

Article

Cayman Islands Private Client Legislative Update

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It's trite to say that 2020 was a year marked by change. Having being bombarded with a variety of unsolicited adjustments to our daily lives, we could be forgiven for having developed a collective fear of change over the last 12 months. Fortunately, the legislative changes affecting Cayman Islands' trust and private wealth practitioners do not align with the general trend of 2020. On the contrary, the pace and direction of change has been much more palatable as legislators have continued with the incremental modernisation of the Cayman Islands' trusts law and related legislation.

Many of the amendments have been focused on increased transparency and regulatory oversight, and have arisen in response to recommendations from financial action task forces and international bodies (a persistent theme on the Cayman legislative agenda). While some practitioners may be weary of the seemingly constant change on this front, this is indeed our "new normal", and we should take comfort that the legislature's approach to complying with international standards while seeking to minimise unnecessary impediments to legitimate business should ensure that the jurisdiction is well-positioned for the future.

There have also been some exciting developments which demonstrate the continued commitment to ensuring that Cayman remains an attractive and leading jurisdiction for wealth structuring. Not least amongst these is the proposed Perpetuities Disapplication Bill. While the Bill had not been finalised or approved at the time of writing, it is expected to remove the current statutory time limit applicable to some trusts (noting that STAR trusts, charitable trusts and pension trusts are already able to exist in perpetuity under Cayman law).

Other developments, such as legislative reform to allow for the virtual witnessing and attestation of deeds, and for digital nomads to work remotely from Cayman, have been introduced specifically in response to the pandemic, but are not (at least for now) intended to be permanent.

The key recent developments are broadly summarised in the table below.

Key changes	Legislation	Comment
Approved measures		
Introduction of "Global Citizen" program for digital nomads to work remotely from Cayman for up to two years	Immigration (Transition) (Global Citizen Exemption) Regulations 2020	Individuals wanting to work remotely in Cayman for a period of up to two years that can show proof of employment outside of Cayman and a minimum household income of US\$100K for singles; US\$150K for couples; or \$180K for families with children, can apply for a special residency permit.
The introduction of a regulatory regime for "Virtual Asset Service" providers	Virtual Asset (Service Providers) Law, 2020 (the "VASP Law")	Under the VASP Law it is mandatory for providers of a "virtual asset service" to be licensed or registered. "Virtual asset service" is given a very broad definition covering the issuance, exchange, transfer, custodial services and "participation in, and provision of, financial services related to a virtual asset". The new regime (which fully comes into effect by 31 January

		2021) requires virtual asset service providers to maintain minimum standards, including having a registered office in the Cayman Islands and compliance with regulations such as the Cayman Islands AML regime and Data Protection Law. Other requirements are imposed on those offering virtual asset custody services or virtual asset trading platforms.
Single Family Offices no longer exempt under the Securities Investment Business Law	Securities Investment Business Law (2020 Revision) (“SIBL”)	SIBL provides for the licensing and regulation of “securities investment business” carried on in, or from, the Cayman Islands. While “Single Family Offices” (“SFOs”) were previously exempt as a non-registrable person, such exemption has now been removed meaning that SFOs which conduct ‘securities investment business’ (i.e. managing, dealing in or arranging deals in securities) may now be required to register with CIMA and be regulated under SIBL.
Introduction of “Living Wills” (advanced health care directives)	Health Care Decisions Law, 2019	The law allows a person to determine their wishes surrounding medical care and treatment, including end-of-life care, should they become mentally incompetent, and to prepare a legal document to this effect.
Modernisation of Cayman’s Trusts Law	Trusts (Amendment) Law 2019	Various amendments to Cayman’s Trusts Law took effect from 14 June 2019 including: a codification of the “Hastings-Bass” principle providing a clear framework to apply for relief where a fiduciary has made a mistake in the exercise of their powers; making it easier for the Grand Court to approve variations to trusts and compromises to litigation on behalf of minor and unborn beneficiaries; and extending the “firewall” provisions which protect against a foreign law applying to a Cayman trust or foundation company.
Virtual witnessing and attestation	Property (Miscellaneous Provisions) (Amendment) Bill, 2020	Provides for the virtual witnessing and attestation of required signatures for the execution of a deed or instrument under seal; and for incidental and connected purposes. At present it is contemplated that this will be an interim measure ending on 16 April 2022.
Currently under consultation		
Abolishing perpetuity periods for trusts	Perpetuities Disapplication Bill	As currently drafted the law will: abolish perpetuity periods for new trusts and powers (other than those relating to land in Cayman); and make provisions for applying to extend a perpetuity period for an existing trust.

*This information is up-to-date as at 26 March 2021

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