

UPDATE

# Cayman Trust Transparency Law Amendments

Update prepared by Tony Pursall (Partner, London), Zachary Hoskin (Senior Associate, Cayman Islands) and Adam Barrie (Associate, Cayman Islands)

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In August 2019, the Cayman Islands government introduced a suite of amendments to existing legislation and regulations, and a set of new regulations, that (among other things) impose new obligations and requirements on trustees. They are:

1. The Trusts (Amendment) (No.2) Law, 2019 (the **Trusts Amendment Law**);
2. The Banks and Trust Companies (Amendment) Law, 2019 (the **BTC Amendment Law**);
3. The Trusts (Transparency) Regulations, 2019 (the **Trusts Regulations**); and
4. The Private Trust Companies (Amendment) (No.2) Regulations, 2019 (the **PTC Amendment Regulations**).

The new obligations and requirements imposed by these legislative changes are explained below.

## New obligations on trustees

### Record keeping

#### *Records relating to persons connected with the trust*

Trustees of trusts governed by Cayman Islands law<sup>1</sup> (**Cayman Islands Trusts**) are now required to maintain, and keep up-to-date, an accurate documentary record of the "identity and particulars" of the following persons connected with the trust:

1. Any settlor;
2. Any contributor to the trust;<sup>2</sup>
3. Any beneficiary<sup>3</sup> – in particular any *specifically named beneficiaries or identifiable classes of beneficiaries*;<sup>4</sup>
4. Any protector;<sup>5</sup>

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<sup>1</sup> Whether or not the trustee is a Cayman Islands trust company.

<sup>2</sup> "Contributor" includes, in the case of a transfer between trusts, the trustee or trustees of the transferor trust: see section 2(3)(a)(i) of the Trusts Regulations.

<sup>3</sup> "Beneficiary" includes, in the case of a transfer between trusts, the trustee or trustees of the transferee trust, and in the case of a distribution to or for the benefit of a minor or an unincorporated charity, the person who gives a receipt for the distribution: see section 2(3)(a)(ii) and 2(3)(b) of the Trusts Regulations.

<sup>4</sup> Per sub-sections 2(1)(e) and (f) of the Trusts Regulations.

5. Any enforcer;<sup>6</sup>
6. Any service provider to the trust, including any investment adviser, manager, accountant or tax adviser; and
7. Any person exercising ultimate effective control of the trust.

Section 2(1) of the Trusts Regulations indicates that a current record of the *names and addresses* of the relevant persons connected with the trust will be sufficient to satisfy this requirement. Where it is not reasonably practicable to identify each beneficiary in a class of beneficiaries, trustees must keep a record of any information that sufficiently identifies and describes the class of persons who are beneficiaries.<sup>7</sup>

#### *Records relating to the terms of the trust*

The Trusts Regulations also require trustees to maintain and keep current copies of the trust deed or other documents containing or recording the terms of the trust, including any deed or other document varying the terms of the trust, as well as the names and addresses of any trustees of the trust.

#### *Consistency with the record keeping requirements of Private Trust Companies (PTCs)*

Save for the additional requirement of maintaining records of the "identity and particulars" of service providers to the trust and any person exercising ultimate effective control of the trust (which are new), the record keeping obligations imposed on trustees by the Trusts Amendment Law and the Trusts Regulations essentially mirror the record keeping requirements of PTCs pursuant to the Private Trust Companies Regulations (2013 Revision) and the PTC Amendment Regulations, the latter of which has expanded the record keeping obligations of PTCs to include the names and addresses of the settlor, any protector, and any enforcer (in addition to the names and addresses of any trustee, contributor and beneficiary, which was already required).

#### *Accounting records for the trust*

The Trusts Amendment Law also requires trustees to "maintain and keep up to date, for such period and in such manner as may be prescribed, accounting records relating to the trust as may be prescribed".<sup>8</sup> There is an existing requirement under section 27A(1) of the Trusts Law for trustees to "keep or cause to be kept accurate accounts and records (including underlying documentation) of the trustee's trusteeship appropriate to the trust and trust property". The new provision allows specific requirements to be prescribed by regulations.

#### *Retention and accessibility of records*

Trustees must take reasonable steps to ensure that all of these records are:

- (a) maintained in an easily accessible form;
- (b) in legible form, or in a form from which it can readily be produced in visible and legible form;
- (c) in the English language, or where the information is not in English, translated into English;
- (d) updated in a timely manner;
- (e) made available to a competent authority within 48 hours of a request in writing by that competent authority; and
- (f) retained for a period of at least five years after the trustee ceases to be a trustee of the trust.<sup>9</sup>

<sup>5</sup> Note that "Protector" is defined in the PTC Amendment Regulations as "a person appointed under a trust instrument to direct or restrain a trustee in relation to the trustee's administration of the trust" but is not defined for the purposes of the Trust Amendment Law.

<sup>6</sup> Note that "Enforcer" is defined in the PTC Amendment Regulations as having the same meaning assigned in section 95(1) of the Trusts Law (2018 Revision) (as amended) (**Trusts Law**) (namely "a person who has standing to enforce a special [i.e. STAR] trust"); it is not explicitly defined for the purposes of the Trust Amendment Law, but it is thought it must have the same meaning and if the PTC is a trustee of a non-Cayman purpose trust, it would be prudent to assume it also applies to the enforcers of that trust.

<sup>7</sup> Trust Regulations, reg. 2(1)(i)(2).

<sup>8</sup> Trusts Amendment Law, s.2(2).

<sup>9</sup> Trust Regulations, reg. 2(4).

## Penalties

A trustee that, without reasonable excuse, fails to comply with these record keeping obligations commits an offence and is liable on summary conviction to a fine of CI\$5,000.<sup>10</sup>

## Sharing information with competent authorities

The Trusts Amendment Law empowers a "competent authority" (as defined under section 2(1) of the Proceeds of Crime Law, (POCL)) that has been assigned responsibility for monitoring compliance with money laundering regulations under section 4(9) of the POCL (a **Competent Authority**), to direct a trustee, or any other person exercising ultimate effective control of a Cayman Islands Trust, to provide such information as the Competent Authority may require in relation to the trust or its activities, if the Competent Authority has reasonable grounds to believe that the trustee or other person is acting or carrying on business in contravention of the Anti-Corruption Law (2019 Revision), the Monetary Authority Law (2018 Revision), POCL, or the Tax Information Authority Law (2017 Revision).<sup>11</sup>

A trustee or other person exercising ultimate effective control over the trust that knowingly fails to comply with such a direction from a Competent Authority commits an offence and is liable on summary conviction to a fine of CI\$50,000. If the offence is a continuing one, further fines of CI\$10,000 may be imposed for each additional day, or part day, that the offence continues (but up to a maximum of an additional CI\$50,000).<sup>12</sup>

## Trustees doing business with persons conducting "relevant financial business"

The Trusts Amendment Law and the BTC Amendment Law impose an identical obligation on trustees<sup>13</sup> and trust companies,<sup>14</sup> respectively, that are forming business relationships or entering into one-off transactions with persons conducting "relevant financial business" under Schedule 6 of POCA to take reasonable steps to inform that person, before or at the time the business relationship is formed or the transaction entered into, that the trustee is acting in its capacity as a trustee of the trust.<sup>15</sup>

## New obligations on the Registrar of Trusts

The Trusts Amendment Law also imposes an obligation on the Registrar of Trusts (the **Registrar**) to share such information with the Anti-Corruption Commission, CIMA, the Financial Crimes Unit of the Royal Cayman Islands Police Service, the Financial Reporting Authority, the Tax Information Authority, and any Competent Authority (together, the **Requesting Bodies**) as the Requesting Bodies may require for the purpose of discharging any function or exercising any power under the Anti-Corruption Law (2019 Revision), the Monetary Authority Law (2018 Revision), the POCL, or the Tax Information Authority Law.<sup>16</sup>

The Registrar is required to respond to any such requests within 48 hours.<sup>17</sup>

There are, however, important restrictions on the manner in which any information obtained by the Requesting Bodies pursuant to such a request may be used; in particular:

1. the information may only be used for the purpose for which it was shared or provided;
2. it may only be retained for as long as is necessary to carry out the purpose for which it was shared or provided; and
3. it must not be disclosed for any purpose other than the purpose for which it was shared or provided, without the prior consent of the Registrar.<sup>18</sup>

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<sup>10</sup> Trust Regulations, reg. 3.

<sup>11</sup> Trusts Law s.74B(1).

<sup>12</sup> Trusts Law s.74B(2).

<sup>13</sup> That is trustees of Cayman Islands Trusts, whether or not the trustee is a Cayman Islands trust company.

<sup>14</sup> That is trust companies licensed under the Banks and Trust Companies Law, whether or not the trust is a Cayman Islands Trust.

<sup>15</sup> Trusts Law, s.6A(3).

<sup>16</sup> Trusts Law, s.74A(1) and (2).

<sup>17</sup> Trusts Law, s.74A(3).

<sup>18</sup> Trusts Law, s.74A(4).

## Comment

The Cayman Islands now has enhanced record-keeping requirements that are largely consistent for professional trustees and PTCs alike. While in most cases, they largely mirror trustees' common law duties and reflect prudent administration, it means that they may now also be subject to criminal penalties for breaches. This will also ensure that fundamental information relating to the trust is available at short notice to any Competent Authority that has reasonable grounds to believe that a trustee or other person exercising control over the trust is committing a regulatory offence. The Registrar of Trusts is now likewise required to comply with appropriate requests for information made by local regulatory bodies.

These changes represent yet a further step by the Cayman Islands government towards its commitment to developing and promoting a financial services industry that is at the forefront of global efforts on compliance and transparency.

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**Tony Pursall**  
Partner, Mourant Ozannes  
London  
+44 20 7796 7603  
tony.pursall@mourant.com



**Hector Robinson QC**  
Partner, Mourant Ozannes  
Cayman Islands  
+1 345 814 9114  
hector.robinson@mourant.com



**Zachary Hoskin**  
Senior Associate  
Cayman Islands  
+1 345 814 9179  
zachary.hoskin@mourant.com



**Adam Barrie**  
Associate  
Cayman Islands  
+1 345 814 9146  
adam.barrie@mourant.com

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