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TRUSTS & ESTATES PRACTICE TEAM ALERT

Puerto Rico enacts a new Trusts Act

On August 31, 2012, Governor Fortuño signed into law Act 219-2012 (the "Trusts Act") to create a new trusts regime for Puerto Rico and to repeal all trusts provisions codified in the Civil Code. The Trusts Act provides new requirements for the creation or establishment of trusts and creates a Special Registry of Trusts ascribed to the Notarial Inspection Office to register trusts. Failure to timely complete such registration will render the trust null and void.

Among the salient changes of the Trusts Act are the following:

- The trust is specifically constituted as an autonomous estate separate from that of grantor, trustee and the beneficiary and title to real property transferred to the trust is vested in the trust, not the trustee.
- Trusts are irrevocable and may only be created by public deed or a will executed in accordance with law.
- The trust document may override the Trusts Act provisions, which are supplementary when the trust does not provide for a given situation. The Trusts Act provisions are only mandatory when specifically provided with respect to matters of extraordinary public interest.
- Trusts constituted in Puerto Rico must be timely registered in the Special Registry of Trusts ascribed to the Notarial Inspection Office to avoid nullity.
- The period of duration of a trust cannot exceed seventy five (75) years from its creation; except for those related to disabled persons for whom the duration of their trust can be established for up to ninety (90) years or the life of the disabled person, whichever is greater and those for public purpose (charitable) which can be established in perpetuity.
- A testamentary trust may be created over the one third legal ("legítima estricta") and the one third improvement ("mejora") portions of an estate belonging to heirs who are minors or disabled, as long as they are designated as the sole beneficiaries and the trust does not extend beyond the majority age of the heirs or the termination of the disability, respectively.
- The duties of a trustee are specifically delineated by the new law and must manage the trust to the best of its abilities, not just under the "prudent and reasonable" standard, and will be responsible for any kind of negligence, unless limited in the trust by the grantor.
- The "protector" figure from the common law is incorporated in the Trusts Act as the "consultant", which are not trustees, but may be delegated by the terms of the trust with the power to modify the trust to obtain or maintain a more favorable Puerto Rico and/or federal tax treatment, approve the accounting and administration reports of current trustees, name a successor trustee or consultant, and consent to investment management actions of a trustee, among other powers.

- The “prudent investor rule” from the Uniform Prudent Investor Act is incorporated by the new act to set a clear standard to evaluate the acts of trustees, but rule can be limited, eliminated or expanded by a grantor of the trust.
- A trustee must conduct an inventory upon accepting its designation and provide annual and a final accounting report according to Generally Accepted Accounting Principles.

If you have any questions or comments, or wish additional information regarding this matter, please contact any of the following attorneys:

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