Improve to the Cayman Islands Trusts Law

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On 24 October 2016, the Trusts (Amendment) Law, 2016 and the Property (Miscellaneous Provisions) (Amendment) Law, 2016 came into force in the Cayman Islands.

The Trusts (Amendment) Law, 2016

The key amendments, which mainly modernise and correct certain deficiencies and technical issues in the Trust Law (2011 Revision) (the “Trusts Law”), are as follows:

Trustees

- The original provision of the Trusts Law, which allowed for the removal of a trustee who has left the Cayman Islands for more than 12 months, has been repealed. Many Cayman Islands trusts are administered by non-resident trustees, so this amendment reflects the modern Cayman Islands trust industry.

- An amendment to the Trusts Law in 1998 created a conflicting transitional provision with regard to trusts created on, or after, 11 May 1998 relating to the discharge of a retiring trustee. Section 6(c) has been amended to specifically refer to trusts created on, or after, 11 May 1998 in order to tidy up and provide certainty in respect of this issue, which will be a significant improvement to the legislation for trust practitioners.

- Section 8 of the Trusts Law has been amended to exempt the requirement that, in order for the retiring trustee to be discharged, at least two individuals or a trust corporation must remain as trustee(s) if only one trustee was originally appointed or if a contrary intention is expressed in the trust deed.

Trustees of STAR Trusts

- The Trustee of a STAR trust must be, or include, a Cayman Islands licensed trust company or private trust company. This provision has been amended to now allow for controlled subsidiaries of Cayman Islands licensed trust companies to act as the trustee of a STAR trust.

Reserved Powers

- A Settlor may grant or reserve the power to appoint either income or capital, or both from the trust. Previously, the Trusts Law was unclear as to whether or not a Settlor was able to appoint income or capital. This will apply to all trusts whenever created.
Other Trustee Powers

- Trustees may insure trust property against any adverse event, not only against loss or damage by fire.
- The common law rule requiring a trustee to appoint at least something to every beneficial object of a discretionary power has been removed.

Charitable Trusts

- A Charitable trust may benefit the public or a section of the public outside of the Cayman Islands, wholly as well as just partly.

The Property (Miscellaneous Provisions) (Amendment) Law, 2016

This law amends the Property (Miscellaneous Provisions) Law (2011 Revision) as follows:

- To permit agents lawfully appointed in writing to execute legal assignments of things in action for their principals.
- To require assignments of equitable interests to be made in writing or by will.
- To provide for the construction and/or interpretation of commonly understood terms in deeds, contracts, wills, orders and other instruments.
- To allow the holder of a trust power to disclaim such power by deed.
- To confirm the valid exercise of powers by deed or another type of non-testamentary instrument (executed as a deed in the ordinary way), even if the instrument creating the power expressly requires additional or other form of execution.

These important improvements and modernisation of the Cayman Islands Trusts Law and related laws ensures that the Cayman Islands will continue to remain an attractive and leading jurisdiction for commercial and private client structures.
This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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