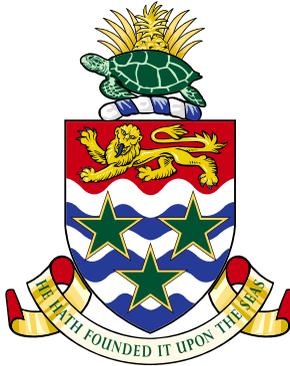


CAYMAN ISLANDS



TRUSTS (AMENDMENT) (NO. 2) BILL, 2019

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A BILL FOR A LAW TO AMEND THE TRUSTS LAW (2018 REVISION) TO ENABLE COMPETENT AUTHORITIES TO REQUIRE CERTAIN INFORMATION FROM TRUSTEES AND THE REGISTRAR OF TRUSTS; TO EMPOWER THE CABINET TO MAKE REGULATIONS TO GIVE EFFECT TO THE LAW; AND FOR INCIDENTAL AND CONNECTED PURPOSES

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”) to enable competent authorities to require certain information from trustees and the Registrar of Trusts. The Bill also amends the principal Law to empower the Cabinet to make regulations to give effect to the Law and seeks to provide for incidental and connected purposes.

Clause 1 provides for the short title of the legislation.

Clause 2 seeks to amend the principal Law to insert a new section 6A which imposes certain obligations on a trustee. The proposed provision would require a trustee to keep and maintain accurate and up-to-date records in relation to certain persons and matters in relation to the trust.

Clause 3 seeks to amend the principal Law to insert new sections 74A and 74B. Section 74A would enable a competent authority as defined by the Proceeds of Crime Law (2019 Revision) which is assigned responsibility for monitoring compliance with money laundering regulations under section 4(9) of that Law to request information on trusts from the Registrar of Trusts. The proposed section also requires the Registrar of Trusts to furnish the information requested by the competent authority within forty-eight hours of the request. Section 74B would require trustees and persons having ultimate effective control over a trust to provide information on the trust or its activities to competent authorities. The provision also prescribes the sanction for failure to provide competent authorities with the required information.

Clause 4 seeks to repeal and replace section 111A of the principal Law to provide that the Rules Committee constituted under section 19 of the Grand Court Law (2015 Revision) may make rules and prescribe fees and forms for all matters relating to pleadings, practice and procedure in the Court under the legislation.

Clause 5 seeks to amend the principal Law to insert a new section 111B which empowers the Cabinet to make regulations to carry out the purposes of the Law.

CAYMAN ISLANDS**TRUSTS (AMENDMENT) (NO. 2) BILL, 2019****Arrangement of Clauses**

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ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Trusts (Amendment) (No. 2) Law, 2019.

Insertion of section 6A in the Trusts Law (2018 Revision) - obligations of trustees

2. The *Trusts Law (2018 Revision)*, in this Law referred to as the “principal Law”, is amended by inserting after section 6, the following section —

“Obligations of trustees

- 6A.** (1) A trustee shall maintain and keep up to date, for such period and in such manner as may be prescribed, an accurate record of the identity and particulars of —
- (a) a settlor;
 - (b) a contributor to the trust;

- (c) a beneficiary;
 - (d) a protector;
 - (e) an enforcer of the trust;
 - (f) a service provider to the trust, including any investment adviser, manager, accountant or tax adviser; and
 - (g) the person exercising ultimate effective control of the trust.
- (2) A trustee shall maintain and keep up to date, for such period and in such manner as may be prescribed, accounting records relating to the trust as may be prescribed.
- (3) Where a person acting in the capacity as a trustee of a trust forms a business relationship or enters into a one-off transaction with a person conducting relevant financial business under Schedule 6 of the *Proceeds of Crime Law (2019 Revision)*, the trustee shall —
- (a) before or at the time the business relationship is formed; or
 - (b) before or at the time the transaction is entered into,
- take reasonable steps to inform the person conducting relevant financial business under Schedule 6 of the *Proceeds of Crime Law (2019 Revision)* that the trustee is acting in the capacity as a trustee of the trust.”.

Insertion of sections 74A and 74B – Registrar of Trusts to share information; power of competent authorities to request information

3. The principal Law is amended by inserting after section 74, the following sections —

“Registrar of Trusts to share information

- 74A.** (1) The Registrar of Trusts shall, upon request by an entity under subsection (2), share any information required for the purpose of discharging any function or exercising any power under the following Laws —
- (a) the *Anti-Corruption Law (2019 Revision)*;
 - (b) the *Monetary Authority Law (2018 Revision)*;
 - (c) the *Proceeds of Crime Law (2019 Revision)*; or
 - (d) the *Tax Information Authority Law (2017 Revision)* .
- (2) For the purposes of this section, the following entities may request information from the Registrar of Trusts —
- (a) the Anti-Corruption Commission established under section 3 of the *Anti-Corruption Law (2019 Revision)*;



- (b) the Cayman Islands Monetary Authority established under section 5 of the *Monetary Authority Law (2018 Revision)*;
 - (c) the Financial Crimes Unit of the Royal Cayman Islands Police Service;
 - (d) the Financial Reporting Authority, as defined under the *Proceeds of Crime Law (2019 Revision)*;
 - (e) the Tax Information Authority, designated under section 4 of the *Tax Information Authority Law (2017 Revision)*; or
 - (f) a competent authority as defined under section 2(1) of the *Proceeds of Crime Law (2019 Revision)* which is assigned responsibility for monitoring compliance with money laundering regulations under section 4(9) of the *Proceeds of Crime Law (2019 Revision)*.
- (3) A request for information by an entity under subsection (2) shall be made in writing.
- (4) Where a request for information is made under subsection (1), the information shall be provided within forty-eight hours of receipt of the request.
- (5) The recipient of any information shared by the Registrar of Trusts under this section shall —
- (a) use the information for the purpose for which it was shared or provided;
 - (b) retain the information for as long as is necessary to carry out the purpose for which it was shared or provided; and
 - (c) not disclose the information for any purpose other than the purpose for which it was shared or provided, without the prior consent of the Registrar of Trusts.

Power of competent authorities to request information

74B. (1) If a competent authority referred to in section 74A(2)(f) has reasonable grounds to believe that a person who is —

- (a) a trustee; or
- (b) any other person exercising ultimate effective control of a trust established under this Law,

is acting, or carrying on a business, in contravention of any of the Laws referred to in section 74A(1), the competent authority may direct that person to provide such information in relation to the trust or its activities as may be required by the competent authority.

- (2) A person who knowingly fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and if the offence is a continuing one, to a fine of ten thousand dollars for each day or part of a day during which the offence continues, up to a maximum of fifty thousand dollars.”.

Repeal and substitution of section 111A - rules

4. The principal Law is amended by repealing section 111A and substituting the following section —

“Rules

111A. The Rules Committee constituted under section 19 of the Grand Court Law (2015 Revision) may in accordance with that section —

- (a) make rules; and
- (b) prescribe fees and forms,

for the purpose of giving effect to the provisions of this Law in relation to all matters relating to pleadings, practice and procedure in the Court.”.

Insertion of section 111B - Regulations

5. The principal Law is amended by inserting after section 111A, the following section —

“Regulations

111B. (1) The Cabinet may make regulations for giving effect to the purposes of this Law.

- (2) Without prejudice to the generality of subsection (1), regulations made under this section may prescribe measures to be taken by a trustee in respect of any of the matters referred to in section 6A.



- (3) A contravention of a provision of the Regulations constitutes an offence punishable with a fine of five thousand dollars.”.

Passed by the Legislative Assembly the day of , 2019.

Speaker

Clerk of the Legislative Assembly

