

Cayman Islands: Trusts

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The Cayman Islands is a leading international finance centre with a well-established trusts industry. Cayman Islands trusts are governed by English legal principles, as supplemented by the Trusts Act (2021 Revision) (the **Trusts Act**). The Trusts Act is an advanced and modern piece of legislation that offers both flexibility and a high degree of protection for the parties involved which means that it's a particularly advantageous jurisdiction in which to establish a trust.

What are trusts used for?

Below are some examples of the purposes for which a Cayman Islands trust may be used:

- estate and succession planning
- philanthropy
- tax planning (for example protected or excluded property settlements for UK inheritance tax purposes and foreign grantor trusts for US tax purposes)
- asset protection
- privacy, and
- commercial uses, such as employee benefit trusts, pension funds and unit trusts.

Key parties and documents

A trust involves the separation of the legal title, or ownership, of property from the right to benefit from that property. A trust is normally established by the transfer of legal title to property (known as the trust fund) by a person (known as the settlor) to another (known as the trustee) to be held for the benefit of one or more persons (known as beneficiaries) or for a particular purpose, which can be charitable or non-charitable.

There is flexibility as to how to create a trust because a trust may be created by oral declaration, by an instrument in writing (including a will or codicil) or by conduct. However, usually a trust is created using an instrument in writing, often in the form of a deed, which is known as the 'trust instrument' or 'trust deed'. Recording a trust in writing is generally advisable because it provides more clarity as to the terms of the trust.

There must be certainty as to the intention to create a trust, its property and its objects (i.e. its beneficiaries or purposes).

Types of Cayman Islands trusts

Discretionary trusts

Perhaps the most commonly used type of trust, a discretionary trust gives the trustee the discretion as to how, when and how much of the trust fund should be applied for the benefit of the beneficiaries. The beneficiaries have no rights or entitlement as regards the distribution of the trust fund, having merely a hope that the trustee will exercise its discretion for their benefit. The settlor may give guidance, usually in

the form of a letter of wishes, as to how the settlor would like the trustee to exercise its discretion, but such guidance is not binding on the trustee.

Life interest trusts

With a life interest trust, one or more specified persons (known as the life tenant(s)) have a right to receive the income from the trust fund or to use trust property during their lifetime. After the death of the life tenant, the trust will usually revert to being a discretionary trust for the benefit of other beneficiaries. This type of trust is commonly used where the settlor wishes to allow someone to remain in a property for their lifetime, but on the life tenant's death, they would like the property to pass to other beneficiaries (either outright or in trust).

STAR Trusts

The Special Trusts (Alternative Regime) (**STAR**) (now contained in the Trusts Act) is a flexible one, allowing for the creation of:

- non-charitable purpose trusts
- hybrid trusts for both purposes and persons
- perpetual trusts (whether for purposes, persons or both)
- trusts which restrict the rights of beneficiaries to enforce the trust or obtain information about it
- trusts which cannot subsequently be varied through the courts (for example, following the death of the settlor, where the variation may frustrate the settlor's intentions)
- trusts permitting alternative dispute resolution (such as arbitration)

These are arrangements that cannot be established under ordinary (i.e. non-STAR) trusts (**Ordinary Trusts**) that are governed by traditional trust law principles.

The persons who are able to enforce a STAR Trust (including the right to bring proceedings against the trustee for breach of trust) are those who have been appointed as enforcers pursuant to the terms of the trust or by the Grand Court. Beneficiaries may or may not be enforcers and enforcers may either have a right to enforce a trust or a duty to do so, but there must be at least one enforcer who is either a beneficiary or who has a duty to enforce and is fit and willing to do so. At least one of the trustees must be a licensed trust company or registered as a private trust company in the Cayman Islands.

STAR Trusts have a number of uses in a family wealth context, including:

- the acquisition and protection of family artefacts, heirlooms, private jets and yachts;
- to hold the shares in a private trust company;
- to hold the shares in operating companies, but in such a way that means the trustee has limited involvement in the management of the business (which is left to the directors); or
- for philanthropic objects that may not be considered strictly charitable under Cayman Islands law.
- to exclude or restrict beneficiaries' rights to information and documents:
 - because the client is concerned about their children not making their way in the world if they have detailed knowledge about the value and nature of the trust assets;
 - to prevent difficult beneficiaries unnecessarily consuming the trust assets and increasing administrative burden by making numerous demands for information or vexatious claims
 - to reduce the risk of a claim based on forced heirship in the settlor's home jurisdiction, as the heirs of an Ordinary Trust would normally have access to information as beneficiaries that would assist them in attacking the trust.

They are also frequently used in securitisation and finance transactions to hold the shares in an 'orphan' special purpose vehicle.

Protective trusts

A protective trust is a particular form of trust whereby the interest of a beneficiary who is entitled to receive all or part of the income from a trust will automatically terminate if that beneficiary attempts to dispose of his rights under the trust or if they become bankrupt. Protective trusts are especially useful where a beneficiary is socially or financially vulnerable.

Other considerations

Duration

A Cayman Islands trust can be established for an unlimited duration. This is distinct from many other jurisdictions which impose a maximum trust period at the end of which the trust must terminate. The ability to create trusts of unlimited duration provides settlors with the option of preserving the benefit of their wealth for many generations of descendants.

Reservation of powers

The settlors of Cayman Islands trusts have the freedom to reserve powers to themselves or confer them on others, often referred to as protectors, without prejudicing the validity of the trust.

Under the Trusts Act, there is a presumption that a trust instrument is intended to have immediate lifetime effect and the settlor may reserve any or all of the following powers or confer them on other persons without affecting the validity of the trust or the presumption of immediate lifetime effect:

- power to revoke, vary or amend the trust instrument
- power of appointment of income or capital or both
- any limited beneficial interest in the trust property
- power to act as a director or officer of any company owned by the trust
- power to give the trustee binding directions in relation to the investment of the trust property
- power to appoint, add or remove any trustee, protector or beneficiary
- power to change the governing law and forum for administration, and
- power to require the trustee to obtain consent before exercising a power.

The provisions provide a statutory exoneration such that a trustee who complies with a valid exercise of any of the reserved powers will not be in breach of trust.

Asset protection and firewalls

The Trusts Act contains provisions (known as 'firewall' provisions) that prevent a Cayman Islands trust from being rendered void by reason that it avoids or defeats a claim under foreign matrimonial, civil partnership or forced heirship laws.

These firewall provisions also protect Cayman Islands trusts against attack by courts in foreign jurisdictions by ensuring that (subject to the terms of the trust) all questions arising in relation to a Cayman Islands trust or any disposition of property to or upon such a trust are to be determined in accordance with the law of the Cayman Islands, without reference to the law of any other jurisdiction, including, for example, questions as to:

- the capacity of the settlor
- the validity, interpretation or effect of the trust or disposition
- the administration of the trust, including as to the powers, obligations, liabilities and rights of trustees and their appointment and removal, and
- the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment, and the validity of any exercise of them.

A foreign judgment based on foreign heirship or matrimonial rights will not be recognised or enforced by the Cayman Islands courts.

It is however recommended that the trust assets are, so far as possible, located in the Cayman Islands, to guard against a foreign court order attaching directly against property situated in the foreign jurisdiction.

Trustee's duties

A trustee must act prudently and in the interests of the beneficiaries and perform its duties honestly and in good faith.

Rights of beneficiaries to information

Often, knowledge of entitlement under a trust can be detrimental to beneficiaries. For example, where a beneficiary is in education, knowledge of entitlement to wealth may not serve the best interests of that beneficiary, or in the case of a pension scheme, the entitlement of one member should not be information available to other members. A trustee should therefore consider carefully whether information can and should be disclosed to beneficiaries.

As a matter of Cayman Islands law, a trustee is not normally obliged to disclose the following:

- any document which reveals the trustee's deliberations as to how it should exercise its trustee functions
- the reasons for any decision made in the exercise of those functions
- any material upon which such a decision was or might have been based, and
- any letter of wishes.

In addition, a trustee normally has a duty to provide copies of the trust instrument and any supplemental trust documents as well as information as to the state and amount of the trust property (normally in the form of trust accounts) at the request of any beneficiary.

As outlined above, different rules apply to STAR trusts. A beneficiary of a STAR trust is not entitled, in his or her capacity as a beneficiary, to any information or documents concerning a STAR trust. Only those persons appointed as enforcers have those rights, although beneficiaries can be enforcers.

Limitation periods

The usual limitation period for bringing actions for breach of trust is six years from the date on which the right of action accrued, provided the claim is not based on fraud or conversion to the trustee's own use, in which case, there is no limitation period.

If a right of action accrued on a date on which a beneficiary was under a disability (such as being subject to a mental incapacity or under the age of 18), the action may normally be brought at any time before the expiration of six years from the date on which that person ceased to be under a disability.

Tax and legal advice

Tax and legal advice should be sought on a case by case basis, to ensure that the creation or administration of a new trust does not give rise to adverse tax or legal issues.

Contacts

A full list of contacts in our International Trusts & Private Client team who specialise in this area can be found [here](#).