



# Cayman Islands Reserved Powers Trusts

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Like many offshore jurisdictions, the Cayman Islands has bespoke reserved powers trust legislation, providing clarity and certainty for settlors and trustees of Cayman Islands' trusts.

In this briefing, we will summarise what you need to know about the reserved powers legislation.

## Background

Under common law, there was a degree of uncertainty about the extent to which assets settled into a trust could continue to be controlled by a settlor while also satisfying the requirement that there was an intention to create a valid trust. A trust that fails to meet this requirement is at risk of being declared a "sham" trust.

The reserved powers legislation clarifies the position by confirming that the reservation or grant of certain powers by the settlor of a trust will not invalidate the trust or affect the presumption of its creation taking immediate effect.

With the comfort of the legislation, settlors who wish to retain some form of control over the trust assets can use reserved powers.

## The legislation

Section 14(1) of the Trusts Act (2021 Revision) (the **Trusts Law**) provides that a settlor can reserve (to themselves) or grant (to another) certain powers. These include:

1. a power to revoke, vary or amend the trust deed
2. a power to pay income or capital from the trust fund
3. a limited beneficial interest in the trust fund
4. a power to act as director of any company owned by the trust

5. a power to give binding directions to the trustee concerning the purchase, holding or sale of trust property (for example, investments)
6. a power to appoint, add or remove any trustee, protector (if any) or beneficiary
7. a power to change the governing law and the forum of administration of the trust
8. a negative power of veto over any trustee powers or discretions

The Trusts Law also confirms that any trustee who has acted in compliance with a valid exercise of any reserved power (in the list given above) will not have acted in breach of trust - although, in practice, many trust deeds add additional protections for a trustee that acts in compliance with an exercise of a reserved power, such as an indemnity concerning any liabilities that might arise as a result of following a reserved power.

## Common uses

Perhaps the most common reserved power a settlor looks to reserve when establishing a trust is the power to give binding direction to the trustee in relation to the purchase, holding or sale of trust property, often referred to as the reserved power over investments (see point five in the list above).

Historically, a trustee was solely responsible for the investment of the trust fund of the trust. [1] However, with the introduction of the reserved powers legislation, the trustee's role in investing the trust fund can be completely divested to the settlor or another third party. The vesting of this investment function in a non-trustee party is a perfect match for any situation where the settlor is knowledgeable or experienced in coordinating their own personal investments and wants to continue to do so once they cease to be the legal owner of the trust assets.

The reserved powers regime in the Cayman Islands is flexible and covers a wide range of powers. So, if well drafted, reserved powers can comfort trustees and settlors alike.

However, despite all the benefits of having reserved powers in a trust deed, there are also potential pitfalls that might arise in unforeseen situations. For example, in the event of the settlor's bankruptcy, the trustee in bankruptcy might be able to exercise the settlor's reserved powers in such a way as to access the trust fund, removing the protection that the trust might previously have provided.

## Summary

The certainty of the reserved powers legislation provides comfort to both settlors and trustees and a great deal of flexibility when considering the most effective allocation of powers between the settlor and the trustee.

If you would like to discuss the possibility of establishing a Cayman Islands reserved powers trust, contact a member of our [Trusts Advisory Group](#).

[1] Note a trustee can also delegate their investment responsibilities to others (for example, investment managers) however, ultimately the trustee would still be the decision makers and would have ultimate responsibility for trust investments.

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