

KEY FACTS TRUSTS

THE CAYMAN ISLANDS TRUSTS LAW AS AMENDED, IS SIMILAR TO THE TRUST LAWS OF THE UNITED KINGDOM.

A Cayman Islands trust may be established by either a deed of settlement in which the settlor is identified, or by a deed of declaration in which the trustees acknowledge their appointment as such and receipt of the settled sum with the settlor's identity not recorded in the deed of declaration.

The Cayman Islands Trusts Law provides for three kinds of trusts:

Ordinary Trust

There is no provision in the law for the formal registration of an ordinary trust, which is the most frequently used trust structure. Cayman legislation permits new trusts to continue for a maximum duration of 150 years regardless of the rule against perpetuities and clarifies the powers that can be reserved by the settlor.

Exempted Trust

The exempt trust is registered with the Registrar of Trusts. The registry is not open to public inspection. An important advantage of an exempted trust is that upon application to the Registrar of Trusts the trust may be exempted for up to 50 years from all taxes that may at a future time be introduced in the Cayman Islands.

Purpose Trust

The Special Trust Alternative Regime (STAR) enacted in 1997 and now incorporated into the Trusts Law provides the legal basis under which a special purpose trust may be established in the Cayman Islands.

A STAR trust may now be created in the Cayman Islands for a specific purpose, or for the benefit of an identifiable group or class of beneficiary as well as for a specific purpose, provided that the purposes are lawful and not contrary to public policy.

PRIVATE TRUST COMPANIES

Under current legislation, passed in the Cayman Islands in September 2008, certain private trust companies incorporated in Cayman no longer require a restricted trust license from the Cayman Islands Monetary Authority (CIMA). Certain restrictions do apply in that the private trust company must both maintain its registered office in the Cayman Islands at the office of a company that has a trust license and include "Private Trust Company" or "PTC" in its name. A private trust company is one that conducts connected trust business with related parties. Instead of obtaining a full license, the private trust company can now register with CIMA on an expedited basis and file an annual declaration. The fees are US\$5,168.29 on registration (Registrar of Trust and CIMA) and annually thereafter.

PROTECTION AGAINST FOREIGN LAWS

The Cayman Islands "firewall" legislation operates so that assets transferred to the trustee of a Cayman trust are protected against claims based on rights of heirship existing under foreign laws or the fact that a foreign law prohibits or does not recognise the concept of a trust. The firewall legislation achieves this by requiring that questions such as the validity of a Cayman trust be determined in accordance with Cayman law and by providing that any foreign judgment or order which conflicts with Cayman law shall not be recognized by the Cayman courts. (This is all subject to the caveat that when the trust assets are located in a jurisdiction outside of Cayman, they may be vulnerable to a foreign order and therefore careful consideration of the location of assets is needed.)

CREDITOR PROTECTION

The Fraudulent Dispositions Law provides Cayman trusts with statutory protection against claims of creditors seeking to set aside transfers to such trusts. A transfer can be set aside if, within a six-year period, a creditor can show that the transfer was made with an intent to defraud and at an undervalue. After the six-year limitation period, no such actions may be brought under the statute.

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