



**AN ACT TO AMEND THE BANKS AND TRUST COMPANIES  
REGULATION ACT**

**ENACTED BY THE PARLIAMENT OF THE BAHAMAS**

<b>Short title</b>	1.(1)	This Act, which amends the Banks and Trust
<b>and</b>		Companies Regulation Act, may be cited as the Banks and
<b>commence</b>		Trust Companies Regulation (Amendment) Act, 2006.
<b>ment.</b>	(2)	This Act shall come into force on such date as
<b>Ch.316.</b>		the Minister may appoint by Notice published in the
		Gazette.
<b>Amends</b>	2.	Section 2 of the principal Act is amended –
<b>section 2</b>		(a) by the insertion in the appropriate
<b>of the</b>		alphabetical position of the following –
<b>Principal</b>		“Bahamas Agent” means a Registered

**Act.**

Representative who provides  
administrative services to a private trust  
company under a service agreement;

“Designated Person” means the individual or  
individuals (whether living or deceased)  
described as such within a Designating  
Instrument provided that if more than  
one Designated Person is described as  
such each Designated Person must be  
related to a Designated Person so  
described by consanguinity or some  
other family relationship;

“Designating Instrument” means  
an instrument in the form specified  
in the First Schedule to the Banks  
and Trust Companies (Private Trust  
Companies) Regulations, 2006  
 (“Private Trust Companies  
Regulations”);

“Other family relationships” means personal  
relationship between two persons -

(i) by marriage or former marriage;

or

(ii) which exists if -

(a) one is the child of the other,

natural or adopted, legitimate or

illegitimate; or

(b) one is regarded by the other as

his child;”

“Private Trust Company” means -

a company incorporated under the

provisions of the Companies Act,

or the International Business Companies

Act, which by its Memorandum and

Articles of Association –

(a) acts as trustee only for a trust or

trusts created or to be created by

or at the direction of a

Designated Person or Designated

Persons or an individual or

individuals who are related by

consanguinity or other family

relationships to the Designated

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Person described within the Designating Instrument or, if there is more than one Designated Person so described, to a Designated Person, which Designated Person or Designated Persons need not be named in such company's Memorandum and/or Articles of Association;

- (b) is required to have a Registered Representative; and
- (c) is not the subject of a notice of withdrawal made under section 4(7) ;

“Registered Representative” means

a licensee or a Financial and Corporate Service Provider approved by the Governor, which provides to a private trust company, the services of a -

- (i) secretary;
- (ii) director;

(iii) Bahamas Agent ,

and is resident in The Bahamas.

**Amends  
section 3  
of the  
principal  
Act.**

3. Section 3 of the principal Act is amended by the insertion of the following subsections immediately after subsection (2) -

“(3) No person shall be a Registered Representative (whether or not such business is carried on in or from within The Bahamas) unless that person is -

(a) in possession of a valid licence granted by the Governor pursuant to section 3(2) of this Act; or

**Ch. 369.** (b) a licensee under the Financial and Corporate Service Providers Act, who has obtained the prior approval of the Governor to carry on such business.

**Exemption.** (4) The Governor may by Regulation exempt any specified person or class of persons, or any specified class or part of any class of

banking or trust business from the provisions of sub-sections (1) and (2) of section 3, or of any regulations made pursuant to this Act, subject to such terms and conditions as may, in the Governor's opinion, be appropriate.

- (5) Subject to subsection (4), the provisions of this Act shall, unless the context otherwise requires, apply mutatis mutandis to Private Trust Companies and to Registered Representatives.
- (6) For the avoidance of doubt, the Governor may impose any of the sanctions set out in section 18 (1)(b), (c), (d), (e), (f) and (g) of this Act, against a Private Trust Company or a Registered Representative where, in the opinion of the Governor, the Private Trust Company or a Registered Representative is,

whether in The Bahamas or elsewhere,

- (a) contravening any of the provisions of this or any other Act or of any order or regulations made under this Act, or any term or condition subject to which an approval pursuant to subsection 3(3), or an exemption pursuant to subsection 3(4), was granted; or
- (b) contravening or failing to comply with a direction of the Governor; or
- (c) carrying on its business in a manner that is detrimental to the reputation of The Bahamas.

(b) by the re-numbering of subsection (3) as subsection (7).”

**Amends  
section 4  
of the principal  
Act.**

4. Section 4 of the principal Act is amended by the insertion immediately after subsection (6) of the following -

“(7) The Governor may, by notice in writing, withdraw -

- (a) any approval granted pursuant to

section 3(3); or

- (b) any exemption granted pursuant to section 3(4):

Provided that before withdrawing such approval or exemption, the Governor shall afford the Registered Representative an opportunity to make written representations regarding any proposed action within such time as may be specified in the notice, but not being a period of less than seven days.”.

(8) Whenever the Governor shall withdraw any approval or exemption under subsection (7) he may cause notice of such action to be published in the Gazette.

(9) Notwithstanding anything to the contrary in any trust instrument, where the Governor is satisfied that in the interests of a trust it is necessary for all or any of the trusts for which the company is acting as trustee to be transferred to a new trustee for administration by such trustee, the Governor may petition the court for that purpose.



(10) Wherever the Governor takes action pursuant to subsection (9), the court, may, after hearing representations from the Governor or any other person appearing to the court to be affected, order the transfer of any such trust to a new trustee, and may make such supplemental or incidental orders or give such directions, as the court thinks fit.”.

**Amends  
Third  
Schedule  
of the  
principal  
Act.**

5. The Third Schedule of the principal Act is amended by the insertion of the following immediately after paragraph (p) -

“(q) On commencement of the business of a private trust company ..... 5,000.

(r) Continuance in being on the first day of January in any year as a private trust company mentioned in paragraph (q) ..... 5,000.”.

## OBJECTS AND REASONS

This Bill empowers the Governor to exempt private trust companies from the licensing requirements of the principal Act.

Clause 2 defines “private trust company” and also defines “Registered Representative”.

Clause 3(3) requires a person who is not a licensee to obtain the Governor’s prior approval before acting as a Registered Representative.

Clause 3(4) empowers the Governor to exempt a person from the licensing requirements of the Banks and Trust Companies Regulation Act.

Clause 3(5) provides that the provisions of the Banks and Trust Companies Regulation Act apply to Private Trust Companies and to Registered Representatives.

Clause 4(7) empowers the Governor to withdraw, by notice in writing, any approval or exemption granted by him under section 3(3) or 3(4) of the Banks and Trust Companies Regulation Act, 2000.

Clause 4(8) empowers the Governor to publish in the gazette a notice that he has withdrawn any approval or exemption granted to a Registered Representative or Private Trust Company, respectively.

Clause 4(9) empowers the Governor to petition the court to transfer the trusteeship of a trust.

Clause 5 seeks to impose an annual licence fee of \$5,000.00 for persons who carry on private trust business.