

THE TRUSTS (AMENDMENT) LAW, 1967.

## MEMORANDUM OF OBJECTS AND REASONS

Experience of the workings of the Law has shewn the following suggested amendments to be desirable for influencing potential settlors to create settlements in the Cayman Islands under the Exempted Trusts provisions of the Trusts Law.

Section 74            This is a mistake

Section 77            The provisions of this section are not intended to apply to the prescient testator who contrived to die within 28 days. It is thought better therefore specifically to exclude wills and codicils.

Section 79 (2)        The purpose of this amendment is twofold. First, it moves the definition of "trustees" to a more logical place (see under s.79 (3) below). But more importantly it makes explicit what the Registrar is to do with any sums recovered, for example, from a defaulting former trustee, in consequence of the exercise of what apart from this section would be the beneficiaries' rights and remedies. It is not seriously suggested that under the law as it stands the Registrar would be entitled to apply any such monies for his own personal benefit, but it is thought that an intending settlor would be more inclined to take advantage of the Exempted Trusts provisions - and his advisors would feel happier in advising him to do so - if the Law provided expressly that any sums recovered by the Registrar be paid to the trustees of the trust.

Section 79 (3)        This is the definition taken down from s. 79 (2), slightly expanded. The reason for the expansion arises from the expression "fiduciary power". This was intended to include the various powers likely to be conferred by the terms of the trust and in particular the power to exercise or refrain from exercising some discretion in favour of one or more beneficiaries. It emerges however that there is a body of legal opinion which regards the term "fiduciary power" as limited to powers whose exercise can be (and in a proper case will be) compelled by the Court, and hence as excluding a power which may or may not - at the discretion of the donee of the power - be exercised. On this view the class of person against whom the beneficiaries are to have no rights or remedies becomes too narrow, and the amendment widens the definition to include the donee of a "discretionary" power.

The object of this amendment is to prevent a beneficiary from taking himself out of the class of persons who are denied rights by placing himself in a fiduciary position - e.g. by becoming a nominee of another. This would be an ingenious manoeuvre on the part of a beneficiary and it is not very likely that it would occur to any of them to do this. But if it is always open to a beneficiary to give himself rights in this way, it could be argued that he still has "rights" of some sort (a situation which s. 79 (3) intends to prevent).

It was intended that all the rules of law and equity and the other parts of the Law should apply to Exempted Trusts. It was thought that since the Exempted Trust is different from any other form of trust known to English Common Law Systems there might be room for argument that the rules of law and equity did not apply to them in the ordinary manner. It seems desirable to reassure settlors and their advisors by making an explicit provision to this effect.

Section 82 (1)

Section 82 (3)

SCHEDULE

LAW 39 of 1967

I assent,

(L.S.)

J.A. CUMBER

Administrator

19th December, 1967

A Law to amend certain provisions of the Trusts Law 1967.

( )

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Trusts (Amendment) Law, 1967 and shall come into operation on a day to be appointed by the Administrator by Public Notice published in the Cayman Islands.

2. The sections of the Trusts Law, 1967 set out in the first column of the Schedule to this Law are hereby amended in the manner respectively mentioned in the second column of the said Schedule.

Short title and commencement.

Amendments to Law No. 6 of 1967.

Enactment

Amendment

The Trusts Law 1967 -

Section 74

Delete the word "unless" and substitute therefor the word "if".

Section 77

Insert after the word "trust" when it first occurs the words "otherwise than by will or codicil".

Section 79 (2)

Delete and substitute therefor the following -

"Where but for the provisions of subsection (3) of this section any right or remedy in respect of the trust would be vested in anyone or more of the beneficiaries thereunder the same shall be vested in and shall be exercisable by the Registrar of Trusts and any sum or sums recovered by the Registrar of Trusts shall be paid to the trustees of the trust and the Registrar of Trusts in relation to the exercise of the said rights and remedies and the payments of sums recovered pursuant thereto shall be answerable to the Administrator in Council as parens patriae and to no other person".

Section 79 (3)

Add after paragraph (d) of this subsection -

"And in this subsection the expression "the trustees" shall mean and include any person in whom under or by virtue of the terms of the trust there is vested (whether in a fiduciary capacity or not) any power or duty whatsoever and trustee shall have a corresponding meaning".

Section 79 (4)

Add after the words "as may be just" the following -

## ENACTMENT

## AMENDMENT

Section 82 (1)

“and in particular and without prejudice to the generality of the foregoing the trustees or any of them shall be at liberty to proceed against any trustee or person who has been a trustee of the trust in respect of any breach of trust.”

Delete the words “shall not (save only in subsection (1) of section 76) include any person so interested in a fiduciary capacity only and”.

Section 82

Add the following new subsection -

“(3) All the provisions of Parts I, II, III and VI and all the rules of Law and Equity shall (subject to Section 79 (5)) apply to every exempted trust as they apply to any other trust save as expressly provided in this part of this law.”

Passed the Assembly this 29th day of November 1967.

**J.A. CUMBER**

*President*

**SYBIL McLAUGHLIN**

*Clerk of the Legislative Assembly.*

Government Notice No. 150 of 1967

Date of operation: 20th December, 1967.