

ADVISORY
Industry Information

The Trusts (Amendment) Law, 2019 will come into force in the Cayman Islands on 14 June 2019

14 June 2019

The Trusts (Amendment) Law, 2019 (the "Amendment") makes a number of significant enhancements to the Trusts Law (2018 Revision) (the "Law") and, in particular, to the Grand Court's jurisdiction in relation to the administration of trusts.

Setting aside a mistaken exercise of a fiduciary power

The Amendment preserves in Cayman law what has become known as the rule in *Re Hastings Bass*: the wide jurisdiction of the Court to unpick mistakes made by trustees and other fiduciaries due to inadequate deliberation when exercising their powers. The application of the rule in England and Wales had been severely curtailed back in 2013 by the Supreme Court's decision in the cases of *Pitt v Holt* and *Futter v Futter*: it was held that the remedy would be available only in instances where the fiduciary had acted in breach of its duties; since that decision, the possibility of the Cayman Court following suit had been a matter of some concern.

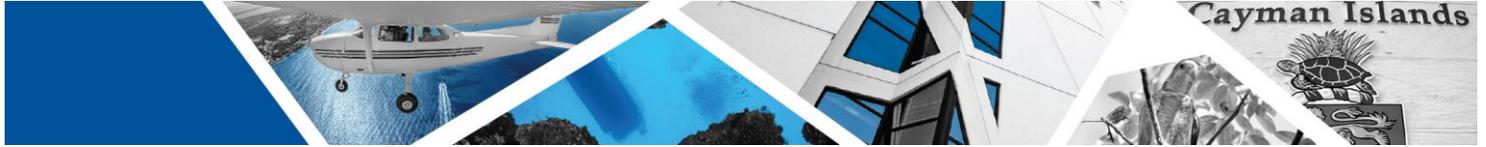
The new section 64A of the Law removes this concern. The section confers on the Court the discretion to set aside, wholly or in part, the exercise of a fiduciary power if it is satisfied that:

- » in exercising the power, the power-holder did not take into account one or more relevant considerations, or took into account one or more irrelevant considerations; and
- » but for that failure, the power-holder would not have exercised the power at all, or would have exercised it at a different time or in a different manner.

Importantly, there is no requirement that the power-holder should have acted in breach of trust or breach of duty in order for the remedy to be available.

Fiduciary power is defined in very broad terms and would include most dispositive, administrative or investment powers. A power-holder includes a trustee or any other person on whom a fiduciary power is conferred.

An application may be brought under section 64A of the Law by the power-holder; any trustee, beneficiary or enforcer of the trust in respect of which the fiduciary power is conferred; the Attorney General, in respect of a charitable trust; and any other person with the leave of the Court.



Variation of trusts

The Court's jurisdiction at section 72(1) of the Law to approve a variation of trust on behalf of a minor, unborn or incapacitated beneficiary is subject to a subtle but significant refinement. Previously, the Court had to be satisfied that the variation would be for the benefit of that person; following the amendment, the requirement is now that the Court be satisfied that carrying out the variation "would not be to the detriment of that person".

Approving compromises

Similarly, the introduction of section 64B of the Law means that the Court may now approve the compromise of trust litigation on behalf of any beneficiary if satisfied that the compromise is not to the detriment of the beneficiary (even though it may not be to his or her benefit).

Exclusion of foreign law

Section 91 of the Law, the so-called "firewall" which seeks to shield a Cayman trust against attack by any party on the grounds that the trust offends or denies rights arising under foreign law (for example, rights of inheritance or rights arising by virtue of marriage or divorce), has been extended. The section now includes rights arising by reason of a personal relationship to any beneficiary, discretionary or otherwise. Previously, the section had referred only to rights arising by reason of a personal relationship to the settlor.

Definition of trust corporation

The definition of a trust corporation has been extended to include any licensed trust company, registered controlled subsidiary or registered private trust company. This definition, which previously applied only to the STAR trust legislation, now has general application in the Law.

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