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Cayman Islands reserved powers trusts: A sophisticated approach to integrating wealth preservation and strategic influence

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Introduction to Cayman reserved powers trusts

The Cayman Islands (**Cayman**) has long set the benchmark for sophisticated private wealth structuring and solutions. For globally mobile, entrepreneurial individuals and families, flexibility is essential.

Among Cayman's suite of powerful planning solutions, the reserved powers trust is a structure designed to reconcile two competing priorities:

- effective succession and wealth planning; and
- the desire to retain strategic control or influence.

Where family businesses, concentrated shareholdings, complex investments or high-risk assets are involved, a fully discretionary trust can feel commercially unrealistic for potential settlors. A Cayman reserved powers trust offers a calibrated, sophisticated alternative.

To illustrate how it can work in practice, we will be referring to the following hypothetical scenario throughout this article:

Mr X founded a business 30 years ago in Central America. Today, through multiple subsidiaries, it operates across several Latin American jurisdictions. His two adult children, now senior executives within the enterprise, are being equipped to assume leadership.

Mr X, now in his 60s, intends to transfer key parts of his wealth and business interests into a Cayman trust for the benefit of his wife, children and grandchildren.

His objectives are clear:

- *Transition ownership to the next generation;*
- *Protect family wealth;*
- *Preserve business continuity, and*
- *Retain strategic influence.*

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The statutory edge

A valid trust requires the settlor to divest legal ownership of the assets being settled into the trust by transferring title to the trustee, who thereafter holds the assets on trust for the beneficiaries, or in the case of a Cayman STAR trust, for the benefit of beneficiaries and/or the advancement of specified purposes.

The statutory regime in Cayman supplements that framework; section 14 (1) of the Trusts Act (2021 Revision) expressly permits settlors to reserve or grant specific powers to themselves or others, including protectors or beneficiaries, without invalidating the trust.

This provision reinforces validity, assists in insulating the trust against technical challenges and is attractive to high net worth (**HNW**) individuals and families operating across borders.

The Cayman reserved powers trust in action

Reserved powers typically fall into two categories:

1. Positive powers, which enable the powerholder to act directly; and
2. Consent (or veto) powers, which requires the trustee to obtain the approval of the powerholder to exercise the power concerned. Used correctly, they allow influence without undermining the trust structure.

By way of illustration, we have addressed the following types of powers which are commonly reserved by a settlor or granted to a trusted third party.

1. Investment directions

Entrepreneurs often possess deeper insight into their own assets than any institutional trustee. Cayman law therefore permits a settlor to reserve the power to direct investment decisions, including acquisition, retention or disposal of assets, or alternatively to require that trustee decisions be subject to the consent of a designated powerholder.

This is particularly relevant where trusts hold operating businesses, private equity or venture investments, digital assets, concentrated shareholdings and/or other high-value or high-risk assets. For sophisticated wealth creators, reserving such powers preserves strategic oversight while maintaining the integrity of the trust structure.

Scenario:

Mr X and his daughter (the Group CFO) have deep knowledge of the business and related investments. Under his Cayman trust, Mr X reserves the power to give binding investment directions to the trustee. Upon his death or incapacity, that power passes to his daughter.

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For seasoned entrepreneurs and investors, holding this power allows legal ownership of the relevant assets to transfer to the trustee while the settlor retains the ability to influence or direct their management, without undermining the validity of the trust.

2. Directorship of an underlying holding company

Depending on the settlor's wealth structuring and risk management goals, it may be preferable for certain assets, such as an active trading business, to be held through an underlying asset holding company rather than directly by the trust.

This approach achieves two objectives:

1. it ring-fences operational and investment risks away from the trustee and the trust's other assets; and
2. it allows the settlor and family members to remain closely involved in the trading company, preserving strategic control with those who possess the relevant commercial and investment expertise, while ownership transitions into the trust structure.

In Cayman, such an arrangement can be readily implemented by reserving appropriate powers under a standard discretionary trust or through a STAR trust, with the trust deed tailored and the trust structured accordingly.

Scenario:

Rather than transferring certain trading subsidiaries directly into the trust, Mr. X requested that the trustee establish a new Cayman holding company directly beneath the trust to hold the shares of certain operating subsidiaries which will be integrated into the structure. Mr. X, together with certain family members, were appointed as co-directors of the underlying holding company, alongside authorised representatives of the trustee. While ownership has shifted, management continuity over those trading subsidiaries remains uninterrupted.

3. Power to appoint and remove beneficiaries and key officeholders

A settlor may reserve or grant to another the power to appoint and remove a trustee, protector and/or beneficiary of the trust. By retaining the power to appoint and remove trustees, the settlor can ensure the trustee's accountability and alignment with his/her long term goals. As the power to appoint and remove trustees is fiduciary in nature, it must be exercised in the best interests of the beneficiaries as a whole, rather than to advance the settlor’s personal interests or agenda.

By retaining the power to appoint and remove the protector of the trust, the settlor can ensure that the office is held by a person best suited to oversee the administration of the trust and its assets, and to provide objective guidance to the trustee where required or helpful. It is worth noting that, subject to obtaining appropriate advice, a settlor may also appoint himself as a protector of the trust.

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By retaining the power to appoint and remove beneficiaries, the settlor is able to respond to shifting family dynamics and circumstances over time, ensuring the trust remains aligned with their estate planning goals.

Crucially, the trust deed should provide for the appointment of successors should the original officeholder (e.g. the settlor) die or become incapacitated, ensuring continuity and the effective administration of the trust. Such a framework advances two key principles in wealth structuring and succession planning:

1. governance mechanisms within the structure must be flexible and adaptive; and
2. powers must be exercised in the collective interests of the beneficiaries.

Ambiguity or poorly drafted provisions can invite disputes and costly court interventions.

Scenario:

Mrs X is appointed as the initial Protector of the trust, holding consent giving powers over key trustee decisions/powers, including the power to make changes to the beneficiaries of the trust. When concerns later arise regarding one beneficiary's risk profile, the trustee proposes his removal as a beneficiary. Following detailed consultation, Mrs X consents to the trustee exercising its power to remove that family member as a beneficiary of the trust.

4. Power to distribute income and capital to beneficiaries

A settlor may reserve the power to direct distributions of income or capital, or to subject the trustee's dispositive powers to his/her consent. Properly structured, this preserves flexibility to address unforeseen circumstances without compromising the long-term integrity of the trust. However, if the settlor exercises this power frequently and solely for his own benefit, such that the trust begins to resemble a mere conduit or 'cash dispenser', the protective character of the structure may be undermined, potentially eroding the integrity of the trust.

Scenario:

Mr X retains a lifetime power under the trust to direct distributions of income to himself, whereas any distribution of capital to a beneficiary requires the consent of the Protector. Exercising this reserved power for the first time since the trust's establishment several years ago, Mr X directed the Trustee to distribute a portion of the trust's annual income to him in order to meet certain substantial and unforeseen medical expenses incurred over the past year.

The critical balance: Control vs ownership in a Cayman reserved powers trust

The commercial appeal of the Cayman reserved powers trust is obvious, but so too are its legal boundaries. If the retained powers amount to de facto ownership, the courts have shown a willingness to unravel the structure.[1]

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In the Cayman case of *TMSF v Merrill Lynch*, the Privy Council held that the settlor's power of revocation (ie allowing the settlor to revoke the trust and reclaim some or all of the trust's assets) was 'tantamount to ownership' and could therefore be relied upon by a receiver to satisfy a foreign judgment.[2]

Similarly, in *Clayton v Clayton* [3], extensive and unfettered powers that were reserved to the settlor were treated as relationship property. By contrast, in *Cooper v Pinney* [4], more limited powers did not cross that threshold. While *Clayton* and *Cooper* are New Zealand decisions and therefore only persuasive rather than binding on the Cayman courts they provide valuable guidance for settlors and their advisors regarding the scope of reserved powers.

Although each case turned on its own facts, together these decisions underscore a clear lesson: a careful calibration of the powers reserved by a settlor or granted to another is essential to ensure the trust is not exposed to and/or can withstand challenges as to its validity.

Section 90 of the Trusts Act (ie the 'firewall' provisions) does not, in itself, prevent the validity of a Cayman trust from being challenged in a foreign jurisdiction. However, it requires a foreign court to determine all questions relating to a Cayman trust, including questions as to its validity, construction and administration, by applying Cayman law. That approach was affirmed by the Grand Court in *Geneva Trust Company (GTC) SA v IDF & Anr* [5]. Although this 'firewall' provision is a robust protective mechanism, it is no substitute for careful and precise drafting, particularly in the context of a reserved powers trust.

Management of a trust's assets and trustee duties

Reserved investment powers can expose both the trust and its trustees to material risk if not carefully structured. Even where the trust deed contains a robust anti-Bartlett clause, the trustee remains subject to the *'irreducible core of trust obligations'*. [6] While it is possible to exclude duties of supervision, it is not possible to exclude the trustee's obligation of honesty and the duty to act in good faith for the benefit of the beneficiaries. [7]

By way of example, consider a Cayman trust holding all the shares in a private investment company. The settlor retains an express power to direct the company's investment strategy, and the trust deed includes a comprehensive anti-Bartlett clause relieving the trustee of any duty to monitor or intervene in the company's management. If the settlor pursues a high-risk investment strategy that results in substantial losses, subject to the terms of the trust, the trustee will generally not be liable for failing to supervise those investment decisions. However, if the trustee becomes aware that the settlor is misappropriating the company's assets, the anti-Bartlett clause would not permit the trustee to ignore such misconduct; the irreducible core obligation of honesty and the duty to act in good faith for the benefit of the beneficiaries would continue to apply.

Where a settlor with genuine investment expertise proposes to retain powers over the investment and management of the trust's assets, Cayman legal advice is essential to ensure that those powers are precisely defined, appropriately limited, and aligned with both the settlor's personal circumstances and the agreed delineation of responsibilities between the settlor and the trustee.

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Conversely, where it would be inappropriate for the settlor to retain the power to manage the trust's investments, for example, if doing so might trigger adverse tax or reporting consequences for the settlor, a Cayman reserved powers trust can be structured to provide a balanced solution. When properly designed, the trust can preserve a meaningful degree of settlor influence, for instance, through reserved consent (or veto) powers.

Generational continuity

With populations ageing worldwide, a historic transfer of private wealth is underway. According to *UBS's Global Wealth Report 2025*, an estimated US$ 83 trillion is expected to pass between generations over the next 20 to 25 years, of which approximately US$ 74 trillion will transfer vertically from older to younger family members (rather than between spouses). [8]

This 'great wealth transfer', the largest in modern history, has profound implications for how families structure their estates and legacies. For founders and wealth creators, the Cayman reserved powers trust offers a structured pathway to transition ownership, preserve business continuity and retain strategic influence, while protecting the family's wealth across generations.

As highlighted above, careful consideration must be given to how succession to reserved powers will operate. If a powerholder becomes incapacitated or dies and the trust deed is silent or ambiguous, disruption, expense and litigation risks are likely to follow. With disputes concerning incapacity and undue influence on the rise, succession to reserved powers cannot be left to chance.

Consequently, at the drafting stage settlors should determine whether such reserved powers will lapse upon death or incapacity, or instead pass to a nominated successor or to the trustee.

Conclusion: **Cayman reserved powers trusts offer a structurally sound, strategically flexible solution.**

They provide an effective structure for individuals and entrepreneurial families seeking to align governance, asset protection and succession planning in a commercially practical manner.

For many settlors, the core challenge is maintaining continuity:

- protecting operating businesses
- managing cross-border risk; and
- navigating generational transition without relinquishing strategic oversight.

A Cayman reserved powers trust addresses this directly by calibrating the balance between settlor influence and trustee stewardship, enabling continued strategic involvement while embedding asset protection and governance discipline within the trust structure.

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How Collas Crill can help

For wealthy individuals, family-controlled businesses and entrepreneurs managing wealth across generations, succession planning and transferring control of assets has never been more challenging. That's why it's important to work with lawyers who not only have the highest standards of legal knowledge and expertise, but also the ability to find unique solutions tailored to your unique circumstances.

This article is intended to provide an overview of Cayman reserved powers trusts. For specific advice, please contact a member of our team.

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[1] *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2017] EWHC 2426 (Ch); Webb v Webb* [2020] UKPC 22.
[2] *Tasarruf Mevduati Sigorta Fonu (**TMSF**) v Merrill Lynch Bank and Trust Company (Cayman) Limited and others* [2011] UKPC 17 at [62].
[3] [2016] NZSC 29
[4] [2024] NZSC 181
[5] Unreported, 21 December 2020, Kawaley J.
[6] *Armitage v Nurse* [1998] Ch 241, per Millett LJ.
[7] *Zhang Hong Li v DBS Bank (Hong Kong) Ltd.* [2019] HKCFA 45
[8] https://www.ubs.com/us/en/wealth-management/insights/global-wealth-report.html

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