
First published in the *Government Gazette*, Electronic Edition, on 31 March 2017 at 5 pm.

No. S 151

TRUSTEES ACT (CHAPTER 337)

TRUSTEES (TRANSPARENCY AND EFFECTIVE CONTROL) REGULATIONS 2017

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In exercise of the powers conferred by section 84A of the Trustees Act, the Minister for Law makes the following Regulations:

Citation and commencement

1. These Regulations are the Trustees (Transparency and Effective Control) Regulations 2017 and come into operation on 31 March 2017.

Definitions

2. In these Regulations, unless the context otherwise requires —

“entity” means —

- (a) a sole proprietorship;
- (b) a partnership;
- (c) a limited partnership;
- (d) a limited liability partnership;
- (e) a corporation sole;
- (f) a company or any other association or body of persons corporate or unincorporated; or
- (g) an express trust or other similar arrangement;

“identity card” has the same meaning as in section 2(1) of the National Registration Act (Cap. 201);

“relevant party”, in relation to a relevant trust, means a relevant trust party of the relevant trust.

Scope of Regulations

3.—(1) Subject to paragraph (2), these Regulations apply to any relevant trust created before, on or after 31 March 2017.

(2) These Regulations do not apply to any relevant trust that is specified in the First Schedule.

Obligation to obtain, etc., information of relevant parties

4.—(1) A trustee of a relevant trust must, within the time specified in paragraph (3), take reasonable steps to ensure that the information mentioned in paragraph (2) of each relevant party —

- (a) is obtained; and
- (b) is verified by means of source data, documents or information that is reliable and independently sourced.

(2) The information in paragraph (1) is —

- (a) where the relevant party is an individual, his or her —
- (i) full name, including any aliases;
 - (ii) identity card number, birth certificate number, passport number, or other similar unique identification number issued by a government authority;
 - (iii) residential address;
 - (iv) date of birth; and
 - (v) nationality; and
- (b) where the relevant party is an entity —
- (i) its full name;
 - (ii) its incorporation number or business registration number;
 - (iii) its registered or business address;
 - (iv) its principal place of business (if different from its registered or business address mentioned in sub-paragraph (iii));
 - (v) its date of constitution, incorporation or registration;
 - (vi) its place of incorporation or registration; and
 - (vii) the following information about every connected individual of the entity:
 - (A) his or her full name, including any aliases;
 - (B) his or her identity card number, birth certificate number, passport number, or other similar unique identification number issued by a government authority.

(3) The steps mentioned in paragraph (1) must be taken —

- (a) in the case of a trust that is a relevant trust on 30 April 2017 —

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- (i) on or before 30 May 2017; or
 - (ii) in respect of any of the following relevant parties that is not known to the trustee on or before 30 May 2017 — as soon as reasonably practicable after the relevant party is known to the trustee:
 - (A) a beneficiary;
 - (B) a protector;
 - (C) a person who has any power over the disposition of any property that is subject to the relevant trust;
- (b) in the case of a relevant trust created after 30 April 2017 —
- (i) in respect of any of the following relevant parties — before the trustee exercises or performs any function, duty or power in respect of the relevant trust:
 - (A) a settlor;
 - (B) another trustee; or
 - (ii) in respect of any of the following relevant parties — as soon as reasonably practicable after the relevant party is known to the trustee:
 - (A) a beneficiary;
 - (B) a protector;
 - (C) a person who has any power over the disposition of any property that is subject to the relevant trust; and
- (c) in the case of a trust that is not a relevant trust on 30 April 2017 but which becomes a relevant trust after 30 April 2017 —
- (i) within 60 days after the date on which the trust becomes a relevant trust; or
 - (ii) in respect of any of the following relevant parties that is not known to the trustee within the time specified in sub-paragraph (i) — as soon as reasonably

practicable after the relevant party is known to the trustee:

- (A) a beneficiary;
- (B) a protector;
- (C) a person who has any power over the disposition of any property that is subject to the relevant trust.

(4) In paragraph (2)(b)(vii), “connected individual” —

- (a) in relation to an entity that is a partnership, means any partner or manager;
- (b) in relation to a trust or other similar arrangement, means any individual having executive authority in the trust or other similar arrangement; and
- (c) in relation to any other entity, means any director, or any individual having executive authority, in the entity.

Obligation to obtain, etc., information of effective controllers of relevant parties

5.—(1) A trustee of a relevant trust must, within the time specified in paragraph (3), take reasonable steps to ensure that the information mentioned in paragraph (2) of each effective controller of a relevant party, if any —

- (a) is obtained; and
- (b) is verified by means of source data, documents or information that is reliable and independently sourced.

(2) The information in paragraph (1) is the effective controller’s —

- (a) full name, including any aliases;
- (b) identity card number, birth certificate number, passport number, or other similar unique identification number issued by a government authority;

- (c) residential address;
- (d) date of birth; and
- (e) nationality.

(3) The steps mentioned in paragraph (1) must be taken —

(a) in the case of a trust that is a relevant trust on 30 April 2017 —

- (i) on or before 30 May 2017; or
- (ii) in respect of an effective controller of any of the following relevant parties that is not known to the trustee on or before 30 May 2017 — as soon as reasonably practicable after the effective controller is known to the trustee:

- (A) a beneficiary;
- (B) a protector;
- (C) a person who has any power over the disposition of any property that is subject to the relevant trust;

(b) in the case of a relevant trust created after 30 April 2017 —

- (i) in respect of an effective controller of any of the following relevant parties — before the trustee exercises or performs any function, duty or power in respect of the relevant trust:

- (A) a settlor;
- (B) another trustee; or

- (ii) in respect of an effective controller of any of the following relevant parties — as soon as reasonably practicable after the effective controller is known to the trustee:

- (A) a beneficiary;
- (B) a protector;

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- (C) a person who has any power over the disposition of any property that is subject to the relevant trust; and
- (c) in the case of a trust that is not a relevant trust on 30 April 2017 but which becomes a relevant trust after 30 April 2017 —
- (i) within 60 days after the date on which the trust becomes a relevant trust; or
 - (ii) in respect of an effective controller of any of the following relevant parties that is not known to the trustee within the time specified in sub-paragraph (i) — as soon as reasonably practicable after the effective controller is known to the trustee:
 - (A) a beneficiary;
 - (B) a protector;
 - (C) a person who has any power over the disposition of any property that is subject to the relevant trust.
- (4) A trustee of a relevant trust need not take the steps prescribed in paragraph (1) in respect of any relevant party that is —
- (a) another relevant trust to which these Regulations apply;
 - (b) a relevant trust specified in the First Schedule;
 - (c) a company or foreign company to which Part XIA of the Companies Act (Cap. 50) applies;
 - (d) a company that is set out in the Fourteenth Schedule to the Companies Act;
 - (e) a foreign company that is set out in the Fifteenth Schedule to the Companies Act;
 - (f) a limited liability partnership to which Part VIA of the Limited Liability Partnerships Act (Cap. 163A) applies; or

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- (g) a limited liability partnership that is set out in the Sixth Schedule to the Limited Liability Partnerships Act.

Obligation to obtain information of service suppliers

6.—(1) A trustee of a relevant trust must, within the time specified in paragraph (3), take reasonable steps to ensure that the information mentioned in paragraph (2) of each person that is appointed or engaged as a service supplier to the relevant trust, is obtained.

- (2) The information in paragraph (1) is —
- (a) the name of the service supplier;
 - (b) the registered or business address of the service supplier;
 - (c) the contact details of the service supplier; and
 - (d) where the service supplier is an entity, the name of an individual who is authorised to act for the service supplier.
- (3) The steps mentioned in paragraph (1) must be taken —
- (a) in the case of a trust that is a relevant trust on 30 April 2017 —
 - (i) on or before 30 May 2017, where the service supplier is appointed or engaged on or before 30 April 2017; or
 - (ii) as soon as reasonably practicable after the service supplier is appointed or engaged, where the service supplier is appointed or engaged after 30 April 2017;
 - (b) in the case of a relevant trust created after 30 April 2017, as soon as reasonably practicable after the service supplier is appointed or engaged; or
 - (c) in the case of a trust that is not a relevant trust on 30 April 2017 but which becomes a relevant trust after 30 April 2017 —
 - (i) within 60 days after the trust becomes a relevant trust, where the service supplier is appointed or engaged before, on, or within 30 days after, the date on which the trust becomes a relevant trust; or

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- (ii) as soon as reasonably practicable after the service supplier is appointed or engaged, where the service supplier is appointed or engaged more than 30 days after the date on which the trust becomes a relevant trust.

(4) In this regulation, “service supplier” means an agent of, or a service provider to, the relevant trust (including any investment adviser or manager, accountant or tax adviser).

Keeping, etc., of records of information obtained

7. A trustee of a relevant trust must take reasonable steps to ensure that an accurate record of the information obtained under regulations 4(1), 5(1) and 6(1) is —

- (a) kept and maintained in an easily accessible form;
- (b) updated in a timely manner; and
- (c) retained for a period of at least 5 years after the trustee ceases to be a trustee of the relevant trust.

Obligation to disclose that trustee is acting for relevant trust

8.—(1) Subject to paragraph (2), if a trustee of a relevant trust, when acting for the relevant trust, forms a business relationship with any specified person after 30 April 2017, the trustee must, at or before the time the business relationship is formed, take reasonable steps to inform the specified person that the trustee is acting for the relevant trust.

(2) The steps mentioned in paragraph (1) need not be taken by a trustee of a trust that is not a relevant trust on 30 April 2017 but which becomes a relevant trust after 30 April 2017, in respect of any business relationship that is formed within a period of 30 days after the date on which the trust becomes a relevant trust.

(3) Subject to paragraph (4), if a trustee of a relevant trust, when acting for the relevant trust, enters into a prescribed transaction with any specified person after 30 April 2017, the trustee must, at or before the time the prescribed transaction is entered into, take reasonable

steps to inform the specified person that the trustee is acting for the relevant trust.

(4) The steps mentioned in paragraph (3) need not be taken by a trustee of a trust that is not a relevant trust on 30 April 2017 but which becomes a relevant trust after 30 April 2017, in respect of any prescribed transaction that is entered into within a period of 30 days after the date on which the trust becomes a relevant trust.

(5) In this regulation —

“advocate and solicitor” and “practising certificate” have the same meanings as in section 2(1) of the Legal Profession Act (Cap. 161);

“law practice” has the same meaning as in section 70A(2) of the Legal Profession Act;

“prescribed transaction” means a transaction that has an aggregate value or amount of more than \$20,000, whether the transaction is carried out in a single operation or multiple operations that appear to be linked;

“specified person” means —

- (a) a financial institution as defined in section 27A(6) of the Monetary Authority of Singapore Act (Cap. 186), read with section 27A(7) of that Act;
- (b) a casino operator as defined in section 2(1) of the Casino Control Act (Cap. 33A);
- (c) a licensed estate agent as defined in section 3(1) of the Estate Agents Act (Cap. 95A);
- (d) a dealer in precious stones or precious metals as defined in regulation 2 of the Corruption, Drug Trafficking and Other Serious Crimes (Cash Transaction Reports) Regulations 2014 (G.N. No. S 692/2014);
- (e) an advocate and solicitor who —
 - (i) has in force a practising certificate; or

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- (ii) is a director, a partner, a consultant or an employee of a law practice, whether or not the advocate and solicitor has in force a practising certificate;
 - (f) a regulated foreign lawyer as defined in section 2(1) of the Legal Profession Act;
 - (g) a foreign lawyer registered under section 36P of the Legal Profession Act;
 - (h) a notary public as defined in section 2 of the Notaries Public Act (Cap. 208);
 - (i) a public accountant as defined in section 2(1) of the Accountants Act (Cap. 2); or
 - (j) a person (not being a person mentioned in paragraph (e) or (f) or a public accountant) who provides one or more of the following services:
 - (i) acting as an agent for the formation of entities;
 - (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a person holding a similar position in any other entity;
 - (iii) providing a registered office, any business address or any accommodation, correspondence or administrative address for an entity;
 - (iv) acting as (or arranging for another person to act as) a trustee of an express trust, or performing (or arranging for another person to perform) a function equivalent to the function of a trustee in any other similar arrangement;
 - (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

Obligation to keep accounting records

9.—(1) A trustee of a relevant trust must take reasonable steps to ensure that there are kept in respect of the relevant trust, accounting records (including the details, documents and notes specified in paragraph (3)) that meet the requirements in paragraph (2).

(2) The accounting records mentioned in paragraph (1) must —

(a) in the case of a trust that is a relevant trust on 30 April 2017 —

(i) correctly explain all the transactions entered into by the relevant trust after 30 April 2017;

(ii) enable the financial position of the relevant trust after 30 April 2017 to be determined with reasonable accuracy; and

(iii) enable financial statements of the relevant trust in respect of any period after 30 April 2017 to be prepared;

(b) in the case of a relevant trust created after 30 April 2017 —

(i) correctly explain all the transactions entered into by the relevant trust on or after it is created;

(ii) enable the financial position of the relevant trust on or after it is created to be determined with reasonable accuracy; and

(iii) enable financial statements of the relevant trust in respect of any period on or after it is created to be prepared; and

(c) in the case of a trust that is not a relevant trust on 30 April 2017 but which becomes a relevant trust after 30 April 2017 —

(i) correctly explain all the transactions entered into by the relevant trust more than 30 days after it becomes a relevant trust;

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- (ii) enable the financial position of the relevant trust more than 30 days after it becomes a relevant trust to be determined with reasonable accuracy; and
 - (iii) enable financial statements of the relevant trust in respect of any period more than 30 days after it becomes a relevant trust to be prepared.
- (3) The accounting records mentioned in paragraph (1) must include —
- (a) details of all sums of money received and expended by the relevant trust, and the matters in respect of which the receipt and expenditure takes place;
 - (b) details of all sales, purchases and other transactions by the relevant trust;
 - (c) details of the assets and liabilities of the relevant trust; and
 - (d) in respect of the details mentioned in sub-paragraphs (a), (b) and (c) —
 - (i) underlying documents (including but not limited to invoices and contracts); and
 - (ii) such notes as may be necessary to give a reasonable understanding of the details.
- (4) Where a trustee of a relevant trust is required under paragraph (1) to ensure that accounting records in respect of any transaction are kept, the trustee must take reasonable steps to ensure the accounting records in respect of that transaction are kept for at least 5 years starting after the end of the calendar year in which the transaction is completed.

Offences

10. Any trustee of a relevant trust that, without reasonable excuse, fails to comply with regulation 4(1), 5(1), 6(1), 7, 8(1) or (3) or 9(1) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

Circumstances in which effective controller considered as ultimately owning, etc., relevant party

11. For the purposes of Part VII of the Act and these Regulations, the circumstances in which an effective controller of a relevant party is considered as —

- (a) ultimately owning the relevant party;
 - (b) ultimately controlling the relevant party; or
 - (c) exercising ultimate effective control over the relevant party,
- are specified in the Second Schedule.

FIRST SCHEDULE

Regulations 3(2) and 5(4)(b)

SPECIFIED RELEVANT TRUSTS

1. A trust in respect of which the trustee is the Public Trustee appointed under section 3 of the Public Trustee Act (Cap. 260).
2. A trust in respect of which the trustee is —
 - (a) a trust company that is granted a trust business licence under section 5 of the Trust Companies Act (Cap. 336);
 - (b) a private trust company that is exempted from the requirement to hold a trust business licence under section 15 of the Trust Companies Act;
 - (c) a bank as defined in section 2 of the Banking Act (Cap. 19);
 - (d) a merchant bank approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186); or
 - (e) a holder of a capital markets services licence under the Securities and Futures Act (Cap. 289), or any person that is exempted from the requirement to hold a capital markets services licence under paragraph 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap. 289, Rg 10).
3. A trust in respect of which a public company has been approved to act as a trustee under section 289 of the Securities and Futures Act.
4. A trust in respect of which the trustee is the Central Provident Fund Board established under the Central Provident Fund Act (Cap. 36).

SECOND SCHEDULE

Regulation 11

CIRCUMSTANCES IN WHICH EFFECTIVE CONTROLLER CONSIDERED AS ULTIMATELY OWNING, ULTIMATELY CONTROLLING OR EXERCISING ULTIMATE EFFECTIVE CONTROL OVER RELEVANT PARTY

Effective controller considered as ultimately owning relevant party

1. An effective controller is considered as ultimately owning a relevant party if —

- (a) where the relevant party is a company or foreign company having a share capital, the effective controller of the relevant party —
 - (i) has an interest in more than 25% of the shares in the company or foreign company; or
 - (ii) has an interest in one or more voting shares in the company or foreign company and the total votes attached to that share, or those shares, is more than 25% of the total voting power in the company or foreign company;
- (b) where the relevant party is a company or foreign company not having a share capital, the effective controller of the relevant party holds, whether directly or indirectly, a right to share in more than 25% of the capital, or more than 25% of the profits, of the company or foreign company; or
- (c) where the relevant party is a limited liability partnership, the effective controller of the relevant party holds, whether directly or indirectly —
 - (i) a right to share in more than 25% of the capital, or more than 25% of the profits, of the limited liability partnership; or
 - (ii) a right to share in more than 25% of any surplus assets of the limited liability partnership on a winding up.

Effective controller considered as ultimately controlling, etc., relevant party

2. An effective controller of a relevant party is considered as ultimately controlling the relevant party, or exercising ultimate effective control of the relevant party, if —

- (a) where the relevant party is a company or foreign company, the effective controller of the relevant party —

SECOND SCHEDULE — *continued*

- (i) holds the right, directly or indirectly, to appoint or remove the directors or equivalent persons of the company or foreign company who hold a majority of the voting rights at meetings of the directors or equivalent persons on all or substantially all matters;
 - (ii) holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the members or equivalent persons of the company or foreign company; or
 - (iii) has the right to exercise, or actually exercises, significant influence or control over the company or foreign company;
- (b) where the relevant party is a limited liability partnership, the effective controller of the relevant party —
- (i) holds the right, directly or indirectly, to appoint or remove the manager of the limited liability partnership, or if the limited liability partnership has more than one manager, a majority of the managers of the limited liability partnership;
 - (ii) holds the right, directly or indirectly, to appoint or remove the persons who hold a majority of the voting rights at meetings of the management body of the limited liability partnership;
 - (iii) holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the partners of the limited liability partnership; or
 - (iv) has the right to exercise, or actually exercises, significant influence or control over the limited liability partnership; or
- (c) where the relevant party is another trust or other similar arrangement, the effective controller of the relevant party has executive authority in the trust or other similar arrangement.

Supplementary provisions

3. For the purposes of paragraphs 1 and 2(a) and (b) —
- (a) subject to sub-paragraphs (b), (c) and (e), subsections (1A) to (6A), (8), (9) and (10) of section 7 of the Companies Act (Cap. 50) apply in determining whether a person has an interest in a share;
 - (b) if 2 or more persons jointly have an interest in a share, or jointly hold a right, each of the persons is considered for the purposes of those

SECOND SCHEDULE — *continued*

paragraphs as having an interest in that share, or as holding that right, as the case may be;

- (c) if shares in respect of which a person has an interest and the shares in respect of which another person has an interest are the subject of a joint arrangement between those persons, each of them is treated for the purposes of those paragraphs as having an interest in the combined shares of both of them;
- (d) if the rights held by a person and the rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of those paragraphs as holding the combined rights of both of them;
- (e) a share or right held by a person as nominee for another is to be considered for the purposes of those paragraphs as held by the other (and not by the nominee); and
- (f) a “voting share” mentioned in paragraph 1(a)(ii) does not include any treasury share or any share mentioned in section 21(4B) or (6C) of the Companies Act.

4. In paragraph 3 —

- (a) a “joint arrangement” is an arrangement between the persons having an interest in shares or between holders of rights that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement; and
- (b) an “arrangement” includes —
 - (i) any scheme, agreement or understanding, whether or not it is legally enforceable; and
 - (ii) any convention, custom or practice of any kind,

but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

5. In this Schedule —

- “company” and “foreign company” have the same meanings as in section 4(1) of the Companies Act;
- “limited liability partnership” has the same meaning as in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A).

Made on 31 March 2017.

NG HOW YUE
*Permanent Secretary,
Ministry of Law,
Singapore.*

[LAW 06/005/8.5 Vol. 8; AG/LEGIS/SL/337/2015/1 Vol. 1]