

Private Trust Companies in the Cayman Islands

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Private trust companies are established with the sole purpose of acting as a corporate trustee to a trust or a number of trusts, provided those trusts are "connected".

Private trust companies are commonly used by high net worth families in their wealth structuring for a number of reasons. They protect confidentiality, they provide a comprehensive framework under which family members can be involved in decision making (by being on the board of the private trust company), and they can avoid the complications of succession when either incorporated as a Cayman Islands foundation company or used in conjunction with a STAR Trust (explained below).

The speed at which a private trust company can be established, and the relatively low cost of operation have made private trust companies extremely attractive to high net worth families and their advisors.

Background

Private trust companies have existed in the offshore world for a number of decades. Originally, they were a key part of employee benefit trust planning, but their popularity in private wealth planning has increased exponentially over the last 25 years or so.

In Cayman, private trust companies were first introduced in 2008, via the Private Trust Companies Regulations (the **Regulations**). The Regulations introduced a new type of Trust Company, which did not require a Restricted Trust Licence to be maintained with the Cayman Islands Monetary Authority. This significantly reduced the cost, compliance burden and delay involved in setting up a Trust Company under the old law. Private trust companies are the trustee of choice for many settlors of Cayman Islands trusts.

A private trust company can be established in a matter of days in most cases. This is

considerably quicker than establishing a Trust Company with a Restricted Trust Licence, where the process can take several weeks to complete.

Qualifying requirements of a private trust company

The Regulations prescribe a number of conditions which the private trust company needs to meet in order to be exempt from the requirement to hold a Restricted Trust Licence. They are:

- the private trust company needs to be incorporated in the Cayman Islands (either as a foundation company, limited by guarantee or an exempted company, limited by shares)
- to maintain a registered office in the Cayman Islands (at the office of a company that holds a Trust Licence under the Banks and Trust Companies Act)
- that the name of the company includes the words "Private Trust Company" or the letters "PTC"
- confirmation of the names and addresses of the directors and shareholders of the private trust company
- that the private trust company conducts only "connected trust business" (explained below)

It ultimately falls to the Trust Licence Holder to ensure that all due diligence requirements are met in relation to the private trust company.

What is "connected trust business"?

"Connected trust business" is trust business where the contributors of funds to the trusts are all "connected persons" in relation to each other. The term "connected person" is then defined within the Regulations. The Regulations broadly look at degree of family connection, and connections via groups of companies. We are able to advise, in any given situation, as to whether the trusts would be connected for the purpose of the Regulations.

The benefits of using a private trust company

Among the benefits of using a private trust company as trustee are:

- confidentiality can be maintained by using a private trust company, rather than a large and highly regulated international financial institution as trustee
- private trust companies allow trusteeships to be harmonised among a group of trusts (even those governed by different laws)
- private trust companies facilitate the direct involvement of family members (and trusted

advisors) in the decision-making processes.

- succession issues are reduced by structuring for the owner of the private trust company to be a STAR Trust or the private trust company itself to be incorporated as a foundation company limited by guarantee and therefore have no shareholders
- private trust companies can be set up quickly and at much lower cost than establishing a Trust Company with a Restricted Trust Licence

Ownership of the private trust company: using foundation companies or STAR Trusts

Additional benefits arise when a private trust company is utilised in a structure along with other Cayman Islands wealth planning innovations, the foundation company or the STAR Trust.

Foundation companies

Foundation companies came into effect in 2017 with the introduction of the Foundation Companies Act. This new private wealth vehicle has several features and flexibility, can operate as a company, retain separate legal personality with limited liability, and function in the same way as a civil law foundation or common law trust. This is an excellent solution for private trust companies who wish to be established as ownerless vehicles as the foundation company can be incorporated as a company limited by guarantee.

A foundation company must have a secretary, licensed or permitted by the Companies Management Act to provide company management services in the Cayman Islands or the secretary may be a licensed Cayman Islands trust company. The foundation company's registered office must be at its secretary's registered office and the secretary must maintain a full and proper record of its activities.

STAR Trusts

STAR Trusts were introduced into Cayman Islands Law under the Special Trusts (Alternative Regime) Law 1997, which is now found within Part VIII of the Trusts Act. One of the major innovations of the STAR Law was the departure from the notion of the beneficiaries of a trust having "beneficial ownership" of the trust assets.

By using a STAR Trust to hold the shares in a private trust company it is possible to create a corporate trustee whose shares are not in the beneficial ownership of any person. The STAR Trust's purpose is then to hold the shares in the private trust company and to facilitate the private trust company acting as trustee on a trust or trusts, in compliance with the Regulations.

Utilisation of the private trust company/STAR structure or a foundation company avoids the

problems of ownership of the private trust company, particularly in the event of deaths occurring within a family. Without either of these structures, if the owner of shares in a private trust company dies, the shares in the private trust company form part of that person's estate and will pass according to the provisions of his or her will. This may lead to unfortunate results and can be the cause of trust or estate disputes and litigation.

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