14 also provides for the penalty applicable for contravention of the Act.
- Clause 15:** Clause 15 empowers the Minister to make regulations generally to give effect to the Act.

- Clause 16:*** Clause 16 empowers the minister to amend the Schedules by Order.
- Clause 17:*** Clause 17 states that the Act will come into operation of the date fixed by Proclamation.

