



E-alert: Amendments to Trusts Ordinance (Disclosure of beneficial interest in express trusts)

INTRODUCTION

The Trusts Ordinance No. 9 of 1917 (as amended) ("**Principal Enactment**") is the primary legislative enactment governing the creation and operation of trusts in Sri Lanka. With the intention of strengthening the domestic anti-money laundering framework, however, Parliament on 28th March 2018 enacted the Trusts (Amendment) Act No. 6 of 2018 ("**Trusts Amendment Act**"), introducing several '*beneficial ownership*' related record-keeping and disclosure obligations into the Principal Enactment.

Similar amendments have also been mooted to the Companies Act No. 7 of 2007 (see <http://www.dailymirror.lk/article/Govt-amends-Companies-Act-to-counter-money-laundering--148708.html>), in respect of companies incorporated in Sri Lanka¹.

THE DEFINITION OF 'EXPRESS TRUSTS'

Under section 2 of the Trusts Amendment Act the definition of an 'express trust' is incorporated to the Principal Enactment to read as "*a trust that is created by the author of the trust generally in the form of an instrument in writing with certainty indicating the intention of the trust, but does not include a constructive or a de facto trust, whether charitable or not*".

¹ Of course, with the enactment of the Trusts Amendment Act, there is a question as to whether there is a need for a separate 'beneficial ownership' register to be maintained by the Registrar General of Companies.

REGISTER OF EXPRESS TRUSTS

The sections 6A and 6B of the Trusts Amendment Act are to be read immediately after section 6 of the Principal Enactment which imposes duties on the Registrar-General to prepare and maintain a register containing information on 'every' express trust created in accordance with the Principal Enactment. Further, the Registrar-General is required to furnish any and all such information to the Financial Intelligence Unit (FIU)² or by any other authority with a written sanction of the FIU.

OBLIGATIONS OF A TRUSTEE OF AN EXPRESS TRUST

A trustee of an immovable or movable property in respect of an express trust, is placed under the obligation to tender any and all information he may have relating to such trusts (in a prescribed manner) to the Registrar-General, in order for the Registrar-General populate the said register with such information. The said obligation also stretches to providing such information to any relevant authority such as a public authority assigned with the responsibility of preventing money laundering and suppression of terrorist financing and any authority that performs the function of investigating and prosecuting the said crimes. Further, such trustees when entering into a continuing business relationship or conducting any transaction exceeding a prescribed financial limit, with any institution carrying out finance or non-finance business, are obliged to provide updated information on such trusts to the said intuitions. For your information, finance or non-finance businesses include licensed commercial banks, licensed finance companies etc., which are set-out under the definition of the said terms in the Financial Transactions Reporting Act No. 6 of 2006 (as amended).

Under section 19A a trustee is required to keep records of all such information as may be prescribed, on the identity of the following persons at the time of creation of an express trust under section 6 of the Principal Enactment, such as;

- (a) the trustee himself;
- (b) the co-trustees, if any;
- (c) the author of the trust;
- (d) the beneficiary, to the greatest extent possible; and
- (e) any other person engaged in the execution of the trust in the capacity of an agent, a legal representative, a manager, an investment advisor or a tax advisor, an accountant or otherwise.

The above requirement is also imposed on express trust that benefit a class of persons, all such information as may be prescribed, on the identity of every person belonging to such class of persons, to the greatest extent possible. Similarly, where an express trust has been created for the benefit of a person other than a natural person, the information on the identity of the natural person who is the beneficial owner of the trust, shall be kept in record.

² A department of the Central Bank of Sri Lanka, established to combat money laundering, terrorist financing and other related crimes in Sri Lanka (www.fiusrilanka.gov.lk).

Such information is required to be verified and updated every three months, to the greatest extent possible and a trustee is required to maintain records of information, at least for a period of six years from the date on which such person's involvement with the trust ceases to exist. For your information, regulations setting out guidelines (such as maintaining of records, updating of the register etc.) under the Trusts Amendment Act are yet to be issued.

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