

The Trusts (Amendment) Law, 2016, Cayman Islands

MARCH 2017

Last year, the Cayman Islands Trusts Law (2011 Revision) was amended by the Trusts (Amendment) Law 2016, as gazetted on 23rd November. The amended legislation serves to resolve technical issues in the current legislation and extend certain statutory powers of trustees that would normally be granted under the terms of a trust deed.

The amendments include:

- The removal of the provision whereby a trustee absent from the Cayman Islands for more than 12 months may be replaced. This would only be relevant if not provided for within the trust instrument already.
- Confirmation that where a trust was created on or after 11th May 1998; only one trustee was originally appointed; or a contrary intention is expressed in the trust deed, a trustee shall be discharged regardless of whether there is a trust corporation or two individuals replacing it or remaining as trustee.
- Confirmation that any or all of the reserved powers previously contained in the law may be included in a trust and that the reservation or grant by a settlor of a general or special power to appoint either income or capital or both of the trust property shall not invalidate the trust or affect the presumption of lifetime effect.
- Confirmation that a single trustee may exercise the power to compound trust liabilities. Most trust instruments already confirm such a power.
- Confirmation that an appointment made in exercise of a power to appoint property among two or more objects is not invalid on the ground that an illusory or nominal share is appointed or that an object of the power is altogether excluded. The amendment applies to all trusts, whenever created. While this issue is normally addressed within a trust instrument, further comfort is added by confirming such power under statute.
- The trustee's statutory power to insure the trust property against fire has been broadened to allow the trustee to insure against any event. This power is also normally provided for in the trust instrument.
- Section 71 of the Trusts Law now provides that a trust will not fail if its purposes (wholly or partly) benefit the public or a section of the public outside of the Islands. The amendment applies to all trusts whenever created.
- An amendment to provide for the purposes of the Special Trusts Alternative Regime ("STAR") (which requires that the trustee of a STAR trust be or include a trust corporation), that trust corporation includes a

controlled subsidiary registered under the Banks and Trust Companies Law. This provision has effect from 7th August 2008.

While the amendments do not constitute a significant change in the trusts law of the Cayman Islands they add clarity to the previous legislation and provide comfort where certain common powers may not have been included within a trust instrument. The changes confirm the commitment of the Cayman Islands to maintaining a leading trusts industry.