Comparison of Trust Laws Bermuda, British Virgin Islands and Cayman Islands
Preface

This publication has been prepared for the assistance of anyone who is considering establishing a trust under the laws of Bermuda, the British Virgin Islands or the Cayman Islands. It deals in broad terms with the requirements of the respective laws. It is not intended to be exhaustive but merely to provide general information to our clients and their professional advisers.

We recommend that our clients seek legal advice in Bermuda, the British Virgin Islands or the Cayman Island on their specific proposals before taking any steps to implement them.

Conyers Dill & Pearman
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<td>Perpetuities and Accumulations Act 1989</td>
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<td>Hague Convention</td>
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<td>Perpetuity period for private trusts</td>
<td>The rule against perpetuities has been abolished or disapplied for all trusts created after 1 August 2009.</td>
<td>100 years</td>
<td>150 years for ordinary trusts; the rule against perpetuities does not apply to STAR trusts.</td>
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<td>SETTLOR RESERVED POWERS</td>
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| **s.2(3) TSPA:**<br>
The reservation by the settlor of certain rights and powers ... are not necessarily inconsistent with the existence of a trust.<br>(Recent case of BQ v DQ confirmed validity of revocable trusts) | **s. 2 (4) TA:** The reservation by the settlor of certain rights and powers ... are not necessarily inconsistent with the existence of a trust.<br>**s.86 TA:**<br>Power may be conferred on any person, including a settlor, to:<br>(a) determine the law of which jurisdiction shall be the proper law of the trust;<br>(b) change the forum of administration of the trust;<br>(c) remove trustees;<br>(d) appoint new or additional trustees;<br>(e) exclude any beneficiary as a beneficiary of the trust;<br>(f) include any person as a beneficiary of the trust in substitution for or in addition to any existing beneficiary of the trust; and<br>(g) withhold consent from specified actions of the trustees either conditionally or unconditionally. | **s.14 Trusts Law:**<br>Settlor may reserve or grant power to:<br>(a) revoke, vary or amend the trust;<br>(b) appoint income or capital;<br>(c) any limited beneficial interest in the trust property;<br>(d) act as a director or officer of any company wholly or partly owned by the trust;<br>(e) give binding directions to the trustee in connection with the purchase, holding or sale of the trust property;<br>(f) appoint, add or remove a trustee, protector or beneficiary;<br>(g) change the governing law and the forum for administration of the trust; or<br>(h) 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 instrument, without invalidating the trust or affecting the [statutory] presumption that the settlor
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<td>Exercising any of the powers in (a) to (d) and (g) will not on its own cause the donee to be deemed a trustee.</td>
<td>intended the trust to take immediate effect.</td>
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**FIREWALL PROVISIONS**

No trust and no disposition of property to be held upon trusts is void, voidable, liable to be set aside or defective in any fashion by reason that:

- **s.11 TSPA:**
  - (a) the law of any other jurisdiction prohibits or does not recognise the concept of a trust;
  - (b) the trust or disposition avoids or defeats rights, claims or interests conferred by the law of another jurisdiction upon any person by reason of a personal relationship to the settlor or to any beneficiary or by way of heirship rights, or contravenes the law of another jurisdiction or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to such rights, claims or interests; or
  - (c) the trust or disposition avoids or defeats rights, claims or interests conferred

- **s.83A TA:**
  - (a) the law of any foreign jurisdiction prohibits or does not recognise the concept of a trust, or
  - (b) the Virgin Islands trust or the disposition:
    - (i) avoids or defeats any right, claim or interest conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights; or
    - (ii) contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to such a

- **s.91 Trusts Law:**
  - (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust; or
  - (b) the trust or disposition avoids or defeats rights, claims or interests conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to such rights, claims or interests.

- **s.92 Trusts Law:**
  - An heirship right conferred by foreign law in relation to the property of a living
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| by the law of another jurisdiction upon any person in respect of the protection of creditors in matters of insolvency. | right, claim or interest. Additionally, it is provided expressly that heirship rights conferred by foreign law shall not constitute a person a creditor for the purposes of section 81 Conveyancing and Law of Property Act. | person shall not be recognised as-
  (a) affecting the ownership of immovable property in the [Cayman] Islands or moveable property wherever situate for the purposes of s.90(i) Trusts Law or any other purpose; or
  (b) constituting an obligation or liability for the purposes of the Fraudulent Dispositions Law or for any other purpose. |

### Enforcement of foreign judgments

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<td>Foreign judgments inconsistent with s.11 shall not be recognized or enforced.</td>
<td>Foreign judgments inconsistent with s.83A shall not be recognized or enforced.</td>
<td>Foreign judgments inconsistent with s.91 or s.92 shall not be recognized or enforced.</td>
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### SPECIAL TRUST LAW FEATURES

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| Purpose Trusts (see below)  
Hybrid purpose trusts with private interest element permitted.  
Bi-furcation of trusteeship between managing, trustees and custodian trustees permitted. | VISTA Trusts:  
The provisions of VISTA may be applied to trusts of shares in BVI companies with the result that the management of the underlying company may be carried on without interference from the trustee | STAR Trusts:  
Special Trusts–Alternative Regime (Part VIII Trusts Law).  
The objects of a STAR trust may be persons or purposes (charitable or non-charitable) or both. |
- Statutory recognition of non-interference in management of subsidiary companies ("Anti-Bartlett" provision).

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<td>(including the payment or non-payment of dividends). A VISTA trust can provide: - that the shares shall not be sold without the consent of a third party; - the manner in which the trustee shall exercise its voting rights in respect of the shares; - rules for the appointment and removal of directors of an underlying company. The rule in <em>Saunders v Vautier</em> can be dis-applied for 20 years. VISTA can apply to an ordinary private trust or to a purpose trust. The trusteeship of a VISTA trust must be sole and held by a licensed BVI trust company (a PTC cannot be trustee).</td>
<td></td>
<td>A beneficiary of a STAR trust, in that capacity, has no standing to enforce the trust and no right to information about the trust or the trust property. The only persons who have standing to enforce are the enforcers nominated in the trust deed or by order of the court. Standing to enforce may be granted or reserved as a right or a duty. Subject to a contrary intention, an enforcer is deemed to have a fiduciary duty to act responsibly with a view to the proper execution of the trust. Every STAR trust must have an enforcer; if there is no enforcer, the trustee must apply to the Grand Court within thirty days for the appointment of an enforcer. At least one trustee must be a licensed Cayman Islands trustee or a registered Cayman Islands private trust company.</td>
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**PURPOSE TRUSTS**

<p>| Non-charitable | s.12A Trusts (Special Provisions) Act: | s.84A TA: | Part VIII Trusts Law (STAR trusts): |</p>
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<td><strong>purpose trusts</strong></td>
<td>- purposes must be sufficiently certain to allow the trust to be carried out;</td>
<td>- purposes must be specific, reasonable and possible;</td>
<td>- the objects may be persons or purposes or both;</td>
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<td>- purposes must be lawful and not contrary to public policy;</td>
<td>- purposes must not be immoral, contrary to public policy or unlawful;</td>
<td>- purposes may be of any number or kind, charitable or non-charitable, provided that they are lawful and not contrary to public policy;</td>
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<td>- at least one trustee must be a licensed BVI trustee or a BVI practicing lawyer or accountant; and</td>
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<td>- an enforcer must be appointed.</td>
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<td><strong>Perpetuity period</strong></td>
<td>The rule against perpetuities has been abolished for all trusts created after 1 August 2009.</td>
<td>The rule against perpetuities does not apply to BVI purpose trusts.</td>
<td>The rule against perpetuities does not apply to STAR trusts.</td>
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<td>for purpose trusts</td>
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<td><strong>FRAUDULENT</strong></td>
<td><strong>TRANSFERS</strong></td>
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<td>s.36C Conveyancing Act 1983:</td>
<td>s.81 Conveyancing and Law of Property Act</td>
<td>s. 4 The Fraudulent Dispositions Law (1996 Revision):</td>
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<td>A transfer to a Bermuda trust may be set aside if the transferor made the</td>
<td>Every conveyance of property made with intent to defraud creditors shall be voidable at the instance of any person thereby prejudiced.</td>
<td>(1) … every disposition of property made with an intent to defraud and at an undervalue shall be voidable at the instance of a creditor thereby prejudiced.</td>
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<td>transfer with the requisite intention at an undervalue and the obligation or</td>
<td>The section does not apply to any estate or interest conveyed for valuable consideration and in good</td>
<td>(2) The burden of establishing an intent to defraud for the purposes of this Law shall</td>
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<td>cause of action arose before, or within two years after, the transfer into trust</td>
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<td>or is the result of a contingent liability that was owed before the transfer and</td>
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<td>falls in within six years. Creditor must commence proceedings within six years from the transfer or, if obligation or cause of action arose within the two year period after the transfer, six years from then.</td>
<td>faith or upon good consideration and in good faith to a person without notice of the intent to defraud creditors. There is no time limit specified for any action under this section.</td>
<td>be upon the creditor seeking to set aside the disposition. (3) No action or proceeding shall be commenced under this Law unless commenced within six years of the date of the relevant disposition.</td>
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<td>TAXATION</td>
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<td>No income, capital, gift or estate taxes apply to Bermuda law trusts.</td>
<td>No income, capital, gift or estate taxes apply to BVI law trusts.</td>
<td>No income, capital, gift or estate taxes apply to Cayman law trusts.</td>
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<td>Certain minor stamp duties may apply to various documents.</td>
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BERMUDA

Trust laws

The principal legislation governing trusts in Bermuda is the Trustee Act 1975 (as amended) (the “Trustee Act”), the Conveyancing Act 1983 (as amended), the Trust (Special Provisions) Act 1989 (as amended) (the “TSPA 1989”), the Perpetuities and Accumulation Act 1989, the Trusts (Regulation of Trust Business) Act 2001 (as amended) and the Perpetuities and Accumulation Act 2009.

The Trustee Act, amongst other things, grants certain powers to trustees of Bermuda trusts including the power to apply income for maintenance and education and to advance capital to a beneficiary who is entitled to a presumptive share. These powers will apply unless excluded or restricted or varied by express terms in the relevant trust deed. The Trustee Act also allows the division of trustees’ functions and powers between managing trustees and other trustees (e.g. “custodian” trustees) thereby effectively limiting the liability of certain trustees to their own specifically assigned duties or functions. The Trustee Act also grants the Court jurisdiction to vary a trust in certain circumstances.

An interesting provision of the Trustee Act is contained in S.47, which is an amalgam of the two sections of the English law, namely S.57 Trustee Act 1925 (applicable to trusts generally) and S.64 Settled Land Act 1925 (applicable to land including land held upon trust for sale). S. 57 of the Trustee Act 1925 does not enable the court to vary the beneficial provisions of a trust while S.64 of the Settled Land Act 1925 does enable the variation of the beneficial provisions of a trust. This unique provision results in trustees being able to apply to the Bermuda courts to, amongst other things:

- restructure of trusts;
- provide for family arrangements;
- alter beneficial provision;
- provide for tax savings provisions;
- provide for situations where beneficiaries cannot consent; or
- even extending perpetuity periods.

The TSPA 1989 is comprised of three parts that deal with three quite separate matters:

(a) The first part (a) clarifies that the governing law of a trust can be a matter of choice and can be changed to another law, (b) sets out the circumstances in which the Bermuda court has jurisdiction over trusts, (c) establishes favourable rules regarding the capacity of a settler to create Bermuda trusts and (d) protects Bermuda trusts from attack pursuant to foreign laws.

(b) The second part contains the statutory basis for the establishment and operation of non-charitable purpose trusts.

(c) The third part sets out a standard list of administrative provisions that can be incorporated by reference into trust documents and greatly shorten their length. Included in this list is the proviso that the Trustee shall not be bound or required to interfere in the management or conduct of the affairs or business of any company in which the Trust is invested or holds an interest.
The Conveyancing Act 1983 (as amended) introduced conservative provisions to avoid certain dispositions where the dominant intention is to put assets beyond the reach of creditors.

Trusts may be discretionary or have fixed interests, for charitable or non-charitable purposes.

Perpetuities
The rule against perpetuities and accumulations has been abolished or dis-applied in Bermuda for trusts created on or after 1 August 2009. The rule still has application for trusts established prior to that date (and to trusts established after that date but funded from trusts established prior to that date) or in relation to Bermuda real property held in trust.

Jurisdiction of the Bermuda Courts
Under Section 9 of the TSPA 1989, the jurisdiction of the Supreme Court of Bermuda in respect of matters concerning a Bermuda trust is established in any of the following circumstances:

(a) where a trustee is resident in Bermuda;

(b) where any trust property is situate in Bermuda but only in respect of such property;

(c) where the administration of any trust is carried on in Bermuda; or

(d) where the Court thinks it is appropriate.

It is usually advisable to ensure that substantive contacts with Bermuda are established in order to create a clear jurisdictional nexus (i.e. the trust administration should take place in Bermuda or there should be at least one Bermuda resident trustee). However, there is no requirement that the settlor be resident in, or have any physical connection with, Bermuda. Nor is it necessary, although it may often be advisable, to have the trust property situate in Bermuda.

Effect of Foreign Laws on Bermuda Trusts
Section 11 of the TSPA 1989 Act provides that a trust which is validly created under the laws of Bermuda shall not be varied or set aside by a Bermuda court and no disposition of property to be held upon the trusts thereof is void, voidable, liable to be set aside for any reason, nor is the trustee, any beneficiary or any other person to be subjected to any liability or deprived of any rights, by reason that:

(a) the law of any other jurisdiction prohibits or does not recognise the concept of a trust;

(b) the trust or disposition avoids or defeats rights, claims or interests conferred by the law of another jurisdiction upon any person by reason of a personal relationship to the settlor or to any beneficiary or by way of heirship rights, or contravenes the law of another jurisdiction or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests; or

(c) the trust or disposition avoids or defeats rights, claims or interests conferred by the law of another jurisdiction upon any person in respect of the protection of creditors in matters of insolvency.
The section is intended to clarify the position that Bermuda trusts will be held valid, if contested in a Bermuda court, when subject to a challenge based on foreign forced heirship laws, mandatory community property matrimonial laws and, in certain cases, when challenged under foreign bankruptcy laws.

**Purpose Trusts**

The TSPA 1989 provides a statutory basis from which to create trusts for non-charitable purposes in Bermuda. In 1998, the TSPA 1989 was amended to provide increased flexibility in the structuring of purpose trusts as well as clarifying the definition of purpose trusts in Bermuda, with the aim being to provide a more streamlined approach to the administration of purpose trusts.

A purpose trust will be valid provided that its purposes are:

- sufficiently certain to allow the trust to be carried out,
- lawful, and
- not contrary to public policy.

The rule against perpetuities does not apply to purpose trusts and the trust deed may impose on the trustees a duty or power to accumulate income for any duration (including an unlimited duration).

Essentially a purpose trust has no specified beneficiaries who would have an enforceable claim or interest in the trust fund. However, the statutory definition of a Bermuda purpose trust allows for a person or company to receive indirect or intangible benefits, without disqualifying the trust from the definition of a purpose trust. Hybrid purpose trusts which have both purpose and private trust elements are permissible; for example, a hybrid trust could include purpose trust obligations over a part of the trust fund, and private trusts over the other parts, or a hybrid trust could be a private trust with the power to apply capital or income to certain purposes (just as some private trusts contain powers to benefit charity).

All the elements of a “trust relationship” are present in a purpose trust. A trustee receives property from some person (or may declare a trust) and holds and distributes that property in accordance with fiduciary obligations. Those obligations are not to act in the best interests of beneficiaries, but to administer the trust property in fulfillment of the stated purposes. The stated purposes may be such that they are carried out through the trustee expending that property until it is exhausted or the trust terminates, or they may be carried out by the trustee holding onto specific property and using it or controlling it in a certain way. An example of the first of these might be spending money to promote a particular political cause or quasi-philanthropic cause. An example of the second might be to hold shares in a company that are to be voted so as to perpetuate a particular type of business or to ensure that the company carries out a particular activity.

Before the 1998 amending act a purpose trust had to have an "enforcer". The "enforcer" could obtain a petition from the court forcing the trustees to fulfill their obligations. It became clear that, in practice, any enforcement really came from the courts and that the role of the enforcer was less significant than originally thought. The TSPA 1989 therefore, was amended, allowing any of the following people the right to petition the court:

- a person appointed under the trust for this purpose;
- the settlor (unless express provision to the contrary);
• a trustee of the trust;
• any person the court feels has sufficient interest in the enforcement of the trust.

The Attorney-General may also make an application to the court where there are no other persons who are willing and able to make an application to the court.

Previously, only those on the list of "designated" persons could be appointed trustee, essentially licenced Bermuda trustee companies. Under the 1998 amending act any person, whenever resident, may be appointed trustee, thus reflecting general trust law and allowing greater flexibility.

Purpose trusts continue to be a popular option for the promotion of Bermuda companies to participate in transactions (such as asset financing where an "orphan company" is desirable), or to perform specific activities (such as owning a private trustee company).

**Private Trust Companies**

A private trust company (“PTC”) may be incorporated in Bermuda with the limited object of acting as trustee for a restricted class or group of trusts, and is advantageous for a number of reasons. A Bermuda PTC is exempt from the licensing requirements under the Trusts (Regulation of Trusts Business) Act 2001 so long as it only offers trustee services to those trusts specified in its memorandum of association. The exemption is provided for under section 3 of the Trusts (Regulation of Trust Business) Exemption Order 2002.

Use of a PTC ensures greater flexibility and confidentiality and allows the settlor and his family or friends, if he so wishes, to play an active role by serving on the board of directors or by owning the shares of the Company. The shares of the PTC may be held in a purpose trust, charitable trust or other private trust.

The PTC also has a role to play in reducing the potential liability of professional trustees. Due to the increasing risk of being sued both by beneficiaries and third parties, professional trustees are increasingly reluctant to take ownership of assets or participate in ventures where substantial risks may be present, such as owning commercial real estate in high tax jurisdictions, venture capital investments or companies which own ships or aircraft. The professional trustee’s preference is normally for a diversified portfolio of low risk investment. In such circumstances the incorporation of a PTC may be advisable. The professional trustee is then able to provide management and administration services to the trust company rather than acting as trustee.

**OECD and exchange of tax information**

The legitimacy of Bermuda as an offshore financial centre was confirmed by its elevation in [2009] to the “White List” created by the Organisation for Economic Cooperation and Development (“OECD”) for the purpose of identifying those jurisdictions which have substantially implemented the OECD’s internationally agreed tax standards.

Bermuda has a well established framework in place for the exchange of tax information internationally. The Bermuda Government has entered into nearly thirty bilateral tax information exchange agreements with foreign governments.
The relevant domestic legislation governing the exchange of tax information is the International Cooperation (Tax Information Exchange Agreements) Act 2005, which sets out the domestic framework for how such requests are effected in Bermuda. Interestingly this Act, as amended in 2011, includes a provision at S.8A to which provides that, “Nothing in this Act shall preclude the right of any person to apply for judicial review of any matter undertaken pursuant to this Act.” While not intended to restrict the compliance with such legislation, it does provide an unambiguous avenue to challenge requests that are not strictly in accordance with the rules.
**BRITISH VIRGIN ISLANDS**

**Trust laws**

The general principles of trust law in the BVI have their origin in English trust law in that (a) the Trustee Ordinance as originally enacted in 1961 (and now referred to as the Trustee Act) was closely based on the English Trustee Act 1925 and the Variation of Trusts Act 1958; and (b) the rules of equity as applied by the English High Court apply directly in the BVI by reason of the Eastern Caribbean Supreme Court (Virgin Islands) Act.

Additionally, there have been significant amendments to the Trustee Act in 1993 and 2003. These introduced not merely desirable provisions of English statutory law which post-date the Trustee Act (such as the Perpetuities and Accumulations Act 1964 and a statutory cy-près jurisdiction for charities, following the model of the English Charities Act 1960) but also provisions which sought to improve upon perceived deficiencies or limitations in English trust law. Examples of the latter are the introduction of non-charitable purpose trusts, rules dealing with the conflict of laws, forced heirship, protectors and, unique to the BVI, rules facilitating commercial dealings by trustees with third parties. Last but not least, the Virgin Islands Special Trusts Act of 2003 ("VISTA") gave legislative sanction to a trust of shares in a BVI company under which the trustee has no obligation to monitor or intervene in the company’s affairs (other than in well defined circumstances) allowing a trustee therefore to play a purely passive role in relation to the company’s affairs.

**VISTA trusts**

While the objects of a VISTA trust may be persons or purposes, its subject matter may consist only of "designated shares" ie shares in a BVI company. A trustee may, however, hold property other than designated shares under the same trust (but to which VISTA does not apply) and any property of any sort, wherever located, may be given to the company in question and thus held, indirectly, under the VISTA regime. It is, however, in the nature and extent of the obligations upon the trustee in relation to the designated shares and the company’s affairs that a VISTA trust may be regarded as significantly different from a trust of shares under English law as analysed in *Bartlett v Barclays Bank Trust Co Ltd*.

In particular, a VISTA trust allows a settlor to remove entirely (or to the extent desired and specified in the trust instrument) the trustee’s power and/or obligation to monitor and intervene in the company’s affairs. It also allows a settlor to specify rules for the composition of the board of the company and, thereby, to allow detailed succession planning in relation to it. Both these features mean that a significant, potential attraction of the VISTA regime is the considerable reservation of indirect settlor power which may be effected under it.

The trustee of a VISTA trust must be a sole trustee and the holder of a trust licence under the Banks and Trust Companies Act.

A VISTA trust may be attractive and of potential use not only in situations where it is desired to augment or retain settlor control but also in the holding of shares in a PTC (see below).

**Non-charitable purpose trusts**

Purpose trusts, other than charitable trusts, were introduced into the BVI in 1993 although trusts established after February 2004 are subject
to section 84A of the Trustee Act which removed some previously existing restrictions e.g. that which prevented a purpose trust from qualifying as such if it existed for the benefit of particular persons or some aggregate of persons: a purpose trust may now be established for both non-charitable purposes and persons (as with the Cayman STAR trust). Further, charitable purposes may also be included in a s84A purpose trust (again, as in the Cayman STAR trust) although nothing in section 84A is intended to interfere with the role of the Attorney-General in enforcing exclusively charitable trusts.

A purpose trust will, after February 2004, be valid under BVI law only if

- its purposes are specific, reasonable, possible and not immoral, contrary to public policy or unlawful;
- at least one trustee is a “designated person” (a BVI practising barrister, solicitor, a BVI practising accountant who is also an auditor under the Act, or the holder of a trust licence under that Act); and
- a person is appointed as an enforcer, provision is made for the successive appointment of enforcers when no person is willing or able to act and the enforcer is made party to the trust instrument or signifies consent to act in writing.

The rule against inalienability (or perpetual duration) does not apply to purpose trusts but, usefully, a settlor is given the option of specifying a termination date or event. If he does so, he may wish also to take advantage of the provision which allows him to specify in his instrument not merely that no person (other than the enforcer) will be entitled to hold the trustee to account while the trust is on foot but also that the trustee owes no duty to any person entitled to the trust assets on its termination.

**BVI conflict of law provisions relating to trusts**

The English Recognition of Trusts Act 1987, giving effect to the Hague Convention on Trusts and their Recognition, has been extended to the BVI. Nonetheless, some matters were specifically excluded from that Convention (principally matters preliminary to the setting up of a trust) and section 83A of the Trustee Act sets out rules, drafted by a leading academic in the field of private international law, which provide a comprehensive code for the conditions of validity of transfers of property into BVI trusts where a foreign element is involved. They also set out robust firewall provisions which allow foreign nationals and domiciliaries to take advantage of the unqualified rule of freedom of testamentary disposition which applies in the BVI by making lifetime transfers into a BVI trust.

**PTCs and trustee and related services**

There is now a substantial and well established legal, accounting and investment advisory industry supporting a significant number of licensed trust companies in the jurisdiction.

A significant part of the private client work undertaken in the jurisdiction, however, is the establishment of private trust companies (“PTC”) which are exempt from the licensing requirement. The Financial Services (Exemptions) Regulations facilitate their establishment where the trustee services provided by the PTC are either to a trust whose beneficiaries are all related to the settlor in
specified ways (or to a number of trusts where the settlors are so related) and remunerated or, in any other case, unremunerated (though a PTC may not be trustee of a VISTA trust and may not be sole trustee of a purpose trust whether remunerated or not). Business must not be solicited from the public, the memorandum of objects of the PTC must state that its business is that of acting as a PTC and it must conduct no business other than trust business. It must also appoint as its registered agent the holder of a Class I trust licence which has an ongoing duty of monitoring compliance with the preceding conditions.

PTCs can be established quickly (in general, as quickly as any other BVI business company may be incorporated i.e. within 24 hours of completion of due diligence) and may involve considerably less expense over time than professional trusteeship would involve since the PTC may engage trust administration services or choose not to do so.

The PTC structure allows for the retention of the maximum degree of settlor or family control over the administration of a trust, increased confidentiality and may prove an attractive vehicle where speculative investment (normally unattractive to the professional trustee) is contemplated.

It is possible for the shares in a PTC to be held on a purpose trust in order to prevent a succession problem arising on the death of any individual in whose name its shares might otherwise be placed and, by applying VISTA to the trust of the shares, to specify Office of Director Rules determining the composition of the board of the PTC in advance and, potentially, for the duration of the family trust trusteeship of which is to be undertaken by the PTC. Alternatively, a PTC may be established as a company limited by guarantee without share capital which also avoids a succession problem to shares but affords a lesser degree of certainty about composition of the board over time.
CAYMAN ISLANDS
Trust law
Cayman trust law derives from English trust law, supplemented and enhanced by local legislation. The principal statutes are The Trusts Law (2017 Revision), The Fraudulent Dispositions Law (1996 Revision) and The Perpetuities Law (1999 Revision). Decisions of the English courts in trust matters, whilst not directly binding, are regarded as highly persuasive in the Cayman courts.

The most common form of trust created in the Cayman Islands is the discretionary trust; the settlor transfers legal ownership of the trust property to a trustee to hold on trust and confers on the trustee wide discretionary powers to distribute income and/or capital amongst one or more beneficiaries. Fixed interest trusts may also be established, pursuant to which the primary beneficiaries are granted specific rights to receive income and/or capital of the trust fund, leaving the trustees with little, if any, discretion over distributions.

Presumption of Immediate Effect and Reserved Powers
In 1998, the Cayman Islands enacted the Trusts (Amendment) (Immediate Effect and Reserved Powers) Law, now consolidated into the Trusts Law as Part III. Section 13 creates a rebuttable presumption such that, when construing the terms of any trust, if the trust instrument is not expressed to be a will, testament or codicil, it is presumed that the trust was intended by the settlor to take immediate effect upon the trust property being identified and vested in the trustee. This presumption applies notwithstanding that the settlor may have created the trust in order to avoid the application of probate or succession laws applicable on his or her death.

Under section 14, the settlor of a trust may, without invalidating the trust or affecting the presumption of immediate effect, reserve to him or herself various powers affecting the trust including power to revoke, vary or amend the trust instrument, power to give binding directions to the trustee in relation to the investment of trust property and power to appoint, add or remove the trustee or beneficiaries. Alternatively, the settlor may grant these powers to third parties, often referred to as “protectors”.

Effect of foreign laws on Cayman trusts
Section 90 of the Trusts Law provides that, subject to any contrary expression in the trust instrument, all questions arising in regard to a Cayman trust or to a disposition of property into a Cayman trust are to be determined according to Cayman law without reference to the laws of any other jurisdictions with which the trust or disposition may be connected. This includes all questions as to the capacity of the settlor, any aspect of the validity, interpretation or effect of the trust or the disposition, the administration of the trust, and the existence and extent of all powers conferred or retained and any exercise of those powers.

Section 91 provides that, again, absent contrary intention in the trust instrument, no Cayman trust and no disposition of property into a Cayman trust is void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of the settlor to be questioned, on the grounds that (a) the laws of any foreign jurisdiction do not recognise the concept of a trust; or (b) the trust or the disposition avoids or defeats rights, claims or interests conferred by a foreign law upon any person by reason of a personal relationship to the settlor (including a relationship by blood, marriage or former marriage) or by way of
heirship rights. So, any challenge mounted by an aggrieved heir of the settlor that a gift of property into trust should be set aside on the grounds that it offends forced heirship laws which apply in the settlor’s home jurisdiction would not succeed in the Cayman courts.

Any judgement of a foreign court which is inconsistent with sections 90 and 91 will not be recognised in the Cayman Islands.

Perpetuities
The English common law rules against perpetual trusts and remoteness of vesting apply to Cayman trusts created before 1 August 1995. For trusts created on or after that date, the Perpetuities Law introduced a 150 year perpetuity period and a “wait and see” principle, so that a trust will not fail for remoteness of vesting until it is certain that the gift will not vest within the perpetuity period. The rule against perpetuities does not apply to charitable trusts or trusts created under the STAR law (see below), both of which may exist in perpetuity.

Fraudulent dispositions
Any disposition of property into a Cayman trust is subject to the provisions of the Fraudulent Dispositions Law, the principal creditor protection legislation in the Cayman Islands. This provides that every disposition of property made with an intent to defraud and at an undervalue is voidable within six years by a creditor prejudiced thereby. “Intent to defraud” means an intention of a transferor wilfully to defeat an obligation or liability owed to a creditor which existed on or prior to the date of the relevant disposition and of which the transferor had notice. The burden of establishing the fraudulent intention is on the creditor seeking to set aside the disposition. If the creditor is successful, the disposition will be set aside only to the extent necessary to satisfy the obligation to that particular creditor.

STAR Trusts
One of the more significant developments in Cayman trust law came in 1997 with the introduction of the Special Trusts (Alternative Regime) Law, known by the acronym “STAR”. STAR has since been incorporated into the Trusts Law as Part VIII.

STAR introduced a range of facilities which may be applied to trusts. A STAR trust may be established to benefit beneficiaries or to further purposes or for a combination of both; there may be any number of beneficiaries and the purposes may be of any kind, charitable or non-charitable, provided that they are lawful and not contrary to public policy.

Unlike an ordinary trust, a STAR trust will not be rendered void for lack of certainty as to its objects or mode of execution. The terms of the trust may confer power to resolve uncertainty on the trustee or any other person and, in default, the court has such a power. Ultimately, if the execution of the trust becomes impossible or impractical, unlawful or contrary to public policy, or obsolete, the court has a jurisdiction to reform the trust cy-près.

A unique feature of STAR is that it allows the settlor to nominate who will have standing to enforce the trust. STAR achieves this by separating the concepts of the right to benefit under a trust and the ability to enforce that right. A beneficiary of a STAR trust, in that capacity, does not have standing to enforce the trust: he or she has no enforceable rights against the trustee or the trust property, nor any
right to obtain information about the trust or the trust property. The only persons who have such standing are those persons who are appointed as enforcers in the trust instrument or by order of the court. Standing to enforce the trust may be granted or reserved to an enforcer as a right or a duty. Subject to a contrary intention, an enforcer is deemed to have a fiduciary duty to act responsibly with a view to the proper execution of the trust. Every STAR trust must have an enforcer. If there is no enforcer who is of full capacity and who (a) is a beneficiary with a right to enforce; or (b) has a duty to enforce and is fit and willing to do so, the trustee must apply to the Grand Court within thirty days for the appointment of an enforcer.

The trustee of a STAR trust must be (or include) a Cayman Islands licensed trust corporation or registered private trust company.

Unless inconsistent with Part VIII of the Trusts Law, all the principles of Cayman trust law which apply to an ordinary trust will apply equally to a STAR trust.

**Trust Companies**

A trust company carrying on business from the Cayman Islands must be licensed pursuant to The Banks and Trust Companies Law (2018 Revision). Licensees are required to satisfy certain net worth requirements and they must be owned and managed by fit and proper persons. Licences are issued by the Cayman Islands Monetary Authority (“CIMA”) and are available in unrestricted, restricted and nominee classes. The process involves rigorous vetting of new applicants and close supervision of the business of existing licensees.

The private trust company (“PTC”) is an increasingly popular tool in the Cayman Islands, as the advantages of having a bespoke, family managed trust company to act as trustee of family trusts become more recognised. Pursuant to the Private Trust Companies Regulations 2008 (“the PTCR”), a Cayman trust company which conducts only “connected trust business” and which has registered as a PTC with CIMA does not require a trust licence. Determining “connected trust business” requires an assessment of the relationship between the contributors of the underlying trust assets: broadly speaking, the contributors must be related to one another either by blood or marriage or as members of the same group of companies. The Trusts Law has been amended recently to allow a Cayman PTC to act as trustee of a STAR Trust.

The PTCR require that a Cayman PTC maintain its registered office in the Cayman Islands at the offices of a trust company which is itself the holder of an unrestricted trust licence. Aside from this, the PTC is not subject to any minimum capitalization requirements, its directors and shareholders are not subject to CIMA vetting or approval and it is not required to produce audited annual accounts.

**Confidential information**

Since the repeal of the Confidential Relationships (Preservation) Law in 2016, confidentiality of customers’ affairs in Cayman is essentially governed by common law rules of implied contract and rules of equity (the leading English case being Tournier v National Provincial and Union Bank of England [1924] 1 KB 461).

The Confidential Information Disclosure Law, 2016 (the “CID Law”) provides for circumstances in which the disclosure of confidential
information may be made by a person who owes a duty of confidence. The CID Law also provides an avenue by which a person may be permitted by the Cayman Islands Court to give confidential information in evidence before any court, tribunal or other authority. A person who intends to or is required to give evidence and the evidence consists of or contains confidential information is required to apply to the Cayman Court for directions unless the principal to whom the duty is owed has consented expressly.

Case law in the Cayman Islands acknowledges the accepted common law principle that the trustee owes fiduciary obligations not to divulge trust information except in accordance with the law which governs the trust. The courts have considered this duty in the context of requests for the release of information about the assets held on trust in response to subpoenas or to assist with inquiries by international regulators.

The Cayman courts will take the approach set out in the Privy Council in Schmidt v Rosewood [2003] UKPC 26 to the disclosure of information to beneficiaries. This will be dealt with by the court as an exercise of discretion under its inherent jurisdiction to supervise the administration of a trust.

**Succession Law**

Succession law in the Cayman Islands is also based largely on English precedent. Individuals are allowed complete freedom of testamentary disposition, regardless of their nationality or place of residence.

Probate and administration practice is governed by The Succession Law (2006 Revision). This provides that no person may take possession of, administer, distribute or otherwise deal with any part of the estate of a deceased person without first having obtained the appropriate grant of representation from the Grand Court. This rule applies to all forms of property situated in the Cayman Islands at the date of the deceased’s death and regardless of the deceased’s nationality or place of residence.

The Succession Law also prescribes rules for the devolution of estates on intestacy.

**OECD and exchange of tax information**

The legitimacy of the Cayman Islands as an offshore financial centre was confirmed by its elevation in 2009 to the “White List” created by the Organisation for Economic Cooperation and Development (“OECD”) for the purpose of identifying those jurisdictions which have substantially implemented the OECD’s internationally agreed tax standards.

The Cayman Islands has a well established framework in place for the exchange of tax information internationally. The Cayman Islands Government has entered into nearly thirty bilateral tax information exchange agreements with foreign governments and, unilaterally, extended comprehensive tax information assistance to many others in relation to civil, administrative and criminal tax matters. It has also implemented automatic information-sharing with EU states under the EU Savings Directive. In addition, CIMA has signed a number of formal Memoranda of Understanding with their counterparts in other jurisdictions which outline the types of assistance that can be requested and given by CIMA, including providing tax information.
and obtaining specified information and documents from other parties.

In 2005, the Tax Information Authority ("the TIA") was established in the Cayman Islands for the purposes of providing international assistance in relation to tax matters and facilitating the exchange of tax information by the Cayman Islands to other countries. The TIA assists in criminal and non-criminal tax matters, particularly in relation to the obtaining of information, the execution of searches and seizures and the interview and examination, by consent, of taxpayers of the requesting country who are located in the Cayman Islands.
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