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A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue overlay containing text. The foreground shows a paved plaza with geometric patterns and a few small, cylindrical bollards.

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.

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1. INTRODUCTION

- 1.1. 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.
- 1.2. 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**). While one option is to obtain a restricted trust license which permits the licensee to act as trustee of certain specified trusts (sometimes referred to as a “licensed PTC”), it is generally more straightforward to register as a private trust company under the PTCR whereby the company obtains an exemption from the licensing requirement provided that it meets certain specified criteria which are explained further below. Registered private trust companies which are the most common form of private trust company in Cayman will therefore be the focus of this publication.

2. WHY ESTABLISH A PRIVATE TRUST COMPANY?

2.1. Control

Settlers 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 (as discussed further below), a settlor and his family may retain a certain degree of control and involvement without prejudicing the legal validity of the trust structure.

2.2. Familiarity and Continuity

Settlers 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

Being appointed as a director of a private trust company, as opposed to acting as an individual trustee, will enable you to avoid the risk of personal unlimited liability which flows from individual trusteeship.

3. REGISTRATION AS A PRIVATE TRUST COMPANY

3.1. Eligibility criteria

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

- (a) be a company incorporated in Cayman; and
- (b) conduct 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:

- (a) they are in a relationship listed in the schedule to the PTCR (a wide class of family relationships);
- (b) one is contributing funds into a trust as trustee of a trust of which the other is a contributor;
- (c) each is in a group of companies; or
- (d) 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 broad effect of this is that a private trust company is generally permitted to act as trustee of a group of trusts with a common settlor (or settlors from the same family), but is unable to act as trustee for multiple trusts where the assets are contributed from different family groups or unconnected persons.

Further, 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.

3.2. Requirements

The company is required to:

- (a) maintain its registered office at the office of a company which holds an unrestricted trust licence under the BTCA (such as Conyers);
- (b) allow CIMA, at all reasonable times, to inspect all documents and records of the private trust company held or that should be held at the registered office; and
- (c) 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.

3.3. Registration

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:

- (a) the name of the private trust company;
- (b) the names and addresses of the directors of the private trust company;
- (c) the names and addresses of the shareholders or members, if any, of the private trust company;
- (d) the name of the holder of the unrestricted trust licence providing the registered office of the private trust company;
- (e) confirmation that the company is a private trust company and does not require a licence to carry out trust business; and
- (f) confirmation that the company is compliant with the requirements of the PTCR,

together with an initial registration fee, and thereafter annual registration fee.

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 private trust company and CIMA must be notified of any changes to the information provided with 30 days of the changes.

3.4. Capital and Funding

There is no minimum net worth requirement. There is also no statutory minimum authorised or issued share capital for a registered private trust company.

3.5. Directors

There should be at least two individual directors of a registered private trust company. Private trust companies registered with CIMA or private trust companies 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.

3.6. Audit

A registered private trust company is not required by CIMA to have audited accounts, although clients should maintain unaudited accounts for good corporate governance.

3.7. Cancellation of Registration

CIMA may refuse or cancel the registration of a private trust company where:

- (a) the private trust company requests the cancellation; or
- (b) CIMA has reasonable grounds to believe that a private trust company 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 private trust company surrendering its registration is required to pay CIMA a deregistration fee. CIMA has issued a Rule on Deregistration of Private Trust Companies (November 2020) and a Regulatory Procedure on Deregistration of Controlled Subsidiaries and Private Trust Companies (November 2020).

4. STRUCTURE OF THE PRIVATE TRUST COMPANY

Generally, when deciding on how to structure a private trust company there are two options for the type of company which will be incorporated:

- (a) a standard form of company incorporated under the Companies Act and being either a company limited by shares or by guarantee; or
- (b) a foundation company incorporated in accordance with the Foundation Companies Act, 2017 ("**Foundation Company**");

4.1. **Company limited by shares or guarantee**

Where a private trust company is a company limited by shares or guarantee, the private trust company will therefore have a member/shareholder. While the private trust company's member may be an individual (such as the settlor), this can raise issues with regard to succession on the death of the member and may also be unattractive for various other tax or legal reasons. As such, the membership interest of a private trust company is more commonly held under the terms of a charitable or non-charitable purpose trust (the latter being a Cayman STAR trust - please see Conyers' Publication "STAR Trusts" for further information).

Where the membership interest is held by a trustee, the "parent" of the private trust company is typically a licenced trust company which holds the shares of the private trust company in its capacity as trustee of the corresponding purpose trust. The trustee's role is relatively passive such that the management and administration of the private trust company is left to its board of directors.

4.2. **Cayman Foundation Company**

Establishing a private trust company as a Foundation Company allows for a simplified structure without the need for a purpose trust holding the private trust company's shares as Foundation Company's may cease to have members/shareholders.

A Foundation Company has many of the same features as an ordinary company, including separate legal personality (making it a familiar structure). However, unlike a typical company it can have beneficiaries or purposes (as with a trust) and may cease to have members and ownership. A further advantage is the flexibility this structure offers, meaning there is wide scope to tailor governing documents.

4.3. **Key Roles**

Ordinarily, a Foundation Company will have the following key roles:

- (a) **Founder(s):** a Foundation Company may (but need not) have a Founder which is a role similar to the settlor of a trust. As the Foundation Companies Act does not formally define the role of "Founder", the governing documents may specify what (if any) powers the Founder will retain. For example, the Founder may reserve the power to appoint the

directors, amend its governing documents or alternatively the Founder may have no ongoing role in relation to the Foundation Company whatsoever.

- (b) **Director(s):** as with an ordinary company, a Foundation Company is managed by its board of directors.
- (c) **Supervisors:** Where a Foundation Company ceases to have members/shareholders, it must have one or more “Supervisors” (who may but need not be directors). As suggested by the title, such officeholder essentially fills the gap left by the lack of shareholders in that they can enforce the rules of the Foundation Company as against the directors and would typically have the right to access the files, books and accounts of the company. The Supervisors may therefore play a role in ensuring the Directors comply with the organisation’s governance model.

4.4. Foundation Company Bylaws

- (a) A Foundation Company may (but is not required to) have “bylaws” which do not form part of the company’s constitution and therefore do not need to be filed with the Registrar of Companies and will remain private. This affords Foundation Companies with a degree of privacy in its operations, coupled with further flexibility to set its own rules in relation to governance, structure and management.
- (b) Bylaws may relate to any aspect of the business or affairs of the Foundation Company, or any of the duties or powers of the directors and other officeholders, including the manner in which to achieve the Foundation Company’s objects.
- (c) For private trust companies, Bylaws may set out the rules with respect to one or more committees which are capable of instructing the directors in the exercise of their powers. For example, the private trust company may have an investment committee which approves any investment strategy / policy, coordinating the administration of the Trusts with investment managers.

5. RECORDS AND PRIVACY

In Cayman, the memorandum of association and articles of association or bylaws of a 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. However, certain information that is provided to the Registrar of Companies is entered into a register and is available for inspection by any person upon payment of a fee:

- (a) the name of the company;
- (b) the part of the Islands in which the registered office of the company is proposed to be situated;
- (c) the amount of capital of the company and, in the case of a company having its share capital divided into shares of a nominal or par value, the number of shares into which it is divided and the fixed amounts thereof;
- (d) the names and addresses of the subscribers to the memorandum and the number of shares taken by each subscriber;
- (e) the date of execution of the memorandum of association;
- (f) the date of filing of the memorandum of association;
- (g) the number assigned to the company;
- (h) in the case of a company limited by guarantee or a company has no limit placed on the liability of its members –
 - (i) a statement that the company is limited by guarantee or is unlimited, as the case may be, and
 - (ii) the omission of any of the particulars which are irrelevant or inappropriate;
- (i) the nature of the business; and
- (j) the date of the end of the company's financial year.

6. COMPANY AND DIRECTOR LIABILITY

6.1. 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.

6.2. 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:

- (a) 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
- (b) 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.

7. 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.

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