

Amendments to the Cayman Islands Trusts Law

Amendments to the Trusts Law (2018 Revision) (*Trusts Law*) affirm the reputation of the Cayman Islands as a leading trusts jurisdiction.

The stated object of the Trusts (Amendment) Law, 2019 (*Amendment Law*) is “to enhance the inherent jurisdiction of the Court in relation to the administration of trusts”.¹ The amendments to the Trusts Law achieve this object in a number of ways, as we explain further below.

Power to correct mistakes – application of the Rule in Hastings-Bass

In particular, the Amendment Law introduces a statutory power enabling the Grand Court of the Cayman Islands (*Court*) to set aside mistaken exercises of a fiduciary power² (a power which is exercised for the benefit of someone other than the holder of the power). An application to correct a mistake may be made by:

- the trustee or other person who holds the relevant power (*power holder*)
- a person beneficially interested under the trust
- in the case of a purpose trust, the enforcer
- in the case of a charitable trust, the Attorney General
- any other person, with leave of the Court

The Court may set aside the exercise of a power where:

1. the power holder has exercised the power on the basis of irrelevant considerations or without taking into account all relevant considerations; and
2. had the power holder taken into account all and only relevant considerations, they would not have exercised the power or would have done so on a different occasion or in a different manner.

It is not necessary for an applicant to show that the power holder acted in breach of trust or duty. As such, the Amendment Law confirms that an expansive *Hastings-Bass*³ type application is permissible in the Cayman Islands. Such applications have previously been approved by the Court. If the exercise of a power is set aside by the Court, it is treated as never having occurred.

Importantly, however, the Court cannot intervene where it would prejudice a *bona fide* purchaser for value of any trust property who did not have notice of the matters that would allow the Court to set aside the exercise of the power.

Power to approve a settlement and variations to a trust

The Amendment Law also enables the Court to approve the settlement of “*trust litigation*” on behalf of any beneficiary if the Court is satisfied that the settlement is not to the detriment of any such beneficiary, even where the Court cannot be satisfied that the settlement is for their benefit.⁴ “*Trust litigation*” means litigation invoking the inherent jurisdiction of the Court in relation to the administration of trusts (including for example, a blessing application).

The Court’s power to approve a variation of a trust has been similarly amended, allowing the Court to approve a variation on behalf of a beneficiary where the Court is satisfied that the variation is not to the detriment of that beneficiary.⁵

In short, in relation to the Court’s power both to approve a settlement and a variation of a trust, the “*benefit test*” has been replaced with the “*no detriment test*”.

These amendments will make it easier to compromise trust litigation or to vary a trust where, for example, all adult beneficiaries agree that litigation should be compromised or the trust varied in a particular manner but the Court’s approval on behalf of, for example, minor or unborn beneficiaries is required. These amendments also mean that the costs of associated applications to the Court will be lower, for the benefit of all beneficiaries.

Firewall expansion

The Trusts Law already protects trusts and dispositions of property into trust from being challenged on the basis that the trust or disposition defeats an interest conferred by foreign law by reason of an individual’s personal relationship to a settlor.⁶ For example, an heir of a settlor cannot challenge a disposition of property on the basis that they

would have inherited the property under foreign forced heirship laws.

The Amendment Law expands the firewall to protect trusts from challenges mounted on the basis of a personal relationship to a beneficiary. As such, spouses of both settlors and beneficiaries, for example, are prevented from challenging a trust on the basis of a spousal right arising under foreign law.

Trust corporations

The Amendment Law introduces a single definition of “*trust corporation*”, so that it includes a registered controlled subsidiary of any licensed trustee company or a private trust company for all purposes under the Trusts Law.⁷



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¹ Amendment Law, preamble.

² Trusts Law, section 64A (Jurisdiction of Court to set aside mistaken exercise of fiduciary power).

³ In *Re Hastings-Bass*; *Hastings-Bass v IRC* [1975], the English Court of Appeal established the rule (explained subsequently in *Sieff & Ors v Fox* [2005] 1 WLR 3811) that the court has discretion to set aside an exercise of power if a trustee failed to take into account relevant considerations, or took into account irrelevant considerations when exercising the power. This rule has been subsequently developed, including in *Pitt v Holt*; *Futter v Futter* [2013] UKSC 26 where the Supreme Court confirmed that an exercise of a power is only voidable where it also amounts to a breach of fiduciary duty.

⁴ Trusts Law, section 64B (Jurisdiction of the Court to approve compromise).

⁵ Trusts Law, section 72 (Jurisdiction of the Court to vary trusts).

⁶ Trusts Law, section 91 (Exclusion of foreign law).

⁷ Trusts Law, section 2 (Definitions).

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