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Guide to Cayman Islands trusts

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The Cayman Islands is a leading jurisdiction for the establishment and administration of trusts. It has a sophisticated and mature local trust industry which is ably supported by a highly experienced judiciary.

Cayman Islands trusts are primarily governed by the Trusts Act (2021 Revision) (as amended) (**Trusts Act**) and common law principles.

This briefing provides a guide to different types of Cayman Islands trusts and how they may be established.

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What is a trust?

A trust is a contractual arrangement whereby a person transfers certain property which they personally own (**Settlor**) to a person who agrees to hold the legal title to such property on certain terms (**Trustee**) for the benefit of certain persons which may include the Settlor (**Beneficiaries**). The assets held under such an arrangement (**Trust Fund**) may include cash, bank accounts, shares in a company, real estate, investments, loans and various other types of assets.

Under common law principles, in order to create a valid trust in the Cayman Islands, there are 'three certainties' which must be satisfied, namely, there must be certainty as to:

1. the Settlor's intention to create a trust,
2. the property which is held on trust, and
3. the objects who are intended to benefit under the trust.

While it is possible to establish a trust in Cayman by way of an oral declaration it is advisable to record the terms of the trust in writing (**Trust Deed**).

Key roles in a trust

1. Settlor

The Settlor is the person who transfers legal title to certain assets which they personally own to the Trustee to hold on trust subject to the terms of the trust. However, a Settlor may be able to retain some control over the

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Trust Fund by reserving certain powers to themselves under the trust (please see the section below on reserved powers).

When establishing a Cayman trust, a Settlor has the option of providing non-binding guidance to the Trustee in the form of a letter or memorandum of wishes setting out how they would like the Trustee to administer and distribute the assets of the trust. The Trustee typically takes the Settlor's wishes into account when making decisions in relation to the trust and its assets, although they are not obliged to follow such wishes.

2. Trustee

A Trustee is an individual or legal person (such as a professional trust company or a private trust company) to whom the Settlor has transferred legal title to certain assets to hold on trust subject to the terms of the trust for the benefit of certain persons and/or class(es) of persons. A trust may have one or more Trustees. The Settlor or a Beneficiary may also act as Trustee, provided that the Settlor is not the sole Trustee. Professionally regulated Cayman trust companies are frequently appointed to ensure the trust is properly administered by trained and experienced trust professionals and to ensure there is ongoing compliance with applicable regulatory requirements.

A Trustee is required to administer the assets of the trust in accordance with its fiduciary duties and legal obligations under the Trusts Act, as supplemented by common law trust principles. These include the duties to act prudently, in good faith and with proper skill and care, in the best interests of all Beneficiaries and to maintain proper accounting records for the trust. If the Trustee breaches any of its duties or acts contrary to the terms of the trust, the Trustee may be liable for breach of trust.

3. Beneficiaries

Beneficiaries are the persons who may benefit from the assets of the trust. Depending on the nature and terms of the trust, they may receive distributions of income and/or capital of the Trust Fund during the life of the trust. When establishing a trust in Cayman , the Settlor specifies the persons and/or class(es) of persons they would like to benefit under the trust. Subject to the terms of the Trust Deed, it may be possible to add further Beneficiaries in future. The Trustee is required to act in the best interests of all the Beneficiaries when making decisions or exercising its powers in respect of the trust. Except in the case of Cayman STAR trusts (discussed below), Beneficiaries generally have a right to access trust information (such as copies of the trust's accounts) and to bring court proceedings to enforce the terms of the trust or to claim damages from the Trustee arising from a breach of trust.

4. Protector

A Settlor may appoint a trusted person to act as the Protector of their trust. A Protector is generally expected to have oversight of the Trustee's decisions and to ensure that the Trustee is administering the trust in accordance with its terms, in the best interests of the Beneficiaries. A Protector may hold positive powers,

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such as the power to appoint or remove Trustees or to vary the terms of the trust, and/or to provide its consent to certain action being taken by the Trustee, for example, making distributions from the Trust Fund.

The Protector is often a trusted advisor, relative or friend of the Settlor or a professional service provider. The Settlor or a Beneficiary may also act as Protector, however, depending on the nature and extent of the powers held by a Protector, there is a risk of compromising certain beneficial features afforded by the trust. Relevant advice regarding tax and regulatory reporting requirements should also be sought before appointing someone as a Protector.

Court supervision and assistance

Where issues or disputes arise in relation to the administration of trusts governed by Cayman law, the Grand Court of the Cayman Islands (Court) has a supervisory jurisdiction to provide guidance and/or make orders to resolve such matters. Under the Trusts Act, persons who have standing, which may include the Trustee, Beneficiaries or Protector/Enforcer, depending on the nature of the trust and the application, may bring proceedings seeking advice, guidance or orders from the Court to vary the terms of the trust, bless certain decisions of the Trustee or make other decisions in respect of the trust. The Court is well-known for its pragmatic approach towards ensuring the proper administration of trusts in the Cayman Islands.

Common types of Cayman trusts

1. Discretionary trust

The most common type of trust established under Cayman Islands law is a discretionary trust, where the Trustee, subject to the terms of the particular Trust Deed, generally has discretion to distribute income and/or capital of the Trust Fund to any of the Beneficiaries of the trust from time to time as it thinks fit, and to exercise a range of other powers. A Trustee of a discretionary trust typically holds broad powers, including in relation to investing the Trust Fund, varying the terms of the trust and/or terminating the trust. In determining whether to exercise those powers, the Trustee must consider the best interests of the Beneficiaries and may take into account the Settlor's wishes.

Under a fully discretionary trust in the Cayman Islands, Beneficiaries do not have any fixed interests in or entitlements to the Trust Fund. They may only benefit if the Trustee decides to exercise its powers in their favour in accordance with the terms of the Trust Deed.

A discretionary trust offers the most flexibility and is very effective for succession planning, as its discretionary nature enables the Trustee to take into account the changing circumstances and the needs of future generations and adapt the administration of the Trust Fund accordingly.

2. Fixed interest or life interest trust

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The Trust Deed may provide for the apportionment of specific, defined shares of the Trust Fund among the Beneficiaries. For example, in the context of a life interest trust, the Trustee may be required to distribute the income of the Trust Fund to the Settlor during their lifetime and upon their death the capital of the Trust Fund shall be distributed to the Settlor's children in certain defined shares. Alternatively, the Trust Deed may provide for the division of the Trust Fund into certain defined shares for each of the Beneficiaries. While these types of trusts provide greater certainty for Beneficiaries regarding their entitlements under the trust, they are generally less flexible and may offer fewer advantages compared to discretionary trusts.

3. Cayman Islands STAR trust

A STAR trust is a creature of statute that is unique to the Cayman Islands, which was created under the Special Trusts (Alternative Regime) Act 1997 (Special Trusts Act) and is now contained in Part VIII of the Trusts Act. STAR trusts possess certain special features, which include the following:

- They may exist indefinitely or for a specified duration. The ability to exist in perpetuity was previously a unique advantage of Cayman STAR trusts and charitable trusts, as other types of trusts were subject to the rule against perpetuities. However, since the enactment of the Perpetuities (Amendment) Act, 2024, any type of Cayman trust may now exist indefinitely if its terms expressly disapply the rule against perpetuities;
- They may be established for either or both charitable and non-charitable purposes of any number or kind, provided that they are lawful and not contrary to public policy. It is possible for a STAR trust to benefit persons and/or advance certain charitable and/or non-charitable purposes. For instance, a Settlor may wish to establish a Cayman STAR trust to benefit members of their family and certain charities, in addition to advancing certain investment or commercial activities;
- Beneficiaries of a STAR trust do not usually have the right to enforce the terms of the trust, bring court proceedings or demand trust information, unlike other types of trusts;
- The only person under a STAR trust who has standing to enforce the terms of the trust is the enforcer appointed under the Trust Deed. Enforcers are granted special powers to obtain trust information and enforce the terms of the trust in order to hold the Trustee accountable for their administration of the trust; and
- At least one of the Trustees or the sole Trustee must be either a trust corporation or a private trust company licensed or registered in the Cayman Islands.

Given their special features, STAR trusts can be especially beneficial in a range of contexts, including, but not limited to:

- holding the shares in private companies (for example, underlying companies of a trust) or in a private trust company which in turn acts as a corporate Trustee of one or more trusts;
- holding luxury, high-risk and/or depreciating classes of assets, including cryptocurrency and digital assets, yachts, aircraft and artwork;
- in circumstances where it is desirable to prevent or restrict Beneficiaries of a trust from obtaining information regarding the trust or bringing court proceedings, for instance if there is a pre-existing

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acrimonious relationship among the Beneficiaries or there is a reasonable risk of litigation which may deplete the Trust Fund;

- engaging in philanthropy, including in respect of purposes which may not be considered wholly charitable under Cayman law, as the concept of philanthropy is broader than charity; and
- commercial transactions or structuring where it may be useful or necessary to have an orphaned company where the shares are held by the trustee of a STAR trust as the company's sole shareholder.

4. Charitable purpose trust

For many high-net-worth (HNW) and ultra-high-net-worth (UHNW) families, engaging in charity and philanthropy is a core pillar of their values and legacy. Cayman charitable purpose trusts are regularly used as vehicles for undertaking long term charitable activities, like projects focused on the relief of poverty, advancement of education, public health or other matters, or which otherwise qualify as charitable under Cayman law. Cayman charitable purpose trusts may exist indefinitely.

Key features and benefits of Cayman trusts

1. Estate and succession planning

Whether a Settlor wishes to preserve their wealth to benefit multiple generations of their family, facilitate the ownership, operation and succession of the family business, advance inheritance and estate planning goals, engage in philanthropy or all of the above, Cayman trusts are extremely useful in developing and implementing one or more bespoke solutions for ones business and estate planning purposes.

2. No perpetuity period

Ordinary Cayman trusts were previously subject to the rule against perpetuities and could only last for 150 years, whereas Cayman STAR trusts have always been able to exist indefinitely. However, The Perpetuities (Amendment) Act, 2024 provides for new Cayman trusts to exist indefinitely or for a specified period if the Trust Deed expressly disapplies the rule against perpetuities. Pre-existing Cayman trusts are still subject to the rule against perpetuities unless a court application is made to disapply the rule.

3. Revocable or irrevocable

A Cayman trust can be established as either revocable or irrevocable:

- **Revocable trust** means that the Settlor retains the power to revoke all or part of the trust after it has been established such that some or all of the Trust Fund is returned to the Settlor to hold personally.
- **Irrevocable trust** means the Settlor irrevocably transfers assets to the Trustee to hold on the terms of the trust and the Settlor cannot revoke any part of the Trust Fund after the trust has been established.

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Nevertheless, there are a number of other ways to wind-up an irrevocable trust, if it is no longer considered to be useful.

When considering the type of trust to establish, it is important to obtain suitable advice and carefully weigh all of the options that are available, giving due consideration to certain life events and risks that are likely to manifest (for example, changes to tax residency, retirement, exposure to creditors, various tax and business risks, regulatory reporting requirements, etc.).

4. Reserved powers

Transferring ownership of assets to a Trustee can be a daunting prospect for a Settlor. As such, they may wish to retain some level of control under the trust, which can be achieved by reserving one or more of the following powers to themselves without invalidating the trust:

- revoke, vary or amend the trust instrument or any trusts or powers arising thereunder in whole or in part;
- a general or special power to appoint either income or capital or both of the Trust Fund;
- any limited beneficial interest in the Trust Fund;
- act as a director or officer of any company wholly or partly owned by the trust;
- give binding directions to the Trustee in connection with the purchase, holding or sale of the Trust Fund;
- appoint, add or remove any trustee, protector or beneficiary;
- change the governing law and the forum for administration of the trust;
- restrict the exercise of any powers or discretions of the Trustee by requiring that they shall only be exercisable with the consent of the Settlor or any other person specified in the Trust Deed.

As the Trusts Act expressly permits reserved powers, a Trustee will not be acting in breach of trust where it acts in compliance with a reserved power.

5. Private trust companies

Under Cayman law, a Cayman private trust company (**PTC**) can be incorporated to act as the sole Trustee, or one of the Trustees, of one or more connected trusts. For many HNW and UHNW families, Cayman PTCs offer various advantages for managing their private wealth. Instead of appointing a professional trust company as Trustee, family members can act as directors and/or shareholders of the PTC together with any trusted advisors or professional directors. PTCs therefore enable families to maintain control over the administration of the trust. PTCs also provide for continuity in the trusteeship, as a PTC can remain as Trustee indefinitely with only the directors and shareholders changing from one generation to the next. This assumes an effective means of transferring directorship and shareholding of the PTC from one generation to the next has been developed and incorporated as part of the Settlor's succession plans.

6. Firewall provisions

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Section 90 of the Trusts Act provides 'firewall' protection for Cayman law trusts. In essence, all questions arising in regard to a trust that is governed by the laws of the Cayman Islands or any disposition of property from such trust must be determined according to Cayman law, without reference to the laws of any other jurisdiction with which the trust or disposition may be connected. The Court has previously confirmed that section 90 does not automatically require all matters concerning Cayman law trusts to be exclusively determined by the Cayman courts. However, if a matter concerning a Cayman law trust is to be determined by a foreign court, the foreign court must apply Cayman trust law .

7. Forced heirship claims and divorce

Where a Settlor transfers assets to a Trustee of a Cayman law trust, such assets cease to be the Settlor's personal property and do not form part of their estate upon death. Accordingly, a Cayman law trust can protect the settled assets against forced heirship claims conferred by the laws of a foreign jurisdiction. Similarly, the Trusts Act provides that a foreign judgment shall not be recognised or capable of being enforced against a Cayman law trust on the basis that the trust contravenes foreign forced heirship laws. The concept of forced heirship arises where the laws of a foreign jurisdiction which govern the deceased's estate require the estate to be divided into certain fixed shares for certain persons, such as close family members. Establishing a Cayman law trust can therefore be a useful succession and estate planning solution, as it affords a Settlor complete testamentary freedom to determine how selected Beneficiaries should benefit from the Trust Fund during and following the Settlor's lifetime.

Similarly, a Cayman law trust may protect assets from matrimonial or relationship property claims in other jurisdictions on divorce or separation. It is recommended that parties obtain all relevant advice before establishing a Cayman law trust.

8. Stable jurisdiction

Asset and wealth protection is a paramount concern for many HNW and UHNW individuals, particularly where they reside in a jurisdiction with an unstable political, social or economic climate. The longstanding stability of the Cayman Islands and its mature, sophisticated and well-regulated private wealth industry continue to provide wealth creators with a viable, stable and effective jurisdiction in which to establish their private wealth structures.

9. Privacy and confidentiality

The Trust Deed and other trust documents are not publicly available in the Cayman Islands, thus ensuring confidentiality and privacy. Depending on the circumstances, the Court may make confidentiality orders in proceedings relating to trusts.

This briefing is intended to provide a general overview of Cayman Islands trusts. For specific advice, please contact a member of our team.

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