

*The revision maintains the Cayman Islands' commitment to being at the forefront of pioneering and accessible offshore trusts legislation and ensures that it remains a leading jurisdiction for all forms of trust structures, both in the private client and commercial contexts.*

Henry Mander  
+1 345 815 2927  
henry.mander@harneys.com  
Cayman Islands

## New revision of Trusts legislation in Cayman

Henry Mander, Partner

The Trusts Law (2017 Revision) (**2017 Revision**) was gazetted on 31 May 2017. The 2017 Revision is the first full revision of the Cayman Islands Trusts Law since its 2011 Revision (**2011 Revision**) and incorporates the Trusts (Amendment) Law 2016 (**Amendment Law**) which amended and modernised the 2011 Revision.

Along with provisions addressing certain powers and the appointment and discharge of trustees, the Amendment Law introduced a number of retrospective provisions with the objective of correcting technical issues in the original legislation.

### Trustees

Under the 2011 Revision, a trustee who was absent from the Cayman Islands for more than 12 months could have been discharged and replaced. The Amendment Law removed this provision. This was welcomed by the industry given that many trustees of Cayman law trusts are based in other financial centres, such as Switzerland, Singapore and Hong Kong.

Additionally, the Amendment Law addressed technical issues concerning the proper discharge of trustees which arose as a result of transitional provisions from 1998. Those provisions applied to trusts created on or after 11 May 1998 or if the specific section had been applied to a trust by express extension by the trustee. The consolidating legislation after 1998 did not preserve the pre/post 11 May 1998 distinction and the Amendment Law corrected this issue by amending section 6(c) to contain specific reference to trusts established on or after 11 May 1998. Section 8 of the 2011 Revision has also been amended to cover the position where there is a retirement of a trustee with no simultaneous appointment of a new trustee. The position is therefore the same irrespective of whether a new trustee takes office or not on the retirement of an incumbent trustee.

### STAR Trusts

The Amendment Law clarified that controlled subsidiaries (under section 5 of the Banks and Trust Companies Law (2013 Revision)) can be trustees of STAR Trusts and that this has been the case since 7 August 2008. Accordingly, to satisfy one of the conditions of the STAR

regime, one of the trustees must be a Cayman licenced trust company, a Cayman Private Trust Company or a controlled subsidiary.

### Reserved powers

Section 14 of the 2017 Revision now allows a settlor to reserve to himself, or a third party, power to appoint both capital and income from a trust. This power can be included in any Cayman trust irrespective of when it was established and will add flexibility to settlors who wish to retain strategic control over distributions from a trust.

### Other trustee powers

The Amendment Law extended the adverse events against which a trustee is authorised to insure trust property.

### Charitable purposes

The scope of the objects of charitable trusts was extended by the Amendment Law. This amendment is retroactive and so applies to all charitable trusts whenever created.

### Conclusion

Overall, the changes incorporated in the 2017 Revision do not represent a major development in trusts law in Cayman; however the 2017 Revision maintains the Cayman Islands' commitment to being at the forefront of pioneering and accessible offshore trusts legislation and ensures that it remains a leading jurisdiction for all forms of trust structures, both in the private client and commercial contexts.

**For more information and key contacts please visit [www.harneys.com/cayman](http://www.harneys.com/cayman).**

© Harneys, June 2017

*Harneys is a leading international offshore law firm. From more than 12 offices around the globe, Harneys advises the world's top law firms, financial institutions and corporations on the laws of Bermuda, British Virgin Islands, Cayman Islands, Cyprus and Anguilla. For more information about Harneys please visit [www.harneys.com](http://www.harneys.com) or contact us at [marketing@harneys.com](mailto:marketing@harneys.com). The foregoing is for general information only and not intended to be relied upon for legal advice in any specific or individual situation.*