

CAYMAN ISLANDS



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PROPERTY (MISCELLANEOUS PROVISIONS) LAW

(2017 Revision)

Law 7 of 1994 consolidated with Law 7 of 2000 (part), Law 14 of 2011 and Law 25 of 2016.

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted-

Law 7 of 1994-23rd September, 1994

Law 7 of 2000- 20th July, 2000

Law 14 of 2011-11th April, 2011

Law 25 of 2016-24th October, 2016.

Consolidated and revised this 1st day of May, 2017.

Note (not forming part of the Law): This revision replaces the 2011 Revision which should now be discarded.

PROPERTY (MISCELLANEOUS PROVISIONS) LAW

(2017 Revision)

ARRANGEMENT OF SECTIONS

1. Short title
2. Charges over debts and other obligations
3. Trusts over debts
4. Dispositions in favour of illegitimate issue not void
5. Legal assignments of things in action
- 5A. Requirements for assigning equitable interest
6. Things in action represented by bearer instruments
- 6A. Construction of expressions used in deeds and other instruments
7. Bodies corporate holding as joint tenants
8. Deeds and certain other instruments no longer required to be executed under seal
- 8A. Disclaimer of power
- 8B. Execution of non-testamentary power
- 8C. Repeal for Islands of section 9 of Statute of Frauds, 1677 of Parliament
9. Application
10. Transitional provisions for Property (Miscellaneous Provisions) (Amendment) Law, 2016

PROPERTY (MISCELLANEOUS PROVISIONS) LAW

(2017 Revision)

1. This Law may be cited as the Property (Miscellaneous Provisions) Law (2017 Revision). Short title
2. (1) A debt or thing in action may be the subject of a fixed or floating charge (and is not thereby extinguished, released or merged) notwithstanding that the chargee is the obligor. Charges over debts and other obligations
- (2) If, and for so long as, a mortgage, legal or equitable, of a debt or thing in action cannot take effect as such by reason that the intended mortgagee is the obligor, it takes effect as a charge.
3. A trust may be validly created of an existing debt notwithstanding that the debtor is the trustee of the trust, and the effect of so doing is that he has an equitable obligation to the beneficiaries on the same terms as the debt to make payment to the trust fund. Trusts over debts
4. There is hereby abolished as respects dispositions made after 23rd November, 1994, any rule of law that a disposition in favour of illegitimate issue not in being when the disposition takes effect is void as contrary to public policy. Dispositions in favour of illegitimate issue not void
5. (1) Subject to subsection (2), any absolute assignment by writing signed by the assignor or the assignor's agent lawfully authorised in writing (not purporting to be by way of charge only) of any debt or thing in action, of which express notice in writing has been given to the person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice- Legal assignments of things in action.
- (a) the legal right to such debt or thing in action;
- (b) all legal and other remedies for the same; and
- (c) the power to give a good discharge for the same without the concurrence of the assignor.
- (2) If the person liable in respect of such debt or thing in action has notice-
- (a) that the assignment is disputed by the assignor or any person claiming under him; or
- (b) of any other opposing or conflicting claims to such debt or thing in action,
- he may, if he thinks fit, either call upon the person making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the Trusts Law (2017 Revision) or any statutory modification or successor thereto. 2017 Revision

Requirements for assigning equitable interest	<p>5A. (1) An assignment of an equitable interest subsisting at the time of the assignment may be made only –</p> <ul style="list-style-type: none">(a) in writing, signed by the person assigning the interest or that person’s agent lawfully authorised in writing; or(b) by will. <p>(2) However, subsection (1) shall not apply to the creation or operation of a constructive, implied or resulting trust.</p>
Things in action represented by bearer instruments	<p>6. Except as provided by any other law, a legal or equitable thing in action, other than interests in land in the Islands, is capable of being evidenced or represented by a bearer instrument such that a disposition thereof may, subject to the terms of the instrument, be effected by delivery of the instrument; but unless so provided by the terms of the instrument the disponent is not relieved of any obligation or liability thereunder.</p>
Construction of expressions used in deeds and other instruments	<p>6A. In a deed, contract, will, order or other instrument, unless the context otherwise requires –</p> <ul style="list-style-type: none">(a) “month” means a calendar month;(b) “person” includes a company or corporation;(c) the singular includes the plural and <i>vice versa</i>; and(d) the masculine includes the feminine and <i>vice versa</i>.
Bodies corporate holding as joint tenants	<p>7. (1) A body corporate shall be capable of acquiring and holding any real or personal property in joint tenancy in the same manner as if it were an individual; and where a body corporate and an individual, or two or more bodies corporate, become entitled to any such property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy, they shall be entitled to the property as joint tenants:</p> <p>Provided that the acquisition and holding of property by a body corporate in joint tenancy shall be subject to the like conditions and restrictions as attached to the acquisition and holding of property by a body corporate in severalty.</p> <p>(2) Where a body corporate is joint tenant of any property, then, on its dissolution, the property shall devolve on the other joint tenant.</p>
Deeds and certain other instruments no longer required to be executed under seal	<p>8. (1) Subject to subsection (5), an instrument is validly executed by an individual as a deed or an instrument under seal if it satisfies the requirements of this section.</p> <p>(2) A deed or instrument under seal satisfies the requirements of this section if -</p> <ul style="list-style-type: none">(a) it is signed in accordance with subsection (3); and(b) it is either -<ul style="list-style-type: none">(i) sealed; or

- (ii) expressed to be, or is expressed to be executed as, or otherwise makes clear on its face it is intended to be, a deed.

(3) For the purpose of this section, a deed or instrument under seal may be signed in any manner contemplated by the parties thereto, including, without limitation -

- (a) by a signature on the complete deed or instrument; or
- (b) by a signature on any signature page or execution page to the deed or instrument (whether or not the deed or instrument is at such time in final form) which is attached by the individual to (or at the direction of, or on behalf of, the individual, or otherwise with the individual's authority to) the deed or instrument,

if the deed or instrument is (or the signature page or execution page, as the case may be, is) signed either -

- (i) by the individual in the presence of a witness who attests his signature; or
- (ii) at the direction of the individual and in his presence and the presence of two witnesses who each attests the signature of the person signing on behalf of the individual and that the individual so directed such person to sign.

(3A) Subsection (3) shall apply to deeds or instruments under seal regardless of whether they are made before, on or after the commencement of subsection (3) provided that no deed or instrument made before the commencement of subsection (3) shall be invalid by reason only of any provision of subsection (3).

(4) In this section-

- (a) a deed or instrument under seal may take the form of an electronic record within the definition of that expression contained in section 2 of the Electronic Transactions Law (2003 Revision); and
- (b) "sign" in relation to a deed or instrument under seal-
 - (i) where the deed or instrument is written on a tangible medium, includes an individual making his mark on the deed or instrument, and "signature" is to be construed accordingly; and
 - (ii) where the deed or instrument is in the form of an electronic record, "signature" means an electronic signature as provided by section 19 of the Electronic Transactions Law (2003 Revision), and "sign" shall be construed accordingly.

2003 Revision

(5) The provisions of subsections (1) to (4) are without prejudice to the validity of any instrument under seal validly executed as such whether before or after 23rd November, 1994, as the case may be.

(6) For the avoidance of doubt, subsection (4) shall not limit or otherwise affect the application of the Electronic Transactions Law (2003 Revision) to an instrument or to writing, or the signing of an instrument or writing, mentioned in another section of this Law.

Disclaimer of power

8A. (1) A person who holds a power may disclaim it by a deed executed before exercising the power.

(2) From the making of the disclaimer –

- (a) the person cannot exercise the power; and
- (b) unless the instrument that created the power otherwise provides, anyone else who also held the power immediately before the disclaimer may exercise the power.

(3) In this section –

“exercise”, a power, includes joining in its exercise; and

“power” includes a power coupled with an interest.

Execution of non-testamentary power

8B. (1) This section applies if –

- (a) an instrument (the “empowering instrument”) creates a power;
- (b) the empowering instrument authorises or requires the power to be exercised by deed or another type of non-testamentary instrument (an “instrument of exercise”); and
- (c) a particular instrument of exercise is executed as a deed in the ordinary way.

(2) The instrument of exercise is, so far as its execution is concerned, taken to be a valid exercise of the power.

(3) Subsection (2) applies even if the empowering instrument expressly requires an instrument of exercise to be executed with an additional or other form of execution or solemnity.

(4) However, subsection (2) shall not affect a requirement under the empowering instrument that, before exercising the power –

- (a) a particular person’s consent is required; or
- (b) an act, not relating to the mode of executing an instrument of exercise, is to be performed.

(5) In this section –

“executed” includes attested.

Repealed for Islands of section 9 of Statute of Frauds, 1677 of Parliament

8C. Section 9 of the Statute of Frauds, 1677 of Parliament is repealed to the extent the section applies to the Islands.

9. Except where expressly provided to the contrary herein, this Law applies to any charge, mortgage, trust, assignment, bearer instrument or joint tenancy created, given or executed or purportedly created, given or executed before or after 23rd November, 1994 and no such charge, mortgage, trust, assignment, bearer instrument or joint tenancy shall be invalid by reason only of the fact that it was created or purportedly created, given or executed or purportedly created, given or executed prior to 23rd November, 1994. Application

10. (1) Section 5 of the Property (Miscellaneous Provisions) Law (2011 Revision), the Law in force immediately before the commencement of the Property (Miscellaneous Provisions) (Amendment) Law, 2016 (hereinafter referred to as the “amending Law”) shall continue to apply for assignments of debts and things in action before the commencement of the amending Law. Transitional provisions for Property (Miscellaneous Provisions) (Amendment) Law, 2016

(2) Sections 5A, 6A, 8A and 8B shall only apply for a document made or an event that happens after the commencement of the amending Law.

Publication in consolidated and revised form authorised by the Cabinet this 22nd day of May, 2017.

Clerk of Cabinet

(Price \$ 2.40)