



# CAYMAN TRUSTS

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The Cayman Islands has become a global centre for trusts largely because it has expert attorneys and service providers, modern and effective legislation, a strong and independent judicial system and a stable political environment. The financial sector in Cayman has serviced international clients for decades with one of the most flexible vehicles for wealth structuring and estate planning and is continuously reviewing and updating legislation so that it remains current, viable and relevant.

The Cayman Islands trust law is derived from an amalgamation of common law and equity, English statute and local statute.

A trust is a legally binding arrangement whereby a person (known as a settlor) transfers assets to another person (known as a trustee) who is entrusted with legal title to the trust assets, not for his own benefit, but for the benefit of other persons (known as beneficiaries, who may include the settlor) or for a specified purpose.

The terms of the management and disposition of trust assets will normally be contained in a formal written instrument so that the beneficiaries, trustees, settlor, and protector know precisely what their rights and duties are under the trust. The trust instrument will usually provide that the trustee has the power to manage the trust assets in accordance with the terms of the trust instrument and the strict duties imposed on the trustee under the Trusts Act (2021 Revision).

## **Types of Trusts**

There are various types of trusts that have developed over the years which include the following:

### **Discretionary Trusts**

Discretionary Trusts are one of the most popular types of trusts. It provides the maximum flexibility as the trustee is usually given wide discretionary powers as to when, how much and to which beneficiaries distribution of income and/or capital should be made. This allows for the trustee to take into account circumstances at the time of distribution which may not have been considered at the time of establishing the trusts. In addition to the trust instrument, it is also usual for a settlor to indicate to the trustee his wishes as to the management and disposition of the trust fund in the future in a letter of wishes. A letter of wishes which, although not legally binding, will generally be considered by the trustee to be of persuasive effect when performing his duties and when determining to make a distribution out of the trust fund. Such letter of wishes may be updated from time to time.

Beneficiaries do not have any legal rights over any particular portion of the trust assets but have a right to be considered by the trustee to benefit under the trust.

### **Fixed Interest Trusts**

In a Fixed Interest Trust, settlors wish to confer fixed interests on beneficiaries, that is, they specify the precise circumstances in which beneficiaries are to be given the income and/or capital of the trust fund.

### **Exempted Trusts**

Exempted Trusts are registered in Cayman with the Registrar of Trusts. A trustee may opt to register the trusts in order to obtain an undertaking from

the Cayman Islands Government that no law enacted in Cayman may impose any tax or duty on the trust for a period not exceeding 50 years from the date of creating the exempted trust. Usually, commercial trusts or unit trusts may benefit from receiving such an undertaking.

## **Charitable Trusts**

A Charitable Trust is established for the benefit of a charitable institution or purpose pursuant to Cayman Islands' laws.

## **Special Trusts Alternative Regime (STAR) Trust**

A STAR Trust provides an alternative to the traditional trust structure by providing a framework for benefiting beneficiaries and/or achieving a wide range of charitable and non-charitable purposes.

STAR Trusts are useful in both private and commercial contexts including where the settlor wishes:

- the trust to hold shares of an operating company or the family business
- to establish a traditional trust with an indefinite trust period
- to retain control over the trust fund
- to exclude the beneficiaries right to enforce the trust
- to create a charitable trust, which may not be solely charitable
- to hold shares in a special purpose vehicle.

The persons with standing to enforce a STAR Trust are those who have been appointed as enforcers by the settlor when the trust was established (beneficiaries may or may not be enforcers), pursuant to the trust deed or an order of the court.

STAR Trusts must have at least one enforcer, and at least one of the trustees must be a licensed trust company or registered as a private trust company in

Cayman.

## **Characteristics of a Trust**

When establishing a trust, the below are some characteristics which the settlor may consider.

### **Reserved Powers**

Unlike onshore jurisdictions, Cayman trusts permit settlors to retain certain powers over the trust including powers to revoke or vary the trust deed, act as a director or officer of a company wholly-owned by a trust, appoint, add or remove a trustee. The reserved powers trust works well for a settlor who wishes to retain some control over the trust property.

### **Revocability**

A revocable trust may be revoked at the option of the settlor, which means that he may terminate the trust and the ownership of the trust assets will be transferred back to him. An irrevocable trust on the other hand cannot be revoked. We usually advise clients to obtain legal advice as there may be consequences, usually tax related, for having a revocable trust.

### **Protectors**

The settlor of a discretionary trust may wish to ensure certain checks and balances or controls are in place in the trust. This can be achieved by requiring the trustee to obtain the consent of a third party being the protector, before exercising its powers under the trust. Common powers which are made subject to the protector's consent include the trustees' power to appoint new trustees, the addition and removal of beneficiaries and the distribution of capital/income from the trust fund. The rights and obligations of a protector vary from trust to trust and should be expressed in the terms of the trust

instrument. Usually, the protector is a close friend, relative or professional adviser of the settlor.

## **Perpetuities**

Ordinary trusts governed by Cayman Islands law exist for a period up to 150 years. Trusts established for charitable or non-charitable purposes under the STAR legislation may exist indefinitely.

## **Confidentiality**

Save for exempted trusts, trusts are not registrable with the Cayman Islands Government. Information in relation to the trust and the settlor are held strictly confidential unless the trustee is under a legal duty to disclose the information or the settlor has requested the disclosure of the trust information.

## **Purpose of Trusts**

### **Estate Planning**

A trust enables a settlor to provide for his spouse or dependents during his lifetime and after his death. It also enables the preservation of family wealth and continuity of family business.

### **Asset Protection**

A trust can serve important asset protection functions. Transferring assets to a trustee of a discretionary trust can ensure that the assets are not available to the creditors of the settlor or are protected in the event of family breakdown among members of the beneficial class. Asset protection trusts should not be established with the intention of defrauding creditors, should not reserve unrestricted powers to revoke the trust to the settlor or to otherwise recover

trust assets.

## **Avoidance of Probate**

The probate process can sometimes be onerous, time-consuming and expensive. Particularly, if the settlor has assets in several countries, it may be necessary to obtain a grant of probate or letters of administration in each country where the assets are located. In addition, there may be estate taxes payable on the estate.

However, if the assets are settled in a trust, on the death of the settlor, the trust assets will remain vested in the trustee and will be dealt with in accordance with the trust instrument. Therefore, there will be no need to obtain a grant of probate or letters of administration on the death of the settlor.

## **Forced Heirship**

An individual from a country with rigid heirship laws may, during his lifetime, wish to distribute assets among his heirs in a manner that differs from that prescribed by the laws of his domicile. Such heirship rights are not recognized in the Cayman Islands as being enforceable in relation to a Cayman trust and as such the settlor may, depending on where the assets are located, be able to avoid the restrictions of the heirship laws by establishing a Cayman trust.

## **Philanthropy**

Trusts are often established as a vehicle for giving to existing charitable institutions or charitable purposes more generally. Charitable trusts can last indefinitely.

## **Prevention of division of assets**

Trusts, particularly STAR trusts are useful vehicles for persons who wish their children and future generations to benefit from the family business but wish to restrict them from disposing of their interest in the family business to non-family members. Family assets may also be assets which cannot be divided but from which a number of individuals benefit such as real estate. Such property can be held in trust for the beneficiaries without disturbing the underlying property.

## **Control of Spending**

Settlors may wish to establish a trust for a loved one who is unfit to manage their own affairs due to age, infirmity or recklessness. A trust structure can allow trustees to help in the management of wealth by controlling the way that trust funds are distributed.

## **Commercial Uses**

Trusts are also used for a wide range of commercial purposes, including:

- benefits and incentive schemes for employees e.g. employee benefit trusts, employee share option schemes, pension funds;
- investment funds e.g. unit trusts
- holding security over a borrower's assets for the benefit of lenders; and
- holding 'off balance sheet' assets.

## **Flexibility**

The trust structure enables a settlor to tailor the trust to meet his and his beneficiaries' needs. The trust may provide a fixed interest for each beneficiary or it may confer wide discretionary powers on the trustee to

distribute the assets to the beneficiary. The trust may also include a power of revocation or amendment which may be vested in the settlor or protector.

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Please note that this briefing is intended to provide a very general overview of the matters to which it relates and is not intended as legal advice and should not be relied upon as such.