



BERMUDA

TRUSTS (REGULATION OF TRUST BUSINESS) EXEMPTION ORDER 2002

BR 38 / 2002

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THE SCHEDULE

In exercise of the powers conferred upon the Minister by section 10(2) of the Trusts (Regulation of Trust Business) Act 2001, the following order is hereby made:—

Citation

1 This Order may be cited as the Trusts (Regulation of Trust Business) Exemption Order 2002.

Interpretation

2 In this Order—

“the Act” means the Trusts (Regulation of Trust Business) Act 2001;

“professional person” means a member of a professional body;

“professional body” means a body which regulates the practice of a profession;

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“recognised professional body” means a professional body recognised by order of the Minister pursuant to an application made under paragraph 1 of the Schedule;

“trust records” include deeds creating a trust and any associated documents, particulars of trust assets, trust accounts, and resolutions of meetings of the trustees.

Exemption in connection with private trust business

3 (1) A trust company is exempted from the requirements of section 9 of the Act if it is authorised to provide the services of a trustee only to the trusts specified—

- (a) in its memorandum of association; or
- (b) in the case of an overseas company, in its permit;

and to such other trusts as the Minister may approve from time to time (“an exempted company”).

(2) An exempted company shall—

- (a) within three months of the date of coming into force of this Order; or
- (b) in the case of a company which has been registered or granted a permit under the Companies Act 1981 after the date of coming into force of this order, within three months of its registration or the grant to it of a permit,

notify the Authority in writing that it qualifies for an exemption by virtue of the restriction specified in subparagraph (1) and give to the Authority particulars of the nature and scope of its trust business.

(3) An exempted company shall notify in writing the Authority of any change in the nature and scope of the trust business that has been approved by the Minister as soon as practicable after approval.

(3A) An exempted company shall, on or before 31 March in every year, where it continues to qualify for exemption in accordance with subparagraph (1), file a declaration with the Authority that it continues to qualify for exemption.

(3B) A declaration filed with the Authority in accordance with subparagraph (3A), shall be in such form and contain such information and documents as the Authority may determine.

(4) In subparagraph (1) “permit” means a permit granted under section 134 of the Companies Act 1981 to an overseas company .

[Regulation 3 amended by BR 137 / 2019 para. 2 effective 31 December 2019]

Exemption in connection with members of recognised professional bodies

4 (1) A trustee who is a member of a recognised professional body is exempted from the requirements of section 9 of the Act if he holds a certificate issued for the purposes of this Order by a recognised professional body.

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(2) The Schedule has effect with regard to recognising professional bodies.

Exemption where licensed co-trustee administers the trust

5 A trustee is exempted from the requirements of section 9 of the Act if he is a co-trustee of a trust and at least one other co-trustee is a licensed trustee.

Exemption where trust records are held by licensed trustee

6 (1) A trustee is exempted from the requirements of section 9 of the Act if—

- (a) he is a professional person; and
- (b) he appoints a specified licensed trust company to maintain trust records of the trust of which he is a trustee.

(2) The following licensed trust companies are specified for the purposes of subparagraph (1)(b)—

- (a) a company owned (whether directly or indirectly) by an undertaking of which the professional person is a director, partner or employee;
- (b) a company in respect of which the professional person is a director or controller; or
- (c) a company forming part of a settlement of which the professional person is a beneficiary.

(3) In subparagraph (2) “settlement” includes every disposition or arrangement under which property is held in trust.

Other exemptions

7 (1) A bare trustee is exempted from the requirements of section 9 of the Act.

(2) A trustee of the following trusts is exempted from the requirements of section 9 of the Act—

- (a) a pension plan registered under the National Pension Scheme (Occupational Pensions) Act 1998;
- (b) a pension trust fund registered under the Pension Trust Fund Act 1966;
- (c) an investment fund authorised under the Investment Funds Act 2006; and
- (d) an investment fund exempted under section 7 of the Investment Funds Act 2006.

[Article 7 para (d) inserted by BR2/2006 effective 6 January 2006; paras (c) and (d) amended by 2006:37 s.77(3) effective 7 March 2007]

Retention of records

8 *[Revoked by 2012 : 27 s. 6]*

[Paragraph 8 revoked by 2012 : 27 s. 6 effective 13 July 2012]

THE SCHEDULE

(Regulation 4 (2))

PART I: RECOGNITION OF A PROFESSIONAL BODY

APPLICATION FOR RECOGNITION

1 (1) A professional body may apply to the Minister for an order declaring it to be a recognised professional body for the purposes of this Order.

(2) Any such application—

(a) shall be made in such manner as the Minister may direct; and

(b) shall be accompanied with such information as he may reasonably require for the purpose of determining the application; and

(c) shall be in such form or verified in such manner as he may specify.

(3) Every application shall be accompanied with a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect.

(4) The Minister may, on application duly made in accordance with this paragraph and after being furnished with all such information as he may require, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised professional body.

(5) The Minister after consulting with the Authority may make a recognition order if it appears to him from the information furnished by the body making the application and having regard to any other information in his possession that the requirements of Part II of the Schedule are satisfied as respects that body.

(6) Where the Minister refuses an application for a recognition order, he shall give the applicant a written notice to that effect, stating the reasons for the refusal.

REVOCATION OF RECOGNITION

2 (1) A recognition order may be revoked by a further order made by the Minister if at any time it appears to him that any requirement of Part II of the Schedule is not satisfied in the case of the body to which the recognition order relates.

(2) An order revoking a recognition shall state the date on which it takes effect and that date shall not be earlier than two months after the day on which the revocation order is made, and may contain such transitional provisions as the Minister thinks necessary or expedient.

(3) Before revoking a recognition order, the Minister shall give written notice of his intention to do so to the recognised body and shall state the reasons for which the Minister proposes to act and give particulars of the rights conferred by subparagraph (4).

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(4) A body on which notice is served under subparagraph (3) may within one month from the date of service of the notice make written representations to the Minister and the Minister shall have regard to such representations in determining whether to revoke the recognition order.

(5) A recognition order may be revoked at the request or with the consent of the professional body and any such order shall not be subject to the requirements of subparagraphs (3) and (4).

PART II : REQUIREMENTS FOR RECOGNITION OF A PROFESSIONAL BODY

STATUTORY STATUS

3 The body must regulate the practice of a profession in the exercise of statutory powers.

CERTIFICATION

4 The body must have rules, practices and arrangements for securing that no person can be certified by the body for the purposes of this Order unless the following conditions are satisfied—

- (a) the certified person must be an individual who is a member of the body; and
- (b) his main business must be the practice of the profession regulated by the certifying body.

SAFEGUARDS FOR CLIENTS

5 (1) The body must have rules regulating the carrying on of trust business by persons certified by it which, in the Minister's opinion, afford an adequate level of protection for clients.

(2) In determining in any case whether an adequate level of protection is afforded for clients, regard shall be had to the nature of the trust business carried on by persons certified by the body, the kinds of clients involved and the effectiveness of the body's arrangement for enforcing compliance.

MONITORING AND ENFORCEMENT

6 (1) The body must have adequate arrangements and resources for the effective monitoring of the continued compliance by persons certified by it with the conditions mentioned in paragraph 4 of this Schedule and rules, practices, arrangements for the withdrawal or suspension of certification in the event of any one of those conditions ceasing to be satisfied.

(2) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance by persons certified by it with the rules of the body relating to the carrying out of trust business.

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(3) The arrangements for enforcement must include provision for the withdrawal or suspension of certification.

INVESTIGATION OF COMPLAINTS

7 The body must have effective arrangements for the investigation of complaints relating to the carrying on by persons certified by it of trust business in respect of which they are subject to its rules.

PROMOTION AND MAINTENANCE OF STANDARDS

8 The body must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of trust business and to co-operate by the sharing of information and otherwise, with the Minister, the Authority and any other person having responsibility for the supervision and regulation of trust business or other financial services.

Made this 9th day of August , 2002

Minister of Finance

[Amended by:

BR 2 / 2006

2006 : 37

2011 : 20

2012 : 27

BR 137 / 2019]