

**DRAFT GUIDELINES ON SCOPE OF REGULATION**

**DISCLAIMER: This version of the Guidelines is in draft form and subject to change.**



The Monetary Authority of Singapore

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# **TRUST COMPANIES ACT (ACT 11 OF 2005)**

## **GUIDELINES ON SCOPE OF REGULATION**

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**Guideline No: TCA 0[...] - G0[...]**

**Issue Date: [...] 05**

## **GUIDELINES ON SCOPE OF REGULATION**

### **1. Purpose of these Guidelines**

1.1 These Guidelines are issued pursuant to section 74 of the Trust Companies Act (Act 11 of 2005) (“the Act”) to provide guidance on the scope of regulation under the Act, as well as the scope of the exemption for banks and merchant banks set out in Section 15 of the Act.

1.2 The Monetary Authority of Singapore (“MAS”) will be guided by these Guidelines in considering whether a person is engaging in regulated activity under the Act, and whether the activities of a bank or merchant bank set out in Section 15 of the TCA are procedural and non-discretionary.

1.3 These Guidelines should be read in conjunction with the provisions of the Act, Trust Companies Regulations 2005 (“the Regulations”) as well as written directions, notices, codes and other guidelines that MAS may issue from time to time.

### **2. Definitions**

2 For the purposes of these Guidelines:

“client” includes the settlor, beneficiary of a trust and a prospective settlor or beneficiary.

### **3. Creation and Arranging**

3.1 In considering whether a person is engaged in the creation of an express trust or in arranging for any person to act as trustee in respect of an express trust, MAS will take into account such activities undertaken before the trust is created, including but not limited to the following -

- (a) preparation of documents relating to an express trust, such as the trust deed, letter of wishes, minutes of the trustee, agreements between trustee and other parties, and any other document relating to the trust;
- (b) advising on documents relating to an express trust, including the trust deed, letter of wishes, minutes of the trustee, agreements between trustee and other parties, and any other document relating to the trust;
- (c) advising on trust structures, including tax, legal or accounting issues;
- (d) seeking a person to act as trustee or provide trust administration services;

- (e) reviewing and performing due diligence on existing trust structures where the licensed trust company did not provide trust business services for that trust prior to the review and due diligence;
- (f) preparation of documentation for and giving of advice on transfer of existing trust structures in paragraph 3.1(e) above to the licensed trust company;
- (g) compiling information from any other parties connected with or related to the express trust; and
- (h) incorporation of companies to hold trust assets, including drafting of documents relating to or connected with such incorporation purposes.

#### **4. Administration**

4.1 In considering whether a person is engaged in trust administration services in relation to an express trust, such activities that MAS will take into account include the following -

- (a) keeping of accounting records relating to an express trust and the preparation of trust accounts;
- (b) acting as a custodian without also acting as a trustee;
- (c) the management and administration of trust assets that are the subject of an express trust;
- (d) dealing with trust assets that are the subject of an express trust, including the investment, transfer and disposal of such assets;
- (e) the distribution of trust assets that are the subject of an express trust;
- (f) the payment of expenses or remuneration out of a trust;
- (g) preparation of documentation for and giving of advice on transfer of existing trust structure from a licensed trust company;
- (h) review and monitoring the activities of investment advisors, agents, and persons to whom a trustee has delegated any trust, power or discretion;
- (i) exercising any trust, power or discretion on behalf of a trustee;
- (j) preparation of documentation for termination of an express trust;
- (k) opening bank accounts for an express trust; and
- (l) transferring assets into an express trust.

4.2 The activities listed in paragraph 3.1 (a), (b), (c), (d), (g) and (h) which may take place after a trust is created may also be taken into account by MAS in considering whether a person is engaged in trust administration services in relation to an express trust.

#### **5. What constitutes “procedural and non-discretionary”**

5.1 An activity that is procedural and non-discretionary would not involve advising on the trust or making significant decisions affecting the trust.

5.2 The following are examples of what MAS considers as procedural and non-discretionary trust administration services: -

(a) carrying out the actual mechanics of making a distribution would be procedural and non-discretionary but not the decision on whether to make a distribution;

(b) obtaining signatures from or forwarding copies of documents to clients would be procedural and non-discretionary but not the preparation of or amendments to documents relating to a trust.