

**C005/2015**



**Command Paper on  
a draft Bill to make provision for the voluntary  
registration of private trust companies and for matters  
related thereto.**

**Presented to Parliament by  
the Minister with responsibility for financial services**

**by Command of Her Majesty  
23<sup>rd</sup> April 2015**

## **1. Draft Bill**

## **2. Draft Explanatory Memorandum**

Comments on this Command Paper should be sent by email to

[commandpapers@gibraltar.gov.gi](mailto:commandpapers@gibraltar.gov.gi) or delivered to

Command Papers Consultation c/o Kevin Warwick, Ministry of Education,  
Justice and International Exchange of Information, Suite 771, Europort,  
Gibraltar, no later than 7 May 2015.

Any comments received later than 7 May 2015 may not be taken into account  
for the purposes of the relevant consultation.

## **Private Trust Companies Act 2015**

### **Section**

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# **BILL**

## **FOR**

**AN ACT** to make provision for the voluntary registration of private trust companies and for matters related thereto.

**ENACTED** by the Legislature of Gibraltar.

### **Short Title and Commencement.**

1. (1) This Act may be cited as the Private Trust Companies Act 2015.
- (2) This Act shall come into operation on the appointed by the Minister by notice in the Gazette and different days may be appointed for different provisions.

### **Interpretation.**

2. In this Act, unless the context otherwise requires—
  - “The 1989 Act” means the Financial Services (Investments and Fiduciary Services) Act of the laws of Gibraltar and any other law or enactment replacing, substituting or amending it from time to time;
  - “Certificate of Registration” shall have the meaning given to it in section 5(2);
  - “The Charities Act” means the Charities Act of the laws of Gibraltar and any other law or enactment replacing, substituting or amending it from time to time;
  - “Class VII Licence” means a licence issued under Section 8 of the 1989 Act and classified as a Class VII licence under Schedule 1 to the Financial Services (Licensing) Regulations 1991;

“Class VIII Licence” means a licence issued under Section 8 of the 1989 Act and classified as a Class VIII licence under Schedule 1 to the Financial Services (Licensing) Regulations 1991;

“Companies Act” means the Companies Act 2014 of the laws of Gibraltar and any other law or enactment replacing, substituting or amending it from time to time;

“Connected Individual” means an individual whose relationship to another is established in the manner set out in Schedule 1;

“Connected Trust Business” means Trust Business in respect of trusts where the Settlor(s) of that or those trusts is / are either–

- (a) the Designated Individual for the purposes of that Connected Trust Business; or
- (b) Connected Individuals of the Designated Individual;

“Declaration of Compliance” shall mean the form set out in Schedule 4 or such other form as the Registrar may by notice published in the Gazette prescribe from time to time for the purposes of this Act;

“Designated Instrument” shall have the meaning given to it in section 8(7)(a) and Schedule 5;

“Designated Individual” means the individual designated by a Private Trust Company to be the Designated Individual for the purposes of its Connected Trust Business;

“Exempted Person” means an exempted person for the purposes of Section 4 of and Schedule 4 to the 1989 Act;

“Income Tax Act” means the Income Tax Act 2010 of the laws of Gibraltar and any other law or enactment replacing, substituting or amending it from time to time;

“Minister” means the Minister with responsibility for financial services;

“Private Trust Company” means a company that has been registered as a Private Trust Company under this Act;

“the Register” shall have the meaning given to it in section 4(2);

“Registered Administrator” means a company holding a valid Class VII Licence or a valid Class VIII Licence;

“the Registrar” shall have the meaning given to it in section 4(1);

“Settlor” shall mean any person who settles or gifts assets into a trust and  
“Settlers” shall be construed accordingly;

“Trust Business” means the business of providing trustee services or holding trusteeship of a trust or trusts or performing functions as trustee of a trust or trusts and includes the holding of any one or more trusteeships and for the avoidance of doubt a company holding trusteeship of one trust shall be deemed to be undertaking Trust Business.

**Registration of Private Trust Companies.**

3. A company that wishes to undertake Connected Trust Business from or within Gibraltar may register as a Private Trust Company in accordance with the provisions of this Act.

**Establishment of Registrar and Register of Private Trust Companies.**

4.(1) There is established the office of the Registrar of Private Trust Companies which shall be held by the Registrar of Companies appointed under section 420(1) of the Companies Act.

(2) The Registrar shall establish and thereafter maintain a Register of Private Trust Companies.

(3) Subject to sub-section (4) below any person may on the payment of the fee or fees prescribed by the Minister from time to time inspect any records kept by the Registrar for the purposes of this Act and may require—

- (a) a copy in such form as the Registrar considers appropriate of any information contained in those records; or
- (b) a certified copy of, or extract from any such record.

(4) The right of inspection set out in sub-section (3) above extends only to the following information—

- (a) The name of any Private Trust Company on the Register;
- (b) The date on which any Private Trust Company was entered onto the Register;
- (c) The address of the registered office of any Private Trust Company on the Register;
- (d) The name of every director of any Private Trust Company on the Register;
- (e) The address of every director of any Private Trust Company on the Register.

(5) The right of inspection extends to the originals of documents delivered to the Registrar in printed form only where the record kept by the Registrar of the contents of the document is illegible or unavailable.

(6) In all legal proceedings, a copy of an extract from a record certified in writing by the Registrar to be an accurate record of the contents of any document delivered to him under this Act, shall be admissible in evidence—

- (a) as of equal validity with the original document; and
- (b) as evidence of any facts stated in it of which direct oral evidence would be admissible,

and, for this purpose, it shall not be necessary to prove the official position.

(7) Copies of or extracts from records furnished by the Registrar, instead of being certified by him in writing to be an accurate record, may be sealed with his official seal.

(8) Any person may require a Certificate of Registration of a Private Trust Company, signed by the Registrar or authenticated by his official seal.

(9) No process for compelling the production of a record by the Registrar shall issue from any court except with the leave of the Court, and any such process shall bear on it a statement that it is issued with the leave of the Court.

(10) Where—

- (a) a person requires a copy of material on the Register under subsection (3);
- (b) that person expressly requests that the copy be certified as a true copy; and
- (c) the Registrar provides the copy in electronic form,

the Registrar's certificate that the copy is an accurate record of the contents of the original document shall be provided in accordance with subsections (11) and (12).

(11) The certificate shall be authenticated by means of an electronic signature which—

- (a) is uniquely linked to the Registrar;
- (b) indicates that the Registrar has caused it to be applied;
- (c) is created using means that the Registrar can maintain under his sole control; and
- (d) is linked to the certificate and to the copy provided under subsection (3) in such a manner that any subsequent change of the data comprised in either is detectable.

(12) For the purposes of this section, an “electronic signature” means data in electronic form which is attached to or logically associated with other electronic data and which serve as a method of authentication.

**Application for Registration.**

5.(1) A company that is desirous of operating as a Private Trust Company under this Act may apply for registration by—

- (a) submitting to the Registrar—
  - (i) a copy of its Memorandum of Association and Articles of Association; and
  - (ii) an application form for registration as a Private Trust Company in the form set out in Schedule 2 or such other form as the Registrar may by notice published in the Gazette prescribe from time to time;
- (b) paying to the Registrar the first registration fee specified in Schedule 3; and
- (c) procuring the submission to the Registrar of a Declaration of Compliance from the Registered Administrator pursuant to section 9(3).

(2) Where the Registrar is satisfied that all the requirements of this Act in respect of the registration of a Private Trust Company have been complied with it shall register the Private Trust Company by entering its name on the Register and shall issue a Certificate of Registration in respect of that Private Trust Company.

(3) A Private Trust Company shall apply to the Registrar annually to renew its registration as a Private Trust Company and the Registrar shall renew the registration of that company as a Private Trust Company on—

- (a) the receipt of a Declaration of Compliance from the Registered Administrator pursuant to section 9(5) and;
- (b) the payment of the annual registration fee specified in Schedule 3.

(4) A company which—

- (a) is registered as a Private Trust Company under sub-section (2) and (if applicable) has renewed its registration for the period of operation under sub-section (3); and
- (b) complies with all the requirements of section 8(2) of this Act shall be deemed not to be—
  - (i) holding out as a professional trustee for profit or reward for the purposes of paragraph 2 of Schedule 3 to the 1989 Act;
  - (ii) soliciting for business as a professional trustee for profit or reward for the purposes of paragraph 2 of Schedule 3 to the 1989 Act; or
  - (iii) undertaking a Controlled Activity for the purposes of Section 3 of and Schedule 3 to the 1989 Act.

#### **Revocation, De-registration and Restoration.**

6.(1) The Registrar may by notice in writing revoke a Private Trust Company's registration as a Private Trust Company where—

- (a) that Private Trust Company is found to be in contravention of the provisions of section 8 of this Act; and/or
- (b) the company fails to apply to renew its registration as a Private Trust Company within thirteen (13) months of registration under section 5(2) or its last renewal under section 5(3) of this Act

upon which the name of the Private Trust Company shall be removed from the Register.

(2) A person who is aggrieved by any decision made by the Registrar under sub-section (1) may make an application to the Registrar to restore the company to the Register.

(3) An application made under subsection (2) must be accompanied by–

(a) an affidavit of–

(i) the applicant's interest in the matter, and

(ii) a statement of the facts on which the application is based;

(a) a Declaration of Compliance signed by the Registered Administrator of the Private Trust Company; and

(b) the fee prescribed in Schedule 3.

(4) In his discretion the Registrar may require that a person making an application under subsection (1) give notice of that application (including the facts on which the application is based and the relief sought) to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest.

(5) On receipt of an application under subsection (2) the Registrar, if satisfied that there are good grounds for restoration of the company to the register, may direct the name of the company to be restored to the register.

(6) Where an application to restore a company to the register has been made under subsection (2), in his discretion, the Registrar may refuse to consider the application and require that the person by whom the application was made apply to the Court for an order to restore the company.

(7) On an application to the Court under subsection (6), the Court may refuse the application or order the Registrar to restore the company to the Register.

(8) In any proceedings brought under subsection (6) the Court may determine any question which may be necessary or expedient to decide in connection with the restoration of the company to the Register.

(9) The Registrar shall be entitled to appear and be heard on any application to the Court under subsection (6) and shall appear if so directed by the Court.

(10) An order made by the Court under subsections (6) and/or (7) shall direct that notice of the order shall be served on the Registrar in the prescribed manner and, on receipt of the notice, the Registrar shall act accordingly.

(11) A Private Trust Company may deregister as a Private Trust Company by providing to the Registrar—

- (a) written notice of its desire to deregister as a Private Trust Company which such notice must be endorsed by the Registered Administrator; and
- (b) the Private Trust Company's Certificate of Registration.

upon receipt of which the Registrar shall remove the name of the Private Trust Company from the Register.

#### **Registrar Immunity.**

7. The Registrar shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the Registrar by this Act unless the act or omission is shown to have been in bad faith.

#### **Requirements of Private Trust Companies.**

8.(1) A company shall not be registered as a Private Trust Company under this Act unless it—

- (a) is incorporated under the Companies Act as—
  - (i) a private company limited by shares;
  - (ii) a private company limited by guarantee and not having a share capital;
  - (iii) a private company limited by guarantee and having a share capital;

- (iv) a private unlimited company; or
- (b) has established domicile in Gibraltar under Part XIII of the Companies Act and Part I of the Companies (Re-Domiciliation) Regulations 1996.

(2) A company registered as a Private Trust Company under this Act–

- (a) shall ensure that, at all times, it has a Registered Administrator in appointment;
- (b) shall ensure that, at all times, its Registered Administrator holds a valid Class VII Licence or a valid Class VIII Licence and has its registered office in Gibraltar;
- (c) shall not–
  - (i) solicit Trust Business or receive contributions from members of the public;
  - (ii) carry on any business other than Connected Trust Business; or
  - (iii) carry on Connected Trust Business in respect of anyone other than–
    1. the Designated Individual; or
    2. Connected Individuals of the Designated Individual; or
  - (iv) carry on any activity other than its Connected Trust Business or any activity incidental to its Connected Trust Business.

(3) If, subsequent to its appointment as the Registered Administrator of a Private Trust Company, the Registered Administrator ceases to hold a valid Class VII Licence or a valid Class VIII Licence, the Private Trust Company may continue to undertake Connected Trust Business for the period of four (4) weeks following the date on which the Registered Administrator ceases to hold a valid Class VII Licence or a valid Class VIII Licence during which period the Private Trust Company shall–

- (a) appoint a Registered Administrator holding a valid Class VII Licence or a valid Class VIII Licence; and
- (c) notify the Registrar in writing (or in any form as the Registrar may by notice published in the Gazette prescribe from time to time for these purposes) of the change of Registered Administrator and the change of registered office.

(4) A Private Trust Company shall notify the Registrar in writing (or in any form as the Registrar may by notice published in the Gazette prescribe from time to time for these purposes) of any change of Registered Administrator.

(5) A Private Trust Company shall within ten (10) days of being so requested by its Registered Administrator provide to it all information which the Registered Administrator requires in order to enable the Registered Administrator to discharge its obligations under this Act.

(6) A Private Trust Company shall ensure that—

- (a) there is no provision under its Memorandum of Association or Articles of Association which may cause or allow the Private Trust Company to breach any of the provisions of this Act;
- (b) it shall not conduct its operations in any manner inconsistent with this Act.

(7) A Private Trust Company shall maintain at its registered office—

- (a) a single Designating Instrument in the form specified in Schedule 5 (or such other form as the Registrar may by notice published in the Gazette prescribe from time to time) which identifies the individual who shall be the Designated Individual in relation to that Private Trust Company; and
- (b) the trust deed and/or other document containing or recording the trust and any deed instrument or document varying or supplementing the trust in respect of each trust for which it serves as trustee.

(8) In addition to all other requirements under this Act a Private Trust Company shall hold at least one (1) meeting per calendar year at its registered office where the Board of Directors and the Registered Administrator shall be present.

(9) A Private Trust Company which acts in contravention of subsection (2) of this section shall (subject to sub-section (3)) be guilty of an offence and shall—

- (a) have its Certificate of Registration revoked and its name removed from the Register under section 6(1); and
- (b) be liable to punishment under section 12.

(10) A company which acts in contravention of any of the provisions of this section other than the provisions of subsection (2) may have its Certificate of Registration revoked and its name removed from the Register under section 6(1).

**Registered Administrator.**

9.(1) No person other than a company holding a valid Class VII Licence or a valid Class VIII Licence may act as a Registered Administrator of a Private Trust Company.

(2) A company holding a valid Class VII Licence or a valid Class VIII Licence shall not agree to act as the Registered Administrator of a Private Trust Company unless—

- (a) it is in possession of a copy of the Designating Instrument identifying the individual who shall be the Designated Individual in relation to that Private Trust Company's Connected Trust Business; and
- (b) it has taken all reasonable steps to satisfy itself that the Private Trust Company complies with section 6(2)(c).

(3) Upon being appointed Registered Administrator of a Private Trust Company, the Registered Administrator shall as soon as is reasonably practicable submit to the Registrar a Declaration of Compliance.

(4) A Registered Administrator shall at all times maintain at its registered office a list of all Private Trust Companies for which it acts as Registered Administrator as well as copies of the following documents in relation to each Private Trust Company for which it acts as Registered Administrator—

- (a) Memorandum of Association and Articles of Association;
- (b) Designating Instrument; and

- (c) up to date copies of the trust deed and/or other document containing or recording the trust in respect of every trust under the Private Trust Company's trusteeship.

(5) The Registered Administrator of a Private Trust Company shall on a periodic basis take all reasonable steps to satisfy itself that the Private Trust Company continues to comply with the requirements of section 6(2)(c) and having so satisfied itself shall annually submit to the Registrar a Declaration of Compliance.

(6) The frequency with which the Registered Administrator reviews the compliance of a Private Trust Company with section 6(2)(c) shall be determined by the Registered Administrator on the basis of its assessment of the risk that the Private Trust Company may fail to comply with that section provided that the Registered Administrator must satisfy itself that the Private Trust Company is in compliance with the requirements of section 6(2)(c) of this Act immediately prior to its submission of a Declaration of Compliance under subsections (3) and (5) of this section.

(7) Where the Registered Administrator of a Private Trust Company discovers that the Private Trust Company has contravened any provision of section 6(2)(c) or where the Private Trust Company fails to provide to the Registered Administrator all the information which the Registered Administrator has requested and requires in order to discharge its duties under this Act and which the Private Trust Company is required to provide to the Registered Administrator under section 8(5) the Registered Administrator shall submit a report of non-compliance to the Registrar.

(8) The Registered Administrator shall submit the report of non-compliance to the Registrar under subsection (7)–

- (a) in cases where the Registered Administrator discovers that the Private Trust Company has contravened a provision of section 6(2)(c) within seven (7) days of the discovery; and
- (b) in cases where the Private Trust Company has failed to provide to the Registered Administrator all the information which the Registered Administrator has requested and which the Private Trust Company is required to provide to the Registered Administrator under section 8(5), within forty-five (45) days from the date on which the request for information was received by the Private Trust Company.

(9) The Registrar may on receipt of the report of non-compliance submitted by the Registered Administrator pursuant to sub-sections (7) and (8) by notice in writing revoke a Private Trust Company's registration as a Private Trust Company under section 6(1) without further inquiry or examination and remove the name of the Private Trust Company from the Register.

(10) A person who is aggrieved by any decision made by the Registrar under sub-section (9) may appeal to the Supreme Court.

(11) The Registered Administrator shall within a period of five (5) working days notify the Registrar in writing (or in any form as the Registrar may by notice published in the Gazette prescribe from time to time for these purposes) of-

- (a) any change to its registered office;
- (b) its proposed retirement or resignation as Registered Administrator of a Private Trust Company; or
- (c) the revocation or surrender of its Class VII License or Class VIII License or any variation or amendment to its Class VII License or Class VIII License which it considers material to its office as Registered Administrator of a Private Trust Company.

(12) A person who, whether by action or omission, contravenes subsections (1), (2), (3), (4), (5), (7), (8) or (11) of this section is guilty of an offence and is liable on conviction to the punishment set out in section 12 of this Act.

#### **Use of words "Private Trust Company".**

10.(1) Notwithstanding any provision of section 39 of the 1989 Act a Private Trust Company may use the words "Private Trust Company" or the letters "PTC" in the name by which the company is registered under the Companies Act.

(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 duly registered under this Act.

(3) Where a Private Trust Company seeks to change the name of the company it shall apply to the Registrar to do so and the Registrar may, subject to any conditions it may impose and on the payment of the fee specified in Schedule 3, consent to the change of name of the Private Trust Company.

**Disclosure of Information.**

11.(1) Subject to any provision in this Act to the contrary 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) Sub-section (1) does not apply to a person carrying out any duty imposed on him by the Income Tax Act or the Financial Services (Information Gathering and Co-Operation) Act 2013 or the 1989 Act or otherwise acting in pursuance of any international agreement to which Gibraltar is a party.

**Offences.**

12. A person who is guilty of an offence under this Act is liable on conviction to a fine not exceeding £25,000 or to a term of imprisonment of six (6) months or to both.

**Regulations.**

13. The Minister may make regulations generally to give effect to or to amend this Act.

**Amendment of Schedules.**

14. The Minister may amend the Schedules by Order.

## **SCHEDULE 1**

### **CONNECTED INDIVIDUALS**

1. For the purpose of this Act, the following persons shall be considered to be a Connected Individual in relation to a Designated Individual—
  - (a) his/her spouse or civil partner; and
  - (b) the children and remoter issue of the Designated Individual and his/her spouse or civil partner.
2. For any relationships listed in paragraph 1 that may be established by blood that same relationship may also be established by adoption.

## **SCHEDULE 2**

### **APPLICATION FORM FOR REGISTRATION OF A PRIVATE TRUST COMPANY**

#### **SECTION A – INFORMATION AVAILABLE FOR PUBLIC INSPECTION**

1. Name of the private trust company:
2. Address of the registered office of the private trust company:
3. Names of the Directors of the private trust company:
4. Addresses of the Directors of the private trust company:

#### **SECTION B – INFORMATION NOT AVAILABLE FOR PUBLIC INSPECTION**

1. Name of the Registered Administrator of the private trust company:
2. Address of the Registered Administrator of the private trust company:

### **INSTRUCTIONS**

**This application form should be accompanied by:**

- (a) a copy of the certificate of incorporation under the Companies Act in respect of the applicant company; and
- (b) proof of payment of the appropriate registration fee.

### **SCHEDULE 3**

#### **FEES**

**£**

First registration fee	[   ]
Annual registration fee	[   ]
Change of name	[   ]
Restoration fee	[   ]

**SCHEDULE 4**

**DECLARATION OF COMPLIANCE**

We, \_\_\_\_\_, Registered Administrator of the Private Trust Company, \_\_\_\_\_ (the “Company”), pursuant to section 9(3) / section 9(5) of the Private Trust Companies Act 2015 (“the Act”), hereby declare that:

1. The Company is conducting only Connected Trust Business and is not conducting or undertaking any other business.
2. The Company is not undertaking Connected Trust Business in respect of anyone other than:
  1. the Designated Individual; or
  2. Connected Individuals of the Designated Individual.
3. The Company is not soliciting for Trust Business (as defined in Section 2 of the Act).

We, \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 20[ ], make this solemn declaration conscientiously believing it to be true.

\_\_\_\_\_  
Signed for and on behalf of the Registered Administrator

## **SCHEDULE 5**

### **DESIGNATING INSTRUMENT**

[INSERT COMPANY NAME]

I, [INSERT DIRECTOR NAME], hereby confirm that in relation to [INSERT COMPANY NAME], the Designated Individual pursuant to the Private Trust Companies Act 2015 shall be:

[INSERT NAME OF DESIGNATED INDIVIDUAL].

Signed:

DIRECTOR

### **EXPLANATORY MEMORANDUM**

This Bill provides for voluntary registration of private trust companies and further provides for the criteria for registration and for the administrative and reporting regime for such companies as do so register.

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