



ANALYSIS

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2004, No. 7

An Act to amend the International Trusts Act 1984

(1 June 2004)

BE IT ENACTED by the Parliament of the Cook Islands and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the International Trusts Amendment Act 2004 and shall be read together with and deemed part of the International Trusts Act 1984 (herein referred to as "the principal Act").

(2) This Act shall come into force on the 1st day of June 2004.

2. Interpretation - Section 2 of the Principal Act is amended by deleting the definition of "Commissioner".

3. Certificate of registration - Section 16 of the principal Act is amended by -

- (a) deleting from subsection (3), the words "within the period of 90 days of" and substituting the words "on or before"; and
- (b) deleting from subsection (6), the word "7" and substituting the word "90"; and
- (c) deleting from paragraph (a) of subsection (6) the words "within the period specified in subsection (3)" and substituting the words "on or before the date of expiry of the last certificate of registration"; and
- (d) inserting after subsection (6), the following new subsection -

“(6A) In every case where the registration of a trust is renewed after the Registrar has given notice pursuant to subsection (6), there shall be payable to the Registrar in addition to the prescribed fee, a further fee of \$50 or such other amount as may be prescribed.”

4. Privacy - The principal Act is amended by deleting section 23 and substituting the following new section –

“23. Privacy - (1) Except where the provisions of this Act require, and subject to this section, it shall be an offence for a person to disclose to any other person information relating to the establishment, constitution, business undertaking or affairs of an international trust.

(2) Subsection (1) shall not apply to a disclosure if:

- (a) the disclosure is required or authorised by the Court;
- (b) the disclosure is made for the purpose of discharging any duty, performing any function or exercising any power under any Act;
- (c) the disclosure is made as required by or under a search warrant.

(3) All judicial proceedings other than criminal proceedings relating to an international trust shall, unless ordered otherwise by the Court, be heard in camera. The decision of the Court in any proceeding may unless ordered otherwise by the Court as to the whole or any part of the decision, be published.

(4) Notwithstanding subsection (3), a copy of every decision of the Court affecting an international trust shall be provided by the Registrar of the Court to the Financial Supervisory Commission.

(5) A trustee or an officer or employee of a trustee or trustee company may divulge or make available information relating to the establishment, constitution, business undertakings or affairs of an international trust to any person or class of persons as that trustee or officer or employee of a trustee or trustee company considers necessary from time to time, in its complete discretion, for carrying out the management and administration of the trust in the ordinary course of business, including to a legal practitioner for the purpose of obtaining legal advice relating to establishment, constitution, business undertakings or affairs of an international trust; or for the purpose of prosecuting or defending any litigation relating to the establishment, constitution, business undertakings or affairs of an international trust.”

26. 5. Power of Exemption - The principal Act is amended by repealing section

6. Trust records – Section 27C of the principal Act is amended by –

- (a) deleting subsection (2) and substituting the following new subsection -

“(2) When an international trust has been terminated, or ceases to be an international trust, each trustee company, international company or foreign company that is or has been a trustee of that trust shall ensure that the records in its possession are retained by it for a period of six years from the said date of termination or removal or resignation of the trustee as the case may be, but thereafter those records may be destroyed.”

- (b) deleting from subsection (3), the word “three” and substituting the word “six”.

7. Application of other Acts - The principal Act is amended by –

- (a) adding to the Schedule to that Act, the following:

“Crimes Act 1969
Criminal Procedure Act 1980-81
Proceeds of Crime Act 2003
Financial Supervisory Commission Act 2004
Mutual Assistance in Criminal Matters Act 2003
Extradition Act 2003
Financial Transactions Reporting Act 2003
Terrorism Suppression Act 2004”

- (b) deleting from the Schedule to that Act, the words “Monetary Board Act 1981”.

This Act is administered by the Financial Supervisory Commission