CAYMAN ISLANDS

Cayman Islands Trusts

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Planning Uses for Cayman Trusts

Cayman trusts are established for various estate, personal, financial, tax, or business planning objectives. These include providing for spouses and dependents, protecting assets from future personal liability, minimizing taxes, avoiding forced heirship rules, preserving family wealth, ensuring efficient asset distribution upon death, protecting against exchange controls, creating charities, establishing pensions or employee stock option plans, and owning specific assets or investments.

The Trust Concept

The principal legislation governing Cayman trusts includes the Trusts Act (2021 Revision), the Fraudulent Dispositions Act (1996 Revision), and the Perpetuities Act (1999 Revision). A trust is a legal relationship where a settlor gives property to a trustee or trustees to hold for the benefit of beneficiaries or for a specified purpose.

Typical Forms of Trust

Discretionary Trust:
A discretionary trust provides trustees with wide discretionary powers over the trust fund to be administered for the benefit of a group of beneficiaries. This trust structure provides flexibility for the settlor and beneficiaries. Under the terms of a discretionary trust, the trustee generally decides whether, when and to which beneficiary he should distribute capital and/or income of the trust, and in what proportions. For this reason, the beneficiaries are regarded as not having a specific interest in the trust but only a right to be considered when the trustee exercises his discretions.

Fixed Interest Trusts:
A fixed trust is a type of trust where the beneficiaries' rights and entitlements are clearly defined and fixed at the outset. Unlike discretionary trusts, there is no flexibility in who receives what, or how much, as the beneficiaries have a defined right to benefit from the trust assets.

This form of trust is used for estate planning purposes or to ensure that certain property passes on stipulated terms and at times for the benefit of relevant family members. It is often specially drafted to suit the particular planning goals contemplated by the settlor.

Charitable Trusts:
This form of trust is established for charitable purposes. A trust under Cayman law is charitable if there is an element of public benefit that falls under the purpose of poverty relief, education advancement, religious advancement and/or community benefits. Charitable trusts may continue indefinitely.

Trusts with Protectors

A protector may be appointed to a trust in order to limit the powers of the trustees and ensure the settlor's wishes are carried out by requiring the trustees to obtain the consent of and/or act at the direction of, or in consultation with, the protector. A protector acts as a layer of protection for the trust's beneficiaries and the settlor's original intentions and can be either an individual, a committee of individuals, or a company.

The inclusion of a protector is not necessary for the creation of a Cayman trust but can balance the wide discretionary and fiduciary powers often given to the trustee under the trust.

Settlors reserved powers

An alternative to the appointment of a protector is to reserve certain powers to the settlor of the trust, such as revoking or amending the trust, appointing income or capital of the trust, acting as director of any company owned by the trust, and the ability to add or remove any trustee, protector, or beneficiary.

The structuring of reserved powers trusts must ensure that an agency relationship is not created, rather than a trust. Also, adverse tax consequences may arise for the settlor and the trust subject to the settlor's tax jurisdiction.

STAR Trusts

The Special Trusts Alternative Regime came into effect in 1997 and provides for a different form of trust commonly referred to as a "STAR trust".

The objects of a STAR trust may be persons or purposes or both. The persons may be of any number, and the purposes may be of any kind, be it charitable or non-charitable, provided that they are lawful and not contrary to public policy. STAR Trusts are also not bound by perpetuity rules so they may be unlimited in duration.

The only persons with standing to enforce a STAR trust are those persons who are appointed "enforcers" under the trust deed or by order of the court. Enforcers are deemed to have a fiduciary duty to act responsibly with a view to the proper execution of the trust, subject to evidence of contrary intention.

Trustees of a STAR trust are required to be (or include) a trust corporation (or its controlled subsidiary) licensed in Cayman or registered as a Cayman private trust company.

Exempted Trusts

Exempted trusts must be registered in Cayman with the Registrar of Trusts and are entitled to a tax exemption undertaking which guarantees that tax will not apply to any assets under an exempted trust for a period not exceeding 50 years from the date of creation. The beneficiaries of an exempted trust cannot include any person resident or domiciled in Cayman, other than a charitable object.

Unit trusts are typically registered as exempted trusts. For more information on Unit trusts, please refer to Conyers' publication "Cayman Islands Unit Trusts".

General Legal considerations

Effect of Foreign Laws

Subject to any express term to the contrary in the trust deed, all questions arising in regard to a trust which is governed by the laws of the Cayman Islands are to be determined according to the laws of the Cayman Islands, without reference to the laws of any other jurisdiction(s) with which the trust or disposition may be connected.

No trust governed by the laws of the Cayman Islands and no disposition of property to be held upon the trusts thereof is void because the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust, or the trust or disposition avoids or defeats forced heirship rights conferred by foreign law.

Rule against Perpetuities

Amending legislation has been passed in the Cayman Islands which disapplies the rule against perpetuities for Cayman ordinary trusts and allows for the creation of trusts with no fixed end date. The terms of the trust deed must specify that the rule is disapplied; if, however, the rule is not dissapplied in the trust instrument, the usual 150-year perpetuity period will continue to apply to ordinary trusts. As noted above, STAR and charitable trusts can continue indefinitely.

Licensing requirements of Cayman trustees

A trust company carrying on business from the Cayman Islands must be licensed pursuant to the BTCA. Applications for licences must be made to the Cayman Islands Monetary Authority (CIMA) in the prescribed form.

Taxation and Stamp Duty

Nominal stamp duty is payable on every settlement and deed in writing under the Stamp Duty Act. There is no income, capital gains, wealth, withholding, gift or inheritance tax in the Cayman Islands.

Trustee Duties and Trust Administration

Individuals, as well as companies licensed as trust companies under the Banks and Trust Companies Act (BTCA), or established as private trust companies, may act as trustees of a Cayman trust.

Trustees are required by law to fulfil certain fiduciary duties for the beneficiaries of the trust, including acting in good faith and for the best interests of beneficiaries, obeying the terms of the trust deed, managing trust property, exercising reasonable care, skill and caution concerning trust administration, refusing to delegate to a third party unless authorised, not profiting from the trust property, and keeping copies of any documents varying the trust. Trustees must also keep accurate records and accounts of the identity of the settlor, trust contributors, named beneficiaries, protector, enforcer, service providers and those with ultimate control of the trust.

Where the trust assets are being re-invested on a regular basis, the trustees will often recommend that a professional investment advisor be employed to make recommendations to the trustees so that the trustees have professional advice upon which to base their investment decisions or to assist the management of assets.

Private Trust Companies

A private trust company is a limited company whose sole purpose is to act as a trustee for a specific trust or a related group of trusts. The regulation of private trust companies in the Cayman Islands is governed by BTCA and the Private Trust Companies Regulations (PTCR). No company may carry on the business of acting as trustee from within the Cayman Islands without possessing a trust licence issued by CIMA however, under the PTCR, a private trust company may obtain an exemption from this licensing requirement provided it meets certain specified criteria.

For more information, please refer to Conyers' publication "Private Trust Companies in the Cayman Islands."

Contact

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