

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is set against a clear blue sky. In the foreground, there is a paved plaza with a geometric pattern of light and dark tiles. A dark blue horizontal bar is positioned below the main title text.

Cayman Islands Private Trust Companies

Preface

This Publication has been prepared for the assistance of those who are considering the formation of a private trust company in the Cayman Islands ("**Cayman**"). It deals in broad terms with the requirements of Cayman law for the establishment and operation of such entities. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients.

We recommend that our clients and prospective clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

For specific advice on Cayman PTCs, please contact:

Robert Lindley

Head of Private Client & Trust, BVI & Cayman

+1 345 814 7360

robert.lindley@conyers.com

Conyers

TABLE OF CONTENTS

1.	INTRODUCTION	4
2.	RATIONALE FOR ESTABLISHING A PRIVATE TRUST COMPANY	4
3.	THE PRIVATE TRUST COMPANY	5
4.	RECORDS AND PRIVACY	9
5.	COMPANY AND DIRECTOR LIABILITY	9
6.	TAXATION	10

1. INTRODUCTION

A private trust company is a limited company whose sole purpose is to act as a trustee for a specific trust or a related group of trusts.

The regulation of private trust companies in Cayman is governed by the Banks and Trust Companies Act (“**BTCA**”) and the Private Trust Companies Regulations (“**PTCR**”). The general rule under the BTCA is that no person may carry on the business of acting as trustee from within Cayman without possessing a trust licence issued by the Cayman Islands Monetary Authority (“**CIMA**”). Under the PTCR, a private trust company may obtain an exemption from this licensing requirement provided it meets certain specified criteria which are explained below.

2. RATIONALE FOR ESTABLISHING A PRIVATE TRUST COMPANY

2.1. Control

Settlors of trusts are sometimes reluctant to relinquish complete control over and involvement with the assets settled into trust. Where tax and other considerations permit, and provided the private trust company is administered properly by observing all correct formalities, a settlor and his family may retain a certain degree of control and involvement without prejudicing the legal validity of the trust structure. Where a settlor is not comfortable with a trust structure because he may be unfamiliar with the concept of trusts, the corporate form of a private trustee company will be more familiar and easier to explain (i.e. “it is like having your own company with directors, etc”).

2.2. Familiarity and Continuity

Settlors expect the trustee to be knowledgeable of and sensitive to their family's circumstances and to administer the trust accordingly. Through the involvement of family members and/or close family advisers on the board of directors, a private trust company will be more familiar with the settlor's family than an institutional trustee. Furthermore, a private trust company is less likely to experience the disruption caused by the potential turnover of staff often seen in institutional trustees as employees are re-assigned or promoted.

2.3. Flexibility

A private trust company may be tailored to suit the settlor's intentions and the scope of its role and powers as trustee can be fine-tuned accordingly. In particular, use of a private trust company will be designed to co-ordinate administration with the family's independent investment advisers and any family office, thus streamlining and simplifying administration.

2.4. Cost

The annual fees of institutional trustees are often calculated on an ad valorem basis and can be considerable where assets of significant value are placed in trust. By comparison, the costs of incorporating and running a private trust company can be subject to client control and may be less expensive for large trusts.

2.5. Family Education and Governance

As a family "owned" company, a private trust company provides a structured forum which can enhance the education of beneficiaries who will inherit large fortunes. It will be important that such beneficiaries understand how the family's assets are managed and, where appropriate, to contribute to the decision making of the trustee.

2.6. Professional Liability

Institutional trustees, increasingly concerned about their potential liability and the risk of being sued, can be reluctant to take on ownership of assets with perceived higher risks (e.g. high-risk capital investments, companies operating business assets such as ships, aircraft and commercial real estate). In these circumstances, a professional or bank trustee will often be more agreeable to administer a private trustee company and provide directors rather than acting as trustee itself.

2.7. Individual Liability

If, given a choice of acting as a trustee directly or as a director of a private trust company, an individual would be well advised to choose the latter since this will enable him to avoid the risk of personal unlimited liability which flows from individual trusteeship.

3. THE PRIVATE TRUST COMPANY

There are two categories of Cayman PTCs: (i) licensed PTCs and (ii) registered PTCs. The latter are not required to obtain a restricted trust licence from CIMA and are the most common form of PTC in Cayman.

3.1. Licensed PTC

The type of licence issued for a licensed PTC is a restricted trust licence. A restricted trust licence is issued subject to the condition that the trust business is limited to certain named clients. Under a restricted trust licence where a private trust company has been established to act as trustee of family trusts, CIMA permits a maximum of 20 trusteeships provided that the trusts are all related.

(a) Capital & Funding

A minimum paid up share capital is required in such amount as will enable the restricted trust licensee to maintain a net worth of C\$20,000 (approximately US\$ 25,000).

(b) Directors & Shareholders

Each licensee is required to have at least two directors, at least one of whom is required to have sound professional knowledge of and experience in trust business. All directors must be approved by CIMA.

All shareholders who are natural persons holding more than 10% of the licensee's issued share capital or voting rights are required to submit prescribed information to CIMA. Any shareholder holding more than 10% of the licensee's issued share capital or voting rights that is a corporation is required to submit audited annual accounts for the

two years immediately preceding the year of application, together with similar accounts for the parent body.

A licensed PTC is required to have a place of business in Cayman which must have resources (including staff and facilities) and hold such books and records as CIMA considers appropriate. Each licensee is also required to have two individuals or a body corporate, approved by CIMA, resident or incorporated in Cayman to be its agent.

(c) Disclosure

When forming a business relationship or entering into a one-off transaction with a person conducting relevant financial business under Schedule 6 of the Proceeds of Crime Act, the licensed PTC will need to inform the person that it is carrying on trust business and acting as trustee of a trust.

(d) Audit

Every licensee incorporated under the Companies Act is required to have its accounts audited annually by an auditor approved by CIMA.

(e) Timing

It normally takes approximately six to eight weeks to complete all aspects of establishing and licensing a licensed PTC.

3.2. Registered PTC

In order to qualify for the licensing exemption under the PTCR, a company must be a trust company which:

- (i) is incorporated in Cayman; and
- (ii) conducts no trust business other than “connected trust business”.

Connected trust business is defined in the PTCR as “trust business in respect of trusts of which there is one or more than one contributor to the funds of which are all, in relation to each other, connected persons”. For these purposes, a person is connected to another person if:

- (i) they are in a relationship listed in the schedule to the PTCR (a wide class of family relationships);
- (ii) one is contributing funds into a trust as trustee of a trust of which the other is a contributor;
- (iii) each is in a group of companies; or
- (iv) one is a company and the other is a beneficial owner of shares or other ownership interests of that company or of any other company in the same group of companies.

The company may not solicit or receive contributions from the public or any persons other than persons who are, in relation to themselves, connected persons. A registered PTC may act as a trustee of a Cayman STAR trust.

The company is required to:

- (i) maintain its registered office at the office of a company which holds an unrestricted trust licence under the BTCA;
 - (ii) allow CIMA, to at all reasonable times inspect all documents and records of the PTC held or that should be held at the registered office; and
 - (iii) in relation to each relevant trust, keep, and make available for inspection by CIMA, at that registered office adequate, accurate and up-to-date copies of the terms of the trust, the name and address of the trustee, the name and address of the settlor, the name and address of any protector, the name and address of any enforcer, the name and address of any contributor to the trust, the name and address of any beneficiary to whom a distribution is made from the trust; any deed or other document varying the terms of the trust; and all financial and transactional records of the private trust company and its connected trust business.
- (a) Establishment of a registered PTC

A registered PTC may be incorporated under the Companies Act either as a company limited by shares or as a company limited by guarantee.

The company is required to register with CIMA and, in order to do so, must, at the time of the registration application and on or before 31 January every year thereafter file a declaration containing:

- (i) the name of the private trust company;
- (ii) the names and addresses of the directors of the private trust company;
- (iii) the names and addresses of the shareholders or members, if any, of the private trust company;
- (iv) the name of the holder of the unrestricted trust licence providing the registered office of the private trust company;
- (v) confirmation that the company is a private trust company and does not require a licence to carry out trust business; and
- (vi) confirmation that the company is compliant with the requirements of the PTCR,

together with an initial registration fee, and thereafter annual registration fee of US\$4,268 (CI\$3,500).

Failure to pay the annual registration fee will result in an additional surcharge not exceeding one-twelfth of the annual registration fee for every month or part of a month that the annual registration fee is not paid.

The company must use the words “Private Trust Company” or “PTC” in the name under which it is registered by the Registrar of Companies.

The company must also file with CIMA proof of the identification of the directors and shareholders of the PTC. CIMA must be notified of any changes to the information provided within 30 days of the changes.

(b) Capital & Funding

There is no minimum net worth requirement.

There is no statutory minimum authorized or issued share capital for a registered private trust company.

(c) Directors & Shareholders

There must be at least one director of a registered PTC. From 1 February 2019 PTCs registered with CIMA or PTCs making any changes to the members of the board of directors are required to have a natural person appointed as a director.

There is no requirement that any of the directors be ordinarily resident in Cayman. The initial director(s) are appointed by the subscriber(s) to the memorandum of association. Thereafter, the addition and/or removal of directors will normally be effected in accordance with the provisions of the articles of association.

It is advisable that at least one of the directors have knowledge and experience in trust business. If not, clients may consider appointing an adviser to the board of directors who has trust administration experience.

The directors of a Registered PTC are not required to be approved by CIMA.

The shares of a PTC are commonly held by one or more individuals, by a company limited by guarantee or in a trust. It is common for a Cayman Islands STAR Trust to hold the shares of a PTC. Please see Conyers’ Publication “STAR Trusts” for further information.

(d) Disclosure

When forming a business relationship or entering into a one-off transaction with a person conducting relevant financial business under Schedule 6 of the Proceeds of Crime Act, the registered PTC will need to inform the person that it is carrying on trust business and acting as trustee of a trust.

(e) Audit

A Registered PTC is not required by CIMA to have audited accounts, although clients should maintain unaudited accounts for good corporate governance.

(f) Timing

It normally takes approximately three to four business days to complete all aspects of establishing a registered PTC.

(g) Cancellation of Registration

CIMA may refuse or cancel the registration of a PTC where:

- (i) the PTC requests the cancellation; or
- (ii) CIMA has reasonable grounds to believe that a PTC or any of its principals are conducting business in breach of the Anti-Money Laundering Regulations or any other applicable act; or is not or ceases to be a fit and proper person.

A PTC surrendering its registration is required to pay CIMA a fee of US\$366 (CI\$300).

4. RECORDS AND PRIVACY

In Cayman, the memorandum of association and articles of association of private trust company, as well as any special resolutions of the company are not available to the public. Trust documents and internal correspondence and records are also confidential and not open to public scrutiny.

5. COMPANY AND DIRECTOR LIABILITY

5.1. Liability of the Company

A Cayman private trust company owes the same fiduciary and statutory duties to act in the best interests of beneficiaries as any other trustee (subject to any exclusion in the trust instrument). The directors of the private trust company must act in the best interests of the company and are subject to certain statutory duties as well as fiduciary duties and duties of skill and care at common law.

5.2. Liability of Directors and Officers

The duties and responsibilities of directors derive from the company's memorandum and articles of association, common law and statute. There are two main categories of directors' duties:

- fiduciary duties, imposed by common law, which include the obligation to act honestly and in good faith in the best interests of the company; and
- duties of skill and care which impose an obligation to ensure that the director's actions are performed with the degree of skill and care which would reasonably be expected from a person of like knowledge and experience.

Directors' duties are owed by each director individually and are generally owed to the company and not to individual shareholders nor to beneficiaries of an underlying trust. There are a number of offences for failure to comply with the requirements of the Companies Act.

6. TAXATION

Cayman has no form of income tax, withholding tax, capital gains tax, estate duty or inheritance tax referable to companies, trusts or private individuals.

Nominal stamp duty may be chargeable on certain documents executed (or brought into) Cayman.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

© Conyers June 2020