

## CAYMAN ISLANDS



# TRUSTS (AMENDMENT) BILL, 2020

Supplement No. 8 published with Legislation Gazette No. 31 dated 28th April, 2020.

**A BILL FOR A LAW TO AMEND THE TRUSTS LAW (2020 REVISION) TO REQUIRE A PERSON TO HAVE A LICENCE TO CARRY ON TRUST BUSINESS; TO CLARIFY THE TYPES OF ENTITIES THAT MAY REQUEST INFORMATION FROM THE REGISTRAR OF TRUSTS AND TRUSTEES FOR ANTI-MONEY LAUNDERING AND COUNTER FINANCING OF TERRORISM PURPOSES; TO CLARIFY THE DEFINITION OF RELEVANT FINANCIAL BUSINESS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

## PUBLISHING DETAILS

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



## Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the *Trusts Law (2020 Revision)* (“the principal Law”) to require a person to have a licence to carry on trust business; to clarify the types of entities that may request information from the Registrar of Trusts and trustees; and to clarify the definition of “relevant financial business”. The Bill would also provide for incidental and connected purposes.

Clause 1 provides the short title of the legislation.

Clause 2 seeks to amend section 6A of the principal Law to clarify that relevant financial business is defined under section 2(1) of the Proceeds of Crime Law (2020 Revision).

Clause 3 inserts a new section 6B in the principal Law which seeks to prohibit a person from carrying on, or arranging for another person to carry on, trust business without having a valid licence granted by the Authority under the Banks and Trust Companies Law (2020 Revision) authorising the person to carry on such business or is exempt under regulations made under section 5(2B) of that Law from holding such licence. The provision also clarifies that an individual shall not carry on, purport to carry on, or arrange for another person to carry on, trust business in or from within the Islands.

Clause 4 seeks to amend section 74A of the principal Law to insert a new paragraph under subsection (2) which would empower the Customs and Border Control Service to request information on trusts from the Registrar of Trusts.

Clause 4 also seeks to amend section 74A of the principal Law to repeal and substitute paragraph (f) of subsection (2) to clarify that information on trusts may only be requested from the Registrar of Trusts by a competent authority as defined under section 2(1) of the Proceeds of Crime Law (2020 Revision).

Clause 5 seeks to repeal and substitute section 74B of the principal Law to expand the category of entities authorised to request information from trustees or persons having ultimate effective control over a trust who are required to provide information on the trust or its activities to such authorised entities.



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## 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) Law, 2020.

**Amendment of section 6A of the Trusts Law (2020 Revision) - obligations of trustees**

2. The *Trusts Law (2020 Revision)*, in this Law referred to as the “principal Law”, is amended in section 6A(3) by deleting the words “under Schedule 6” wherever they appear and substituting the words “as defined by section 2(1)”.

**Insertion of section 6B - licence required to carry on trust business**

3. The principal Law is amended by inserting after section 6A the following section —

**“Licence required to carry on trust business**

**6B.** (1) A person shall not —

- (a) carry on, or purport to carry on; or
- (b) arrange for another person to carry on;

trust business, as defined by section 2 of the *Banks and Trust Companies Law (2020 Revision)*, from within the Islands, whether or not such business is carried on in the Islands, unless that person holds a valid licence granted by the Authority under the *Banks and Trust Companies Law (2020 Revision)* authorising the person to carry on trust business or is exempt under regulations made under section 5(2B) of that Law from holding such licence.

- (2) Notwithstanding any provision of this Law or any other Law, an individual shall not —
  - (a) carry on trust business; or
  - (b) arrange for another person to carry on trust business, in or from within the Islands, under this Law.”.

**Amendment of section 74A - Registrar of Trusts to share information**

4. The principal Law is amended in section 74A(2) as follows —

- (a) by inserting after paragraph (b) the following paragraph —

“(ba) the Customs and Border Control Service as established under section 3 of the *Customs and Border Control Law, 2018*.”; and

- (b) by repealing paragraph (f) and substituting the following paragraph —

“(f) a competent authority as defined under section 2(1) of the *Proceeds of Crime Law (2020 Revision)*.”.

**Repeal and substitution of section 74B - power of competent authorities to request information**

5. The principal Law is amended by repealing section 74B and substituting the following section —

**“Power of authorised entity to request information**

**74B** (1) Where an entity authorised to request information under section 74A 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 entity may direct





that person to provide such information in relation to the trust or its activities as may be required by the entity.

- (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.”.

**Passed by the Legislative Assembly the            day of            2020.**

*Speaker*

*Clerk of the Legislative Assembly*

