

Regulation of Anguilla: /2022

Gazette Dated: , 2022

ANGUILLA PRIVATE TRUST COMPANIES REGULATIONS, 2022

Regulations made by the Governor in Council under Section 141 of the Business Companies Act, 2022.

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PART I
PRELIMINARY PROVISIONS

Interpretation

1. (1) In these Regulations, unless the context otherwise indicates—

“Act” means the Anguilla Business Companies Act, 2022;

“ceased operations,” means, in relation to a private trust company, that the private company no longer conducts connected trust business for any connected trust;

“connected person” has the same meaning assigned to that expression in paragraph (2);

“connected trust business” means trust business in respect of trusts of which there is one or more than one contributor to the funds of which are all, in relation to each other, connected persons;

“enforcer” means a person who has standing to enforce a special trust;

“group of companies” comprises every company which, directly or indirectly, is a subsidiary of the same holding company, and such a group includes the holding company.

“natural person” means a human being, as distinguished from a person who is a corporation, club, society, association or other body created by law;

“principal” means—

- (a) a person who is entitled to exercise control of ten per cent or more of the voting power over an institution or over another company of which the institution is a subsidiary;
- (b) a person, whether the person is a shareholder or not, in accordance upon whose directions or instructions—
 - (i) the directors of an institution;
 - (ii) the directors of an institution which is a subsidiary of another company, are accustomed to act; or
- (c) a director of a private trust company;

“private trust company” means a trust company which—

- (a) is incorporated in Anguilla; and
- (b) conducts no trust business other than connected trust business; and

“protector” means a person appointed under a trust instrument to direct or restrain a trustee in relation to the trustee’s administration of the trust.

(2) For the purposes of these regulations, a person is a connected person in relation to another person if—

- (a) they are in a relationship listed in the Schedule;
- (b) one is contributing to the funds of a trust as the trustee of a trust of which the other is a contributor;
- (c) each is in a group of companies; or
- (d) one is a company and the other is a beneficial owner of shares or other ownership interests of that company or of any other company in the same group of companies.

Registered office

2. (1) A private trust company shall maintain its registered office at the office of a company that holds a Trust licence under Part 3 of the Trust Companies and Banking Act.

(2) The Commission is entitled at all reasonable times to inspect all documents and records of the private trust company held or that should be held at the registered office.

(3) A private trust company shall keep at its registered office and make available for inspection by the Commission at its registered office, in relation to each relevant trust, adequate, accurate and up to date copies of the trust deed or other documents containing or recording —

- (a) the terms of the trust;
- (b) the name and address of the trustee;
- (ba) the name and address of the settlor;
- (bb) the name and address of any protector;
- (bc) the name and address of any enforcer;
- (c) the name and address of any contributor to the trust;
- (d) the name and address of any beneficiary to whom a distribution is made from the trust;
- (e) any deed or other document varying the terms of the trust; and
- (f) all financial and transactional records of the private trust company and its connected trust business.

(4) For the purposes of paragraph (3) —

- (a) where there is a transfer between trusts, “contributor” means the trustee or trustees of the transferor trust, and “beneficiary” means the trustee or trustees of the transferee trust; and

- (b) where there is a distribution to or for the benefit of a minor or an unincorporated charity, “beneficiary” means the person who gives a receipt for the distribution.

Exemption from licensing requirements

3. (1) A company that is a private trust company and is registered under paragraph (2), does not require a licence to carry on connected trust business.

(2) For the purposes of paragraph (1), a private trust company shall register with the Commission and, in order to be registered, shall, at the time of registration and on or before the 31st day of January every year thereafter during the continuation of the registration —

- (a) file with the Commission an annual declaration in such form as the Commission may approve, declaring —
 - (i) the name of the private trust company;
 - (ii) the names and addresses of the directors of the private trust company;
 - (iii) the names and addresses of the shareholders or members, if any, of the private trust company;
 - (iv) the name of the holder of the Trust licence providing the registered office of the private trust company;
 - (v) that the company is a private trust company to which paragraph (1) applies; and
 - (vi) that the company is in compliance with the requirements of these regulations;
- (aa) file with the Commission in the form specified by the Commission proof of the identification of the directors and shareholders of the private trust company; and
- (b) pay to the Commission an initial registration fee of three thousand five hundred dollars and thereafter an annual registration fee of three thousand five hundred dollars.

(3) A private trust company which fails to pay the annual registration fee pursuant to paragraph (2)(b) is required to pay, in addition to the annual registration fee, a surcharge not exceeding one-twelfth of the annual registration fee for every month or part of a month that the annual registration fee is not paid.

(4) A private trust company shall not file false, misleading or inaccurate information under paragraph (2)(a) and (aa); and, in addition to any other penalty that may be imposed for contravention of these regulations, the Commission may cancel the registration of a company if that company files any such false, misleading or inaccurate information or fails to comply with paragraph (2)(a) and (aa).

(5) If there is any change in the information provided to the Commission for the registration of a private trust company, the registered private trust company shall within thirty days

of the change, inform the Commission of the change.

Directors

4. A private trust company registering with the Commission under regulation 4(2) or a private trust company making any change to the membership of the board of the private trust company, on or after the commencement of these amending Regulations, is required to have a natural person appointed as a director.

Cancellation of registration

5. The Commission may refuse or cancel the registration of a private trust company where—
- (a) the private trust company requests the cancellation; or
 - (b) the Commission has reasonable grounds to believe that a private trust company or any principal of a private trust company—
 - (i) is conducting business in breach of the Anti-Money Laundering and Terrorist Financing Code, the Anti-Money Laundering and Terrorist Financing Regulations or any other applicable law; or
 - (ii) is not or ceases to be a fit and proper person.

Contributions

6. (1) 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 words “Private Trust Company”

7. (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 Anguilla Business Companies Act.
- (2) No person, other than a private trust company shall use the words “Private Trust Company” or the letters “PTC” in the description or title under which such person is carrying on business from within the Islands, whether or not such business is carried on in the Islands.

Penalty

8. A private trust company that contravenes regulation 2(3) or 3(2) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Surrendering registration

9. A private trust company surrendering its registration shall pay to the Commission a fee of three hundred dollars upon surrendering the registration.

Citation

10. These Regulations may be cited as the Private Trust Companies Regulations, 2022

Made by the Governor, after consultation with _____, this _____ day of _____, 2022

GOVERNOR OF ANGUILLA

DRAFT, 1st Consultation

SCHEDULE 1

(Regulation 1)

CONNECTED PERSONS

1. For the purposes of these regulations, the following persons constitute connected persons 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 stepchildren, 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 that person's children, the children of those children, and so on.
4. For the purpose of paragraph 3, the term "children" includes step-children.