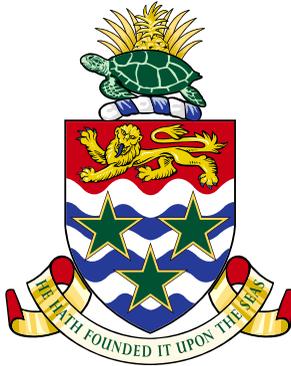


CAYMAN ISLANDS



THE TRUSTS (AMENDMENT) BILL, 2019

A BILL FOR A LAW TO AMEND THE TRUSTS LAW (2018 REVISION) TO ENHANCE THE INHERENT JURISDICTION OF THE COURT IN RELATION TO TRUSTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

Supplement No. 12 published with Legislation Gazette No. 2 dated 19th February, 2019.

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Home Affairs
(FSHA)



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Trusts Law (2018 Revision) (“the principal Law”) in order to enhance the inherent jurisdiction of the Court in relation to the administration of trusts.

Clause 1 provides the short title and commencement of the legislation.

Clause 2 amends section 2 of the principal Law by revising the definition of “trust corporation” and by introducing the definition of “trust litigation”.

Clause 3 amends the principal Law by introducing a new section 64A which sets out the circumstances in which the Court has jurisdiction to correct mistaken exercises by trustees of their fiduciary powers. It also identifies the persons who may apply to the Court in order to invoke its jurisdiction in such circumstances.

Clause 3 also introduces a new section 64B which, in relation to the exercise of the Court’s jurisdiction to approve compromises of trust litigation affecting minor or unborn beneficiaries, replaces the “benefit test” with a “no detriment test”.

Clause 4 amends section 72(1) of the principal Law in order to delete the “benefit test” and substitute the “no detriment test” when seeking to vary a trust.

Clause 5 amends section 91(b) of the principal Law by inserting after the words “a personal relationship to the settlor” the words “or any beneficiary (whether discretionary or otherwise)”. This extends the protection afforded by the reference to “a personal relationship to the settlor” to include a personal relationship to any beneficiary including a discretionary beneficiary.

Clause 6 amends section 105 of the principal Law by repealing the definition of “trust corporation” in subsection (2).

Clause 7 amends the principal Law by inserting section 111A which provides for rules to be made by the Court in order to give effect to the provisions of the legislation.

Clause 8 amends section 113 of the principal Law by repealing subsection (4) as a consequence of the repeal of section 105(2) and also due to the provision being spent.

CAYMAN ISLANDS**THE TRUSTS (AMENDMENT) BILL, 2019****Arrangement of Clauses**

Clause	Page
1. Short title and commencement	7
2. Amendment of section 2 of the Trusts Law (2018 Revision) - definitions.....	7
3. Insertion of new sections - jurisdiction of Court to set aside mistaken exercise of fiduciary power and to approve compromise	8
4. Amendment of section 72 - jurisdiction of Court to vary trusts.....	10
5. Amendment of section 91 - exclusion of foreign law.....	10
6. Amendment of section 105 - trust corporation.....	10
7. Insertion of new section - rules	10
8. Amendment of section 113 - transitional provisions for Trusts (Amendment) Law, 2016	10

CAYMAN ISLANDS

**THE TRUSTS (AMENDMENT) BILL, 2019**

A BILL FOR A LAW TO AMEND THE TRUSTS LAW (2018 REVISION) TO ENHANCE THE INHERENT JURISDICTION OF THE COURT IN RELATION TO TRUSTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Law may be cited as the *Trusts (Amendment) Law, 2019*.
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet.

Amendment of section 2 of the Trusts Law (2018 Revision) - definitions

2. The *Trusts Law (2018 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 as follows —
 - (a) by deleting the definition of “trust corporation” and by substituting the following definition —

“**“trust corporation”** means a body corporate licensed to conduct trust business, with or without restriction, under the *Banks and Trust Companies Law (2018 Revision)* or registered under that Law as a controlled subsidiary or a private trust company;” and



(b) by inserting in the appropriate alphabetical sequence the following definition —

“**trust litigation**” means litigation invoking the inherent jurisdiction of the Court in relation to the administration of trusts;”.

Insertion of new sections - jurisdiction of Court to set aside mistaken exercise of fiduciary power and to approve compromise

3. The principal Law is amended by inserting after section 64, the following sections —

“Jurisdiction of Court to set aside mistaken exercise of fiduciary power

64A. (1) If the Court, in relation to the exercise of a fiduciary power, is satisfied by a person specified in subsection (5) that the conditions set out in subsection (2) have been met, the Court may —

- (a) set aside the exercise of the power, either in whole or in part, and either unconditionally or on such terms and subject to such conditions as the Court may think fit; and
- (b) make such order, consequent upon the setting aside of the exercise of the power, as it thinks fit.

(2) The conditions referred to in subsection (1) are that —

- (a) in the exercise of the power, the person who holds the power did not take into account one or more considerations (whether of fact, law or a combination of fact and law) that were relevant to the exercise of the power, or took into account one or more considerations that were irrelevant to the exercise of the power; and
- (b) but for his failure to take into account one or more such relevant considerations or his having taken into account one or more such irrelevant considerations, the person who holds the power —
 - (i) would not have exercised the power;
 - (ii) would have exercised the power, but on a different occasion to that on which it was exercised; or
 - (iii) would have exercised the power, but in a different manner to that in which it was exercised.

(3) If and to the extent that the exercise of the power is set aside under this section, to that extent the exercise of the power shall be treated as never having occurred.



- (4) The conditions specified in subsection (2) may be satisfied without it being alleged or proved that in the exercise of the power, the person who holds the power, or any advisor to such person, acted in breach of trust or in breach of duty.
- (5) An application to the Court under this section may be made by —
- (a) the person who holds the power;
 - (b) where the power is conferred in respect of a trust or trust property, by any trustee of that trust, or by any person beneficially interested under that trust, or (in the case of a purpose trust) the enforcer;
 - (c) where the power is conferred in respect of a charitable trust or otherwise for a charitable purpose, the Attorney General; or
 - (d) with the leave of the Court, any other person.
- (6) No order may be made under subsection (1) which would prejudice a *bona fide* purchaser for value of any trust property without notice of the matters which allow the Court to set aside the exercise of a power over or in relation thereto.
- (7) In this section —
- “**fiduciary power**” means any power that, when exercised, must be exercised for the benefit of or taking into account the interests of at least one person other than the person holding the power;
- “**power**” includes a discretion as to how an obligation is performed; and
- “**person holding the power**” includes any person, whether or not the trustee of a trust, on whom a power has been conferred, whether or not that power is exercisable by that person alone, and any person to whom the exercise of a power has been delegated.

Jurisdiction of Court to approve compromise

64B. Where a compromise of trust litigation is proposed and the approval of the Court is required on behalf of any beneficiary, whether a party to the litigation or represented by a party to the litigation, the Court shall be entitled to approve the compromise if it is satisfied that the compromise is not to the detriment of such beneficiary notwithstanding that the Court is not satisfied that it is for his benefit.”.

Amendment of section 72 - jurisdiction of Court to vary trusts

4. The principal Law is amended in section 72(1) by deleting the words “the carrying out thereof would be for the benefit of that person” as they appear in the proviso and substituting the words “the carrying out thereof would not be to the detriment of that person”.

Amendment of section 91 - exclusion of foreign law

5. The principal Law is amended in section 91(b) by inserting after the words “a personal relationship to the settlor” the words “or any beneficiary (whether discretionary or otherwise)”.

Amendment of section 105 - trust corporation

6. The principal Law is amended in section 105 by repealing subsection (2).

Insertion of new section - rules

7. The principal Law is amended by inserting after section 111, the following section –

“Rules

- 111A. The Court may make rules in order to give effect to the provisions of this Law.”.

Amendment of section 113 - transitional provisions for Trusts (Amendment) Law, 2016

8. The principal Law is amended in section 113 by repealing subsection (4).

Passed by the Legislative Assembly the day of , 2019

Speaker

Clerk of the Legislative Assembly

