



THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

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House: Senate

Minister: The Minister of Finance

Senate Bill No: 3 of 2023

Links: The links to the Bill, and its progress can be found on the Bill's home page through the Parliament's Website:

<https://www.ttparliament.org/publication/the-miscellaneous-provisions-trustees-exchequer-and-audit-act-the-minister-of-finance-incorporation-act-proceeds-of-crime-income-tax-companies-partnerships-securities-tax-information-exchan/>

BILL ESSENTIALS

BILL ESSENTIALS NO. 2 of 2023-2024

4th SESSION, 12th PARLIAMENT

The Miscellaneous Provisions (Trustees, Exchequer and Audit Act, the Minister of Finance (Incorporation) Act, Proceeds of Crime, Income Tax, Companies, Partnerships, Securities, Tax Information Exchange Agreements, the Non-Profit Organisations and Mutual Administrative Assistance in Tax Matters) Bill, 2023

Table of Contents

Bill Summary.....	2
Key Features Of The Bill (By Act Amended).....	2
Amendments To Section 10 Of The Trustee Ordinance, Cap 4 Of 193.....	3
Amendment Of The Minister Of Finance (Inc.) Act, Chap 69:03.....	3
Amendment Of Reg 12 Of The Financial Obligations Regulations Of The Proceeds Of Crime Act, Chap 11:27.....	4
Amendment Of The Income Tax Act Chap. 75:01.....	4
Amendment Of The Companies Act, Chap 81:01.....	4
Amendment Of The Partnerships Act, Chap 81:02.....	5
Amendment Of The Securities Act, Chap 83:02.....	5
Amendment Of The Non-Profit Organizations Act, No. 7 Of 2019.....	5
Amendment Of The Tax Information Exchange Agreements Act, No. 5 Of 2020.....	5
Amendment Of The Mutual Assistance In Tax Matters Act, No. 7 Of 2020.....	5
References.....	5-6

BILL SUMMARY

1. The Miscellaneous Provisions (Trustees, Exchequer and Audit Act, the Minister of Finance (Incorporation) Act, Proceeds of Crime, Income Tax, Companies, Partnerships, Securities, Tax Information Exchange Agreements, the Non-Profit Organisations and Mutual Administrative Assistance in Tax Matters) Bill, 2023 (“the Bill”) is an omnibus bill. Omnibus bills are a comprehensive legislative measure encompassing a variety of different provisions of a similar subject. The Bill seeks to amend several Acts related to trusts and beneficial ownership.
2. The Honourable Colm Imbert, Minister of Finance, introduced the Bill in the Senate in the Fourth Session of the Twelfth Parliament, on November 24th, 2023.
3. The amendments seek to create a comprehensive regulatory framework that aims to prevent money laundering by enhancing transparency, accountability, and to facilitate the tracing and verification of beneficial ownership of financial entities. Additionally, the amendments align with global efforts to combat financial crimes via several economic safeguards.
4. **A beneficial owner is a person/trustee/settlor/beneficiary who, either directly or indirectly, has control over a trust.**¹ The proposed Bill expands the definition of a 'beneficial owner' to emphasize having effective control and that such being controls at least ten percent (10%) of a company or entity. This control is monitored by mandating accurate record-keeping and introducing legal measures for transparency.

KEY FEATURES OF THE BILL

Amendments to Section 10 of the Trustee Ordinance, Cap 4 of 1939

5. **Clause 3 of the Bill** amends the Trustee Ordinance by supplementing the **existing Section 10 of the Ordinance** related to beneficial ownership.
6. **Clause 3** proposes **Section 10A** to provide context for the proposed Section 10B. Section 10A specifies that reference to individuals in Section 10B include corporations, bodies corporate, or international organizations.
7. The proposed **Section 10B** places an obligation on trustees and administrators to inquire into and collect beneficial ownership information for express trusts² and other legal arrangements.
8. The proposed **Section 10C** outlines the requirements and penalties related to the disclosure of beneficial ownership by registered entities pursuant to the Securities Act and Companies Act. This




¹ Per Black's Law Dictionary (9th edition), a beneficial owner can have use and title over something even if the legal title belongs to someone else. Ex: A corporate shareholder who can buy and sell shares but is not registered as the owner.

² An express trust is a trust whereby the creator (“trustor” or “settlor”) leaves explicit instructions for the treatment of the subject matter. The alternative is an implied trust.

Section includes a new requirement of beneficial owners to complete the applicable form of the Companies Act for submission to the trustee/administrator of the express trust/legal arrangement.

9. The proposed **Section 10D** requires a trustee or administrator to file the statement of the beneficial owner (per the proposed **Section 10C**) with the Registrar General within thirty (30) days of receipt of same.

Amendments of the Exchequer and Audit Act, Chap 69:01

10. **Clause 4 of the Bill** amends the Exchequer and Audit Act, Chap 69:01 by inserting new sections after the **existing Section 31**.
11. The proposed **Section 31A** introduces definitions for “beneficial owner” and “Member”. A “Member” means person(s) having control over a statutory body, including director.
12. The proposed **Section 31B** compels statutory bodies subject to this Bill to maintain an up to date record of its beneficial owners. Some of the requirements of a statutory body include taking reasonable steps to:
 -  Issue a notice to all of their beneficial owners (within thirty (30) days of the commencement of this section) to acquire all necessary information;
 -  Maintain and keep an updated Register that retains the information of all beneficial owners (even those who cease to be beneficial owners for at least six (6) years thereafter; and
 -  Ensure that the Register is verified annually.
13. The failure of a statutory body to maintain the required records will result in a penalty, which includes fines and imprisonment.
14. The proposed **Section 31C** aims to simplify the reporting process for individuals holding ten percent (10%) or more in membership interest in relation to statutory bodies. It exempts them from reporting their information if they are already listed on the register. However, if the listed person is not the beneficial owner, the beneficial owner must promptly submit a statement to the statutory body who is required to file a return with the Treasury.
15. Per the proposed **Sections 31D and 31E**, the Treasury must also maintain a register of beneficial owners to be regularly updated as returns are received. All filings of beneficial ownership information must be monitored.

Amendment of the Minister of Finance (Incorporation) Act, Chap 69:03

16. **Clause 5 of the Bill** introduces the definition of a beneficial owner. The clause requires the Corporation Sole or any person acting under its delegated authority to maintain the Register by the This register shall be sent to the Board of Inland Revenue.

Amendment of Regulation 12 of the Financial Obligations Regulations of the Proceeds of Crime Act, Chap 11:27

17. **Clause 6(a) of the Bill** amends Sub-regulation (5) and (6) of the Financial Obligations Regulations contained within the Proceeds of Crime Act by deleting and replacing the definition of “beneficial owner” and deleting the definition of the term “legal arrangements” and introducing a definition of “natural person in relation to legal arrangements”.

Amendment of the Income Tax Act Chap. 75:01

18. **Clause 7 of the Bill** proposes to delete and replace Section 4(8) of the Income Tax Act Chap. 75:01 with a new **Section 4(8)**. in the amendment prescribes the circumstances in which the Board of Inland Revenue can disclose taxpayer information received under tax information sharing agreements.

Amendment of the Companies Act, Chap 81:01

19. **Clause 8 of the Bill** seeks to amend the Companies Act, Chap. 81:01 to make provision for the cancellation, conversion, and in limited circumstances the reinstatement of bearer shares.
20. **Clause 8(b) of the Bill** proposes to declare bearer share warrants invalid. It also seeks to introduce a new process for the conversion of existing bearer shares, with penalties for non-compliance.

Amendment of the Partnerships Act, Chap 81:02

21. **Clause 9 of the Bill** seeks to amend the Partnerships Act, Chap. 81:02 by inserting new Sections following Section 20.
22. The proposed **Section 20A** inserts the definition of beneficial ownership. It also outlines specific identification criteria of the beneficial owners of partnerships not comprised of natural persons, including those who enjoy ultimate effective ownership or control, control through other means, or the senior managing official.
23. The proposed **Section 20B** mandates partnerships to obtain and update beneficial ownership information, issuing annual notices for partner statements. Failure to comply results in penalties, with fines and imprisonment. Partnerships must ensure correctness with the Registrar General, file annual reports, and maintain accurate information. They also risk facing penalties for non-compliance.
24. The proposed **Section 20C** mandates partnerships and individuals to submit statements disclosing beneficial ownership details. These details include aspects such as their capacity, name and address. If said information is changed, an update must be provided within thirty (30) days of receipt of information.

Amendment of the Non-Profit Organizations Act, No. 7 of 2019

25. **Clause 11 of the Bill** amends the Non-Profit Organizations Act by introducing a definition of "beneficial owner" for Non-Profit Organizations. It encompasses the natural person who owns or controls at least ten percent (10%) of the membership interest, the person exercising ultimate effective control or (if uncertainty exists) the individual holding the position of senior managing official.

26. **Clause 11 of the Bill** also introduces new Sections following Section 21. The proposed **Section 21A** imposes an obligation on Non-Profit Organizations to ascertain and obtain information as it relates to its beneficial owners. The information process described is identical to the outline for partnerships.
27. The proposed **Section 21B** outlines the procedures and responsibilities concerning the submission of statements and updates related to beneficial ownership in a Non-Profit Organisation. The submission process described is identical to the outline amendments for the Exchequer and Audit Act provided.
28. The proposed **Sections 21C and 21D** requires the Registrar General to maintain a register of beneficial owners and to monitor all filings by Non-Profit Organizations. This register must be regularly updated upon receipt of a return, pursuant to the proposed Section 21A.

Amendment of the Tax Information Exchange Agreements Act, No. 5 of 2020

29. **Clause 12 of the Bill** proposes to amend the Tax Information Exchange Agreements Act No. 5 of 2020 by considering “double taxation arrangements” provided for under the Income Tax Act as declared agreements under the Tax Information Exchange Agreements Act.
30. **Clause 12(c) of the Bill** seeks to introduce a new **Section 12**. This new section permits the Board of Inland Revenue to withhold notifying the person(s) whose personal information has been shared with the competent authorities of another State so as not to undermine the success of an ongoing investigation.

Amendment of the Mutual Administrative Assistance in Tax Matters Act, No. 7 of 2020

31. **Clause 13 of the Bill** seeks to amend Section 17 of the Mutual Administrative Assistance in Tax Matters Act to now require financial institutions to keep a record of all steps undertaken and records obtained/created/relied on when complying with the provisions of the Act.

REFERENCES

KEY LEGISLATION

- **Trustee Ordinance, Cap 4 of 1939**
<http://laws.gov.tt/ttdll-web2/revision/download/69983?type=amendment>
- **Exchequer and Audit Act, Chap 69:01**
<https://agla.gov.tt/downloads/laws/69.01.pdf>
- **Minister of Finance (Incorporation) Act, Chap 69:03**
<https://www.finance.gov.tt/wp-content/uploads/2019/07/The-Minister-of-Finance-Incorporation-Act.pdf>
- **Proceeds of Crime Act, Chap 11:27**
<http://laws.gov.tt/ttdll-web/revision/download/105648?type=act>
- **The Income Tax Act, Chap 75:01**
<http://laws.gov.tt/ttdll-web/revision/download/106658?type=act>

- **The Companies Act, Chap 81:01**
<http://laws.gov.tt/ttdll-web/revision/download/106725?type=act>
- **The Partnerships Act, Chap 81:02**
<http://laws.gov.tt/ttdll-web/revision/download/106687?type=act>
- **The Securities Act, Chap 83:02**
<http://laws.gov.tt/ttdll-web/revision/download/106463?type=act>
- **The Tax Information Exchange Agreements Act, No. 5 of 2020**
<http://news.gov.tt/sites/default/files/E-Gazette/Gazette%202020/Acts/Act%20No.%205%20of%202020%20The%20Tax%20Information%20Exchange%20Agreements%20Act.pdf>
- **The Non-Profit Organizations Act, No. 7 of 2019**
<https://fiu.gov.tt/wp-content/uploads/Non-Profit-Organisations-Act-2019.pdf>
- **The Mutual Assistance in Tax Matters Act, No. 7 of 2020**
<http://news.gov.tt/sites/default/files/E-Gazette/Gazette%202020/Acts/Act%20No.%207%20of%202020%20Mutal%20Administrative%20Assistance%20in%20Tax%20Matters%20Act,%202020.pdf>

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