

General information - Trusts

1.1 Trust Administration

Cayman Trust Law is sufficiently flexible to have trusts that are designed to be fully or partially compliant with Sharia Law if required.

How the Trust deed is drafted will depend upon the Settlor's wishes and intentions when establishing the trust. The two areas likely to be most affected by the decision will be regarding investment of the trust assets and succession planning. Cayman Islands Trust Law is based in part on the trust laws of the United Kingdom, however, it is also based on precedents set by the decisions made in the Cayman Islands courts.

There are many advantages of holding assets in trust including:

- ❖ Confidentiality;
- ❖ Management of assets in more than one country and/or investment portfolio management within an underlying company;
- ❖ Provision for intended heirs and protection against foreign laws;
- ❖ Asset protection; and
- ❖ To facilitate tax planning and/or estate planning.

Assets can be held in trust, so that upon the death of the Settlor the family is less likely to face multi jurisdictional issues in terms of the assets held therein. The Trust assets can pass to the beneficiaries as detailed in the Trust deed.

A trust creates a fiduciary relationship with respect to certain assets ("Trust Property"), imposing on the trustee an obligation to deal with the Trust Property for the benefit of specified persons or, in certain limited cases, for specified objects. A trust has no separate legal personality and is not a legal person; therefore whilst the trustee owns the Trust Property, it is the beneficiaries who derive the economic benefit there from.

A trust can be set up in a short period of time and with minimal initial costs. The more information that can be provided at the outset will limit both the time and cost involved.

1.2 Types of Trust

There are a wide variety of trust structures that can be utilised in Cayman.

1.2.1 Ordinary or Discretionary Trust

There are many different forms a trust can take. The most common trust vehicles used in the Cayman Islands are Ordinary or Discretionary Trusts. This gives the Trustees wide discretion over the Trust Property, including the management of investments and distributions. Of course, the trustee must always act in the best interests of the beneficiaries; they must act in good faith and in accordance with the trust deed. The legislation in Cayman, the Perpetuities Law, allows for new trusts to continue for a maximum of 150 years.

1.2.2 Exempted Trust

An Exempted Trust is one that is registered with the Registrar of Trusts, whereby it can for the payment of a registration fee and annual fee pay for a tax exemption for the period of 50 years. This guarantees that the trust will not pay Cayman Islands tax for that period, should any taxes be introduced at some future time. It is worthy of note, however, that no Cayman Trust pays any Cayman taxes at this time whether exempted or not.

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1.2.3 Reserved Powers Trust

Understandably, one of the concerns most expressed by 'would be' Settlers is the thought of losing control over the administration of the Trust Property. In the Cayman Islands, the trust law allows for certain powers to be reserved by the Settlor or an appointed Protector, including, but not limited to, the power to direct investments and distributions the power to appoint or remove the trustees. Care must be taken when including these reserved powers into the Reserved Powers Trust Deed. Legal and tax advice should be sought to ensure there are no unforeseen consequences to reserving any such powers.

1.2.4 Purpose Trust (STAR)

The Special Trust (Alternative Regime) was enacted in 1997, in answer to the growing demand for non-charitable purpose trusts, specifically a special trust or a STAR Trust which can be created for a specific purpose, whether objects or persons or indeed both. This is with the proviso that the purposes are lawful and not contrary to public policy.

1.2.5 Private Trust Company

A further solution to address any lingering concerns regarding the loss of control over the trust assets is the use of a Cayman Private Trust Company ("PTC"). A PTC can be incorporated as either a regular Exempted Company or an Ordinary Company however, the former is more commonly used for this purpose. The regulations changed in the Cayman Islands in 2008 so that PTC's incorporated in the Cayman Islands no longer necessarily require a Restricted Trust Licence, but instead can simply register with CIMA for a one off registration fee and an annual payment thereafter. These fees would be treated as an addition over and above the annual basic maintenance charges. Under the Private Trust Companies Regulations (2008) the PTC must maintain its registered office at the office of a company that holds a trust licence, must only conduct "connected trust business" and must keep up to date copies of the trust deed and any other documents pertaining to the trust, its powers or provisions and any variations thereto. Furthermore, unlike a PTC with a Restricted Trust Licence, there is no requirement for a registered PTC to file annual audited financial statements.

The Settlor or a trusted family advisor can then sit on the board of the PTC as a director. It may also be desirable to appoint directors with trust experience to the board.

A PTC can be owned by a STAR Trust. The unique advantage of a Cayman STAR trust is that it can be created for non-charitable purposes and for the benefit of individual beneficiaries, or be structured as a pure purpose trust with no beneficiaries, merely a business plan. Non-charitable trusts in other jurisdictions do not offer the ability to have mixed purposes. The purpose of a STAR Trust in a PTC structure is to own the shares of the PTC and to ensure that the PTC carries out the function for which it was created. This structure is becoming increasingly popular among high net worth clients and offers not only peace of mind, but also is a convenient and effective estate planning tool.

2 Other Trust Matters

2.1 Letter of Wishes

An ever more common method for the Settlor to mitigate any concerns is the use of a Letter of Wishes. This is a letter written to the trustees by the Settlor suggesting guidelines as to the administration of the trust. It is important to note however, that this is a non binding letter and must not detract from the trustees discretionary powers. The Letter of Wishes must be very carefully drafted in order to avoid the possibility of the court holding that the trust instrument is a sham. Letters of Wishes should not be at variance with the terms of the trust instrument.

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2.2 Ongoing Administration of a Trust

It is normal in most trust structures for the trust to own an underlying company which in turn owns the assets. Unlike the trust, the company is an independent legal entity and can own property and investments in its own name.

2.3 Revocable Trust

Finally, a trust can be revocable, which means that the Settlor has the power to revoke the trust, thereby the Trust Property vests back with the Settlor, or irrevocable which means once the trust is created and the trust property duly transferred to the trustees, the Settlor only then has the reserved powers (if any) available to him.