

CAYMAN ISLANDS



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**THE TRUSTS (FOREIGN ELEMENT) LAW, 1987
(LAW 17 OF 1987)**

Law 17 of 1987

I Assent

PETER LLOYD

Governor

28th May, 1987

**A LAW TO DEAL WITH THE CREATION OF
TRUSTS, AND MATTERS CONNECTED THEREWITH AND
INCIDENTAL THERETO.**

ENACTED by the Legislature of the Cayman Islands.

Short title and
commencement.

1. This law may be cited as the Trust (Foreign Element) Law, 1987 and shall come into force on the thirty-first day of May, 1987.

Interpretation.

2. (1) In this Law unless the context otherwise requires:-

“dispose” and “disposition” in relation to property connote every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction by which any legal or equitable interest in property is created, transferred or extinguished;

“formalities” in relation to a disposition of property means the documentary and other actions required generally by the laws of a relevant jurisdiction for all dispositions of like form concerning property of like nature, without regard to:-

- (a) the fact that the particular disposition is made in trust,
- (b) the terms of the trust,
- (c) the circumstances of the parties to the disposition, or
- (d) any other particular circumstances,

but include any special formalities required by reason that the party effecting the disposition is not of full age, is subject to a mental or bodily infirmity or is a corporation.

“heirship right” means any right, claim or interest in, against or to property of a person arising or accruing in consequence of that person’s death, other than any such right, claim or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property to such person;

“personal relationship” includes every form of relationship by blood or marriage, including former marriage, and in particular a personal relationship between two persons exists if:-

- (a) one is the child of the other, natural or adopted (whether or not the adoption is recognised by law), legitimate or illegitimate; or
- (b) one is married to the other (whether or not the marriage is recognised by law); or
- (c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parent and child or husband and wife; or
- (d) personal relationships exist between each of them and a third person,

but no change in circumstances causes a personal relationship, once established, to terminate.

“settlor” in relation to a trust means and includes each and every person who, directly or indirectly, on behalf of himself or on behalf of any other or others, as owner or as the holder of a power in that behalf, disposes of property to be held in such trust or declares or otherwise creates such trust.

Law 6 of 1967 (R)

(2) Terms and expressions defined in the Trusts Law (Revised) have the same meanings in this Law.

Application.

3. This Law applies to every trust and every disposition of property in trust made before or after the commencement of this Law, whether such property is situate in the Islands or elsewhere.

Governing Law.

4. (1) In determining the governing law of a trust regard is first to be had to the terms of the trust and to any evidence therein as to the intention of the parties; and the other circumstances of the trust are to be taken into account only if the terms of the trust fail to provide such evidence.

(2) A term of the trust expressly selecting the laws of the Islands to govern the trust is valid, effective and conclusive regardless of any other circumstances.

(3) A term of the trust that the laws of the Islands are to govern a particular aspect of the trust or that the Islands or the

courts of the Islands are the forum for the administration of the trust or any like provision is conclusive evidence, subject to any contrary term of the trust, that the parties intended the laws of the Islands to be the governing law of the trust and is valid and effective accordingly.

(4) If the terms of a trust so provide, the governing law of the trust may be changed to or from the laws of the Islands provided that:-

- (i) in the case of a change to the law of the Islands, such change is recognised by the governing law of the trust previously in effect;
- (ii) in the case of a change from the law of the Islands, the new governing law would recognise the validity of the trust and the respective interests of the beneficiaries.

(5) A change in governing law shall not affect the legality or validity of, or render any person liable for, any thing done before the change.

Matters determined
by governing law.

5. All questions arising in regard to a trust which is for the time being governed by the laws of the Islands or in regard to any disposition of property upon the trusts thereof including, without prejudice to the generality of the foregoing, questions as to:-

- (i) the capacity of any settlor,
- (ii) any aspect of the validity of the trust or disposition or the interpretation or effect thereof,
- (iii) the administration of the trust, whether the administration be conducted in the Islands or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment and removal, or
- (iv) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment, and the validity of any exercise thereof,

are to be determined according to the laws of the Islands, without reference to the laws of any other jurisdictions with which the trust or disposition may be connected, provided only that:-

- (a) this section does not validate any disposition of property which is neither owned by the settlor nor the subject of a power in that behalf vested in the settlor, nor does this section affect the recognition of foreign laws in determining

whether the settlor is the owner of such property or the holder of such a power;

- (b) this section takes effect subject to any express contrary term of the trust or disposition;
- (c) as regards the capacity of a corporation this section does not affect the recognition of the laws of its place of incorporation;
- (d) this section does not affect the recognition of foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property;
- (e) this section does not validate any trust or disposition of real property situate in a jurisdiction other than the Islands which is invalid according to the laws of such jurisdiction;
- (f) this section does not validate any testamentary trust or disposition which is invalid according to the laws of the testator's domicile.

Exclusion of foreign law.

6. Without limiting the generality of the foregoing section, it is expressly declared that no trust governed by the laws of the Islands and no disposition of property to be held upon the trusts thereof is void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of any settlor to be questioned by reason that:-

- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust; or
- (b) the trust or disposition avoids or defeats rights, claims or interests conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests.

Prior actions.

7. This Law does not render any person liable for any thing done before its commencement.

Passed the Legislative Assembly this 29th day of April, 1987.

PETER LLOYD
President.

GEORGETTE MYRIE
Clerk of the Legislative Assembly.

AMENDMENTS BY IMPLICATION

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Summary Jurisdiction Law, 1975	20/92 (by S.7)
Sunday Trading Law, (Cap.161)	7/69 19/71 U.K.S.I.-1971 No.1737 1/74 10/75
Telephone Law, 1966	7/69 19/71 U.K.S.I.-1971 No.1737 1/74 10/75
Town & Communities Law, (Cap.169)	7/69 19/71 1/74 10/75
Trade Union Law (Cap.169)	7/69 19/71 1/74 10/75 U.K.S.I.-1971 No. 1737
Trade & Business Licensing (1978 Rev)	24/79
Trusts Law (1976 Rev)	17/87 (by S.3)
Weights & Measures Law	7/69 19/71 1/74 10/75
Workmen's Compensation Law, 1964	7/69 19/71 U.K.S.I.-1971 No.1737 1/74

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