

The Cayman Islands – advantages as an offshore jurisdiction

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Introduction

The Cayman Islands is one of the world's leading offshore jurisdictions. Although particularly renowned for the establishment of investment funds (both hedge funds and private equity funds), Cayman Islands entities are customarily used for transactions of all types including equity, debt and insurance capital markets transactions, in mergers and acquisitions and in joint ventures. The Cayman Islands Monetary Authority (CIMA) supervises and regulates providers of a wide range of financial services, including banking, insurance and investment management.

Absence of tax

The Cayman Islands have no direct taxes of any kind. There are no corporation, capital gains, income, profits or withholding taxes. Under the terms of the relevant legislation, it is possible for exempted companies, unit trusts and limited partnerships to register with and apply to the Cayman Islands government for a written undertaking that they will remain tax-free for a minimum period (20 years in the case of exempted companies and 50 years in the case of unit trusts and limited partnerships).

Absence of exchange controls

There are no exchange control restrictions or regulations in the Cayman Islands. Funds can be freely transferred in and out of the Islands in unlimited amounts. The Cayman Islands dollar is tied to the US dollar and the latter is freely accepted and used within the local economy.

Reliable legal system

Cayman Islands law derives from English common law, supplemented by local legislation. The court system is well developed and experienced. Major civil cases are heard in the Grand Court with appeals to the Cayman Islands Court of Appeal and ultimately to the Privy Council in London. It is common practice for leading advocates from the UK to appear before the Cayman Islands courts on major litigation matters.

Availability of banks and professional services

Out of the world's 50 leading banks, over 40 have a presence in the Cayman Islands. All the leading accountancy firms are represented in the Islands. Institutions and arrangers doing business in the Cayman Islands also benefit from top quality professional service providers (attorneys, fund administrators, trust companies, company managers, etc) with extensive experience.

Speed and cost

As Cayman entities can be formed on the day of filing and there is no lengthy regulation or filing procedures, transactions can be brought to market very quickly. The cost of forming and maintaining Cayman entities is competitive and usually minimal in the context of most transactions.

Political and economic stability

The Cayman Islands is a British Overseas Territory and has a history of stable government. The British government retains responsibility for internal security, defence and external affairs. Prudent economic policies and a strong financial services sector have resulted in the Islands enjoying an Aa3 sovereign risk rating. The Islands enjoy a high standard of living.

Excellent communications

The Cayman Islands are situated in the western Caribbean, 480 miles south of Miami and 180 miles northwest of Jamaica. The Islands are five hours behind Greenwich Mean Time in the Eastern Standard Time zone. The Islands benefit from state-of-the-art telecommunications facilities and direct flights are available from a number of major international centres.

Cayman Islands Monetary Authority

The mission of CIMA is to regulate and supervise the financial services industry in order to maintain a first class financial system. CIMA has regard to international standards and the need for operational freedom by financial services providers and for the maintenance of a dynamic and competitive industry. CIMA currently regulates over 11,000 open-ended mutual funds and over 12,000 closed-ended funds or private equity funds (referred to here as **private funds**).

Cayman Islands Stock Exchange

The Cayman Islands Stock Exchange (**CSX**) was established in 1997 to provide a highly competitive listing facility for Cayman's specialist products, mutual funds and debt securities. Since then the CSX has expanded its facilities for listing of derivative warrants, depositary receipts and Eurobonds. The CSX has admitted more than 5,000 securities to listing and currently maintains a market capitalisation over US\$372 billion.

Anti-money laundering

The Cayman Islands has long committed to implementing best international practice in line with the requirements of the Organisation of Economic Co-operation and Development (**OECD**) and the Financial Action Task Force (**FATF**). A comprehensive legislative framework has been enacted in relation to anti-money laundering, countering the financing of terrorism and countering proliferation financing.

Types of Cayman Islands entities

Below we give a very brief summary of the main features of Cayman Islands entities.

Exempted companies

Cayman Islands exempted companies have distinct legal personality. They need only have one shareholder and there is no minimum capital requirement. Shares can be denominated in any currency and denomination. There is no minimum or maximum amount prescribed for authorised issued or paid up share capital.

A Cayman Islands company is required to maintain a registered office in the Cayman Islands. Mourant Governance Services (Cayman) will typically act as registered office for companies we incorporate. Subject to solvency considerations, dividends or other distributions are payable to investors from amounts standing to the credit of a company's share premium account, even if no profits are available.

Shares in a Cayman Islands company may also be redeemed or repurchased out of capital, again, subject to solvency considerations. For the statutory segregation of assets and liabilities between sub-portfolios of the same company, segregated portfolio companies may be established.

There is no statutory restriction on the issue of debt instruments by Cayman Islands companies. Cayman Islands law recognises a number of different types of security interests over assets.

Management of a company is generally delegated to its board of directors. However, it is possible for an 'exempted limited duration' company to be incorporated (which can be governed by its shareholders), or for a limited liability company or 'LLC' to be formed (which can be governed by its members and/or

managers) on the terms of its constitutional documents. Such constitutional documents can be bespoke and may, if necessary, be supplemented by a shareholders' agreement.

Although a company's constitutional documents must be registered with the Cayman Islands Registrar of Companies, they are not publically available.

Unit trusts

Cayman Islands trust law is based on English common law and therefore interpreted according to English case law, as modified by any Cayman case law. Under a unit trust arrangement investors (or unit holders) contribute funds to a trustee which holds those funds on trust for the unit holders, and each unit holder is directly entitled to share pro-rata in the trusts' assets.

Limited partnerships

Exempted Limited Partnerships (**ELP**s) are the most common vehicle for private funds. They are also sometimes used in master-feeder open-ended fund structures.

A partnership registered as an ELP, in addition to the limited partners, must have at least one general partner which:

- if an individual, is resident in the Cayman Islands;
- if a company, is incorporated in Cayman Islands or registered as a foreign company; or
- if a partnership, is registered in Cayman Islands.

The general partner is responsible for the conduct of the ELP business and it (rather than the limited partners) is liable for the partnership's debts or obligation, save as otherwise specified in the limited partnership agreement.

An ELP does not have any separate legal identity distinct from its partners and therefore any property of the ELP held in the name of the general partner or in the name of the ELP will be deemed to be held on trust by the general partner as an asset of the ELP. Limited partners enjoy limited liability (limited to the amount of capital advanced to the partnership), but must not take part in the conduct of the business of an ELP and to do so would risk making such limited partner liable for the debt and obligations of the ELP, if the ELP becomes insolvent.

Trusts

The Cayman Islands has a well-established and flexible trusts regime allowing for privacy and asset protection, both in the commercial and private wealth spheres. As an example, if a Cayman Islands incorporated trust company carries out 'connected trust business' only, it can register as a private trust company (**PTC**) with CIMA. The PTC has proved to be a particularly attractive structure for wealthy families who are, for example, sensitive to issues of confidentiality, or who wish to retain some control or influence over the administration of the trust assets, which may include shares in a family company. PTCs can also be used in a philanthropic or commercial context.

For commercial purposes, especially where a special purpose vehicle is incorporated for the purpose of a particular transaction, the Special Trusts (Alternative Regime) (**STAR**) under Part VIII of the Trusts Act (2021 Revision) can be used so that the shares in the special purpose vehicle are vested in the STAR trustee for the purpose of exercising its voting rights to further the transaction in question.

Contacts

A full list of contacts specialising in Cayman Islands law can be found [here](#),

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