

A BILL

i n t i t u l e d

An Act to amend the Trustee Act 1949.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Trustee (Amendment) Act 2024.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 3

2. The Trustee Act 1949 [*Act 208*], which is referred to as the “principal Act” in this Act, is amended in section 3 by inserting after the definition of “mentally disordered person” the following definition:

“ ‘Minister’ means the Minister charged with the responsibility for law;’.

New Part IVA

3. The principal Act is amended by inserting after section 44 the following part:

“PART IVA

TRANSPARENCY AND EFFECTIVE CONTROL
MECHANISMS

Application

44A. (1) This Part shall apply to an express trust—

- (a) governed by the laws of Malaysia;
- (b) administered in Malaysia; or
- (c) in respect of which a majority of the trustees is resident in Malaysia.

(2) For the purposes of this section—

- (a) a trust is administered in Malaysia if the control and management of the trust is exercised in Malaysia;
- (b) a trustee is resident in Malaysia if—
 - (i) the trustee, being an individual, is ordinarily resident in Malaysia; or
 - (ii) the trustee is incorporated, formed or established in Malaysia.

Interpretation

44B. In this Part, unless the context otherwise requires—

“beneficiary” means—

- (a) any person who is entitled to the benefit of any trust;
and

- (b) in the context of life insurance or another investment linked insurance policy, any person who will be paid the policy proceeds when or if an insured event occurs, which is covered by the policy;

“beneficial owner” includes—

- (a) a settlor;
- (b) a trustee;
- (c) a protector;
- (d) each beneficiary, or where applicable, the class of beneficiaries and objects of a power;
- (e) any other natural person exercising ultimate effective control over trusts which includes ownership or control exercised through a chain of ownership or control; and
- (f) in the case of an express trust, any natural person holding an equivalent position to any person referred to in paragraphs (a) to (e);

“competent authority” means—

- (a) the public authorities with designated responsibilities for combating money laundering or terrorist financing including its financial intelligence unit;
- (b) the authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing and seizing or freezing and confiscating criminal assets;
- (c) the authorities receiving reports on cross-border transportation of currency and bearer-negotiable instrument; and

- (d) the authorities that have anti-money laundering, countering the financing of terrorism supervisory, monitoring responsibilities aimed at ensuring compliance by financial institutions and designated non-financial business or profession with anti-money laundering and countering the financing of terrorism requirements;

“express trust” means a trust created by the settlor usually in the form of a document which includes a written deed of trust;

“property” means—

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, however acquired; or
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including currency, bank credits, deposits and other financial resources, traveller’s cheques, bank cheques, money orders, capital market products, drafts and letters of credit,

whether situated within or outside Malaysia, and includes a legal or equitable interest, whether full or partial, in any such property;

“protector” means a person who, under the instrument creating the express trust, has control over how a trustee of the trust administers the trust;

“settlor” means a person who transfers ownership of their assets to any trustee by means of a trust deed or similar arrangement.

Express trust

44c. (1) An express trust shall have the following characteristics:

- (a) a fiduciary relationship in which a trustee holds or deals with trust property for the benefit of the beneficiaries or for a lawful purpose; and
- (b) a trustee is accountable for the way the trustee carries out the duties imposed on the trustee by any written law.

(2) A sole trustee of a trust shall not be the sole beneficiary of the trust.

(3) An express trust may be created—

- (a) by any written law;
- (b) by a settlor who, subject to any requirements provided under any written law—
 - (i) indicates an intention to create a trust;
 - (ii) identifies the beneficiaries or the lawful purpose of the trust; and
 - (iii) identifies the trust property.

(4) An express trust is created under subsection (3) when a trustee holds the property of the trust.

Duty to keep records and documents relating to beneficial ownership

44d. (1) A trustee shall collect and keep the following documents:

- (a) the trust deed and any other document that contains the terms of the trust;
- (b) any variations made to the trust deed or trust;

- (c) the records of the trust property that identify the assets, liabilities, income, and expenses of the trust and that are appropriate to the value and complexity of the trust property;
 - (d) any records of the trustee's decisions made during the trustee's trusteeship;
 - (e) any written contracts entered into during the trustee's trusteeship;
 - (f) any accounting records and financial statements prepared during the trustee's trusteeship;
 - (g) the documents of appointment, removal and discharge of trustees including any court orders appointing or removing trustees;
 - (h) any letter or memorandum of wishes from the settlor;
 - (i) any documents and information required to be kept by trustees as prescribed under section 66A;
 - (j) any other documents necessary for the administration of the trust; and
 - (k) any documents referred to in paragraphs (a) to (j) that were kept by a former trustee during that person's trusteeship and passed on to the current trustee.
- (2) The trustees of any express trust shall—
- (a) obtain and hold adequate, accurate and up-to-date beneficial ownership information regarding the trust which includes the information on the identity of the beneficial owners as follows:
 - (i) if an individual—
 - (A) his full name, including any aliases;

- (B) his identity card number, birth certificate number, passport number or other similar unique identification number issued by a government authority;
 - (C) his residential address;
 - (D) his date of birth;
 - (E) his nationality; and
 - (F) any other information as may be determined by the Minister; and
- (ii) if an entity—
- (A) its full name;
 - (B) its incorporation number or business registration number;
 - (C) its registered or business address;
 - (D) its principal place of business, if different from its registered or business address mentioned in subsubparagraph (C);
 - (E) its date of constitution, incorporation or registration;
 - (F) its place of incorporation or registration;
 - (G) the following information about the beneficial owner of the entity:
 - (AA) his full name, including any aliases; and
 - (AB) his identity card number, birth certificate number, passport number or other similar unique identification number issued by a government authority; and

(H) any other information as may be determined by the Minister;

- (b) obtain and hold adequate, accurate and up-to-date basic and beneficial ownership information of the parties to the trusts;
- (c) obtain and hold basic information on other regulated agents of, and service providers to, the trust including but not limited to investment advisors or managers, accountants and tax advisors;
- (d) keep the information obtained under subsection (1) and paragraphs (a), (b) and (c) for at least five years after their involvement with the trust ceases;
- (e) grant access to the documents and information referred to in subsection (1) and paragraphs (a), (b) and (c) in accordance with any regulations made under section 66A;
- (f) ensure that any information referred to in subsection (1) and paragraphs (a), (b) and (c) be kept accurate and up-to-date and the information should be updated within one month upon receipt of such information; and
- (g) disclose their status to the financial institutions and the designated non-financial businesses and professions when, in their function, forming a business relationship or carrying out an occasional transaction above the threshold.

(3) The Minister may, by order published in the *Gazette* specify the financial institutions and designated non-financial businesses and professions referred to in paragraph (2)(g).

(4) The Minister may, by order published in the *Gazette* and subject to such terms and conditions as may be specified in the order, exempt any trustee from this section.

(5) Any trustee who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Disclosure of beneficial ownership information to competent authorities of foreign states

44E. The Minister may enter into an agreement or arrangement, in writing, with the government of a foreign State regarding the exchange of beneficial ownership information, between the competent authority and any corresponding authority of that foreign State.”.

New sections 66A and 66B

4. The principal Act is amended by inserting after section 66 the following sections:

“Regulations

66A. (1) The Minister may make regulations as may be expedient or necessary for the purpose of carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations to prescribe—

- (a) all matters relating to beneficial ownership information;
- (b) the offences which may be compounded and the forms to be used and the method and procedure for compounding the offences under this Act; and
- (c) any other matters required by this Act to be prescribed.

Compounding of offences

66B. (1) The Minister may, with the approval of the Public Prosecutor, make regulations prescribing—

- (a) any offence under this Act as an offence which may be compounded; and
- (b) the method and procedure for compounding such offence.

(2) The Minister may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act prescribed to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Registrar appointed under subsection 20(1) of the Trustees (Incorporation) Act 1952 [*Act 258*] of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in his written offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted.

(4) If the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Minister may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(5) Where an offence has been compounded under subsection (2), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

(6) All sums of money received by the Minister under this section shall be paid into and form part of the Federal Consolidated Fund.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Trustee Act 1949 (“Act 208”) to introduce new provisions relating to transparency and effective control mechanism for trustees so as to be in line with international standards and practice.

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend section 3 of Act 208 to introduce new definition of “Minister” into Act 208.

4. *Clause 3* seeks to introduce new Part IVA into Act 208 which deals with the provisions relating to transparency and effective control mechanisms.

The proposed new section 44A seeks to provide for the application of new Part IVA in Act 208.

The proposed new section 44B contains the definitions of certain words and expressions used in the proposed new Part IVA.

The proposed new section 44C deals with express trust and the characteristics of an express trust.

The proposed new section 44D seeks to provide for the duty to keep records and documents relating to beneficial ownership by the trustees. The new section 44D also empowers the Minister to prescribe the financial institutions and designated non-financial businesses and professions and the exemption from the application of section 44D to the trustee by order published in the *Gazette*. The new section 44D also provides that any trustee who contravenes the section commits an offence.

The proposed new section 44E seeks to empower the Minister to enter into an agreement in writing with the government of a foreign state and between the competent authority of such foreign state to exchange information on beneficial ownership of a trustee.

5. *Clause 4* seeks to introduce new sections 66A and 66B into Act 208 to empower the Minister to make regulations for the purpose of carrying out or giving effect to the provisions of this Act and provisions relating to compounding of offences.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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