

CAYMAN ISLANDS



Supplement No. 14 published with Extraordinary
Gazette No. 71, dated 9 September, 2016.

**A BILL FOR A LAW TO AMEND THE PROPERTY (MISCELLANEOUS
PROVISIONS) LAW (2011 REVISION), TO CORRECT DEFICIENCIES
AND TECHNICAL ERRORS IN THAT LAW; AND FOR INCIDENTAL
AND CONNECTED PURPOSES**

**THE PROPERTY (MISCELLANEOUS PROVISIONS) (AMENDMENT)
BILL, 2016**

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Property (Miscellaneous Provisions) Law (2011 Revision).

Clause 1 provides for the short title.

Clause 2 amends section 5 to permit agents lawfully appointed in writing to execute legal assignments of things in action for their principals.

Clause 3 inserts a new section 5A, which will require assignments of equitable interests to be made in writing or by will.

Clause 4 amends section 6 to delete a redundant reference to bearer shares.

Clause 5 inserts a new section 6A, which will provide for the construction of commonly understood terms in deeds, contracts, wills, orders and other instruments.

Clause 6 amends section 8 to insert a new subsection (6). That subsection will provide that existing section 8(4) shall not affect the Electronic Transactions Law (2003 Revision) from applying to other provisions of the Law (including those being inserted).

Clause 7 inserts new sections 8A, 8B and 8C. Section 8A will enable a power to be disclaimed by deed. Section 8B will facilitate the exercise of powers by deed or another type of non-testamentary instrument. Section 8C will repeal section 9 of the Statute of Frauds, 1677 of Parliament as it applies to the Islands.

Clause 8 inserts a new section 10, which contains transitional provisions.

**THE PROPERTY (MISCELLANEOUS PROVISIONS) (AMENDMENT)
BILL, 2016**

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 5 of the Property (Miscellaneous Provisions) Law (2011 Revision) - legal assignments of things in action
3. Insertion of section 5A - requirements for assigning equitable interest
4. Amendment of section 6 - things in action represented by bearer instruments
5. Insertion of section 6A - construction of expressions used in deeds and other instruments
6. Amendment of section 8 - deeds and certain other instruments no longer required to be executed under seal
7. Insertion of sections 8A, 8B and 8C- disclaimer of power - execution of non-testamentary power - repeal for Islands of section 9 of Statute of Frauds, 1677 of Parliament
8. Insertion of section 10 - transitional provisions for Property (Miscellaneous Provisions) (Amendment) Law, 2016.

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE PROPERTY (MISCELLANEOUS PROVISIONS) LAW (2011 REVISION), TO CORRECT DEFICIENCIES AND TECHNICAL ERRORS IN THAT LAW; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Property (Miscellaneous Provisions) (Amendment) Law, 2016.

Amendment of section 5 of the Property (Miscellaneous Provisions) Law (2011 Revision) - legal assignments of things in action
Insertion of section 5A - requirements for assigning equitable interest

2. The Property (Miscellaneous Provisions) Law (2011 Revision), in this Law referred to as the “principal Law”, is amended in section 5(1) by deleting the words “under the hand of the assignor” and substituting the words “signed by the assignor or the assignor’s agent lawfully authorised in writing”.

3. The principal Law is amended by inserting after section 5 the following section -

“Requirements for assigning equitable interest 5A. (1) An assignment of an equitable interest subsisting at the time of the assignment may be made only -

- (a) in writing, signed by the person assigning the interest or that person’s agent lawfully authorised in writing; or
- (b) by will.

(2) However, subsection (1) shall not apply to the

creation or operation of a constructive, implied or resulting trust.”.

4. The principal Law is amended in section 6 by deleting the words “shares in an ordinary company incorporated under the Companies Law (2011 Revision) or”.

Amendment of section 6 -things in action represented by bearer instruments

5. The principal Law is amended by inserting after section 6 the following section -

Insertion of section 6A - construction of expressions used in deeds and other instruments

“Construction of expressions used in deeds and other instruments

6A. In a deed, contract, will, order or other instrument, unless the context otherwise requires -

- (a) “month” means a calendar month;
- (b) “person” includes a company or corporation;
- (c) the singular includes the plural and *vice versa*; and
- (d) the masculine includes the feminine and *vice versa*.”.

6. The principal Law is amended in section 8 by inserting after subsection (5) the following subsection -

Amendment of section 8 - deeds and certain other instruments no longer required to be executed under seal

“(6) For the avoidance of doubt, subsection (4) shall not limit or otherwise affect the application of the Electronic Transactions Law (2003 Revision) to an instrument or to writing, or the signing of an instrument or writing, mentioned in another section of this Law.”.

7. The principal Law is amended by inserting after section 8 the following sections -

Insertion of sections 8A, 8B and 8C - disclaimer of power - execution of non-testamentary power - repeal for Islands of section 9 of Statute of Frauds, 1677 of Parliament

“Disclaimer of power

8A. (1) A person who holds a power may disclaim it by a deed executed before exercising the power.

(2) From the making of the disclaimer -

- (a) the person cannot exercise the power; and
- (b) unless the instrument that created the power otherwise provides, anyone else who also held the power immediately before the disclaimer may exercise the power.

(3) In this section -

“exercise”, a power, includes joining in its exercise; and

“power” includes a power coupled with an interest.

Execution of non-testamentary power

- 8B. (1) This section applies if -
- (a) an instrument (the “empowering instrument”) creates a power;
 - (b) the empowering instrument authorises or requires the power to be exercised by deed or another type of non-testamentary instrument (an “instrument of exercise”); and
 - (c) a particular instrument of exercise is executed as a deed in the ordinary way.

(2) The instrument of exercise is, so far as its execution is concerned, taken to be a valid exercise of the power.

(3) Subsection (2) applies even if the empowering instrument expressly requires an instrument of exercise to be executed with an additional or other form of execution or solemnity.

(4) However, subsection (2) shall not affect a requirement under the empowering instrument that, before exercising the power -

- (a) a particular person’s consent is required; or
- (b) an act, not relating to the mode of executing an instrument of exercise, is to be performed.

(5) In this section -

“executed” includes attested.

Repeal for Islands of section 9 of Statute of Frauds, 1677 of Parliament

8C. Section 9 of the Statute of Frauds, 1677 of Parliament is repealed to the extent the section applies to the Islands.”.

Insertion of section 10 - transitional provisions for Property (Miscellaneous Provisions) (Amendment) Law, 2016

8. The principal Law is amended by inserting after section 9 the following section -

“Transitional provisions for Property (Miscellaneous Provisions) (Amendment) Law, 2016

10. (1) Section 5 of the principal Law as in force immediately before the commencement of the Property (Miscellaneous Provisions) (Amendment) Law, 2016 (hereinafter referred to as the “amending Law”) shall continue to apply for assignments of debts and things in action before the commencement of the amending Law.

(2) Sections 5A, 6A, 8A and 8B shall only apply for a document made or an event that happens after the commencement of the amending Law.”.

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.