

CAYMAN ISLANDS



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

THE TRUSTS (AMENDMENT) BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Trusts Law (2011 Revision).

Clause 1 provides for the short title.

Clause 2 amends section 4(1) to remove the power to replace a trustee merely because the trustee has left the Islands for more than 12 months.

Clause 3 amends section 6(c) to include a corrected transitional provision for amendments under the Trusts (Amendment) (Immediate Effect and Reserved Powers) Law, 1998 (the “1998 amending Law”). Originally, the transitional provision was in section 6 of the 1998 amending Law (“transitional s 6”). Using powers under section 4 of the Law Revision Law (1995 Revision), section 110(4) was inserted into the Law to give effect to transitional s 6. Section 110(4) has always been understood as having applied to the amendments to section 6 (namely, that the 1998 amendments to section 6(c) only apply to a trust if it was created on or after 11th May 1998 or if the section is expressly extended to apply to the trust by a deed executed by its trustees.). However, a transitional provision contained in the “tail” to section 3 of the 1998 amending Law (which section made the amendment to section 6(c)) was to the reverse effect. Replacement section 6(c) resolves this conflict in a way that achieves the original intent.

Clause 4 inserts a new subsection (3) into section 8 (retirement of trustee without new appointment). This compliments an amendment of section 6(c) (“amended s 6(c)”) (about the appointment of trustees) under the 1998 amending Law. Section 8(3) will exempt the requirement under section 8 for there to be a trust corporation or at least two individuals as trustees if only one trustee was originally appointed or if a contrary intention is expressed in, or evidenced by, the trust instrument. Under inserted section 113(2), section 8(3) will only apply to a trust if it was created on or after 11th May 1998 (when the 1998 amending Law commenced) or if section 8(3) is expressly extended to apply to the trust by a deed executed by its trustees.

Clause 5 amends section 14 to allow settlors of trusts to reserve powers to appoint both trust income and capital. Under inserted section 113(3)(a), the amendment will apply to all trusts whenever created.

Clause 6 amends section 21 so that the power under that section to compound trust liabilities may be exercised by just a single trustee.

Clause 7 inserts a new section 23A. Section 23A will reflect section 158 of Law of the Property Act 1925 of Parliament (validation of appointments if objects are excluded or take illusory shares). The section will overturn an old rule of equity that required the trustee of a discretionary trust (but not for a discretionary power) to appoint at least something to every object of the power. Under inserted section 113(3)(b), section 23A will apply to all trusts, whenever created. Experienced trust drafters in the Islands have typically drafted discretionary trusts to avoid issues of validity because of the common law rule. Overseas, the position of the rule having been overturned has been commonly understood since 1925. Therefore, trusts for the Islands drafted overseas may not have been drafted to avoid the rule.

Clause 8 amends section 25 so that a trustee's power to insure the trust property may be for any adverse event and not just for fire.

Clause 9 amends section 71 (which was inserted under the 1998 amending Law) so that a charitable trust may benefit the public or a section of the public outside the Islands, wholly as well as just partly. Under inserted section 113(3)(a), amended section 71 will apply to all trusts, whenever created. This reverts section 71 to its commonly understood position since its insertion. Also, under inserted section 113(3)(a), section 71 will be deemed to apply to all trusts whenever created.

Clause 10 amends section 105 to correct a technical defect for provisions about trusteeship of "STAR" trusts under Part VIII, which was inserted on 7th August 2008. The correction will allow controlled subsidiaries to be the trustee of such a trust as well as a registered private trust company itself. Under inserted section 113(5), the amendment to section 105 will be deemed to have had effect on and from 7th August 2008.

Clause 11 repeals section 110(4) and makes a consequential amendment to the marginal note. Section 110(4) was a transitional provision for the 1998 amending Law. Inserted section 112 corrects and re-enacts that provision in the light of the amendments to section 6(c) and 71.

Clause 12 inserts a new Part X for transitional provisions other than for the Law's original enactment and the transitional provisions inserted into section 6(c) under clause 3. The objects of and reasons for inserted Part X are discussed above in context.

THE TRUSTS (AMENDMENT) BILL, 2016

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 4 of the Trusts Law (2011 Revision) - power of appointing new or additional trustees
3. Amendment of section 6 - supplemental provisions as to appointment of trustees
4. Amendment of section 8 - retirement of trustee without new appointment
5. Amendment of section 14 - reserved powers
6. Amendment of section 21 - power to compound liabilities
7. Insertion of section 23A - equivalent of the Law of Property Act 1925 of Parliament- validation of appointments if objects are excluded or take illusory shares
8. Amendment of section 25 - power to insure
9. Amendment of section 71 - charitable purposes
10. Amendment of section 105 - trust corporation
11. Amendment of section 110 - application of Law
12. Insertion of new Part X - other transitional provisions

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LAW; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Trusts (Amendment) Law, 2016. Short title
2. The Trusts Law (2011 Revision), in this Law referred to as the “principal Law”, is amended in section 4(1) by deleting the words “remains out of the Islands for more than twelve months,” and the words “remaining out of the Islands,”. Amendment of section 4 of the Trusts Law (2011 Revision) - power of appointing new or additional trustees
3. The principal Law is amended by repealing section 6(c) and substituting the following paragraph - Amendment of section 6 - supplemental provisions as to appointment of trustees
 - “(c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but (except if either (i) the trust was created before 11 May 1998 and the trustee has by deed executed by the trustee extended the Trusts (Amendment) (Immediate Effect and Reserved Powers) Law, 1998 to the trust or (ii) the trust was created on or after 11 May 1998 and, in either case, either (iii) only one trustee was originally appointed

or (iv) a contrary intention is expressed in, or evidenced by, the trust instrument) a trustee shall not be discharged from the trust unless there is either a trust corporation or at least two individuals to act as trustees to perform the trust; and”.

Amendment of section 8 - retirement of trustee without new appointment

4. The principal Law is amended in section 8 by inserting after subsection (2) the following subsection -

“(3) Subject to section 113(2), the requirement under subsection (1) for there to be a trust corporation or at least two individuals to act as trustees to perform the trust does not apply if -

- (a) only one trustee was originally appointed; or
- (b) a contrary intention is expressed in, or evidenced by, the trust instrument.”.

Amendment of section 14 - reserved powers

5. The principal Law is amended in section 14 as follows -

- (a) in subsection (1), by inserting after the words “a trust of” the words “any or all of the following”; and
- (b) in subsection (1)(b), by inserting after the word “capital” the words “, or both,”.

Amendment of section 21 - power to compound liabilities

6. The principal Law is amended in section 21 by deleting the words “A personal representative, or two or more trustees acting together,” and substituting the words “A personal representative or trustee”.

Insertion of section 23A - validation of appointments if objects are excluded or take illusory shares

7. The principal Law is amended by inserting after section 23 the following section -

“Validation of appointments if objects are excluded or take illusory shares

23A. (1) An appointment made in exercise of a power to appoint property among two or more objects is not invalid on the ground that -

- (a) an unsubstantial, illusory, or nominal share only is appointed to, or left unappointed to devolve upon, any one or more of the objects of the power; or
- (b) an object of the power is altogether excluded because of the exercise.

(2) Any such appointment is valid despite the fact that any one or more of the objects is not, because of the exercise or default of appointment, to take any share in the property.

(3) This section does not affect a provision in the

instrument creating the power declaring the amount of any share from which an object of the power is not to be excluded.”.

8. The principal Law is amended in section 25(1) by deleting the words “by fire” and substituting the words “due to any event”. Amendment of section 25 - power to insure
9. The principal Law is amended in section 71 by deleting the words “in part”. Amendment of section 71 - charitable purposes
10. The principal Law is amended in section 105(2), definition “trust corporation” by deleting the words “as a private trust company under that Law” and substituting the words “under that Law as a controlled subsidiary or private trust company”. Amendment of section 105 - trust corporation
11. The principal Law is amended in section 110 as follows - Amendment of section 110 - application of Law
- (a) by deleting the marginal note and substituting the following marginal note “Saving and transitional provisions for Law as originally enacted”;
 - (b) in subsection (1), by deleting the words “Subject to subsection (4), this Law” and substituting the words “This Law”; and
 - (c) by repealing subsection (4).
12. The principal Law is amended by inserting after Part IX the following Part - Insertion of new Part X - other transitional provisions

“PART X - OTHER TRANSITIONAL PROVISIONS

“Transitional provision for sections 13 to 15

112. Sections 13 to 15 only apply to a trust if -

- (a) the trust was created on or after the 11th May, 1998; or
- (b) the sections are or have been expressly extended to apply to the trust by a deed executed by its trustees.

Transitional provisions for Trusts (Amendment) Law, 2016

113. (1) This section applies to the amendments to this Law under the Trusts (Amendment) Law, 2016.

- (2) Section 8(3) only applies to a trust if -
 - (a) it was created on or after 11th May 1998; or
 - (b) section 8(3) is expressly extended to apply to the trust by a deed executed by its trustee.
- (3) The following apply, and are deemed to have

always applied, to all trusts whenever created -

- (a) the amendments to sections 14 and 71; and
- (b) section 23A.

(4) The amendments to section 105(2) are deemed to have taken effect on and from 7th August 2008.”.

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.