

## Back to basics: getting the fundamentals right in Cayman trusts

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Partner Anthony Partridge recently spoke at the STEP Cayman conference on effectively managing relationships with settlors. One of the recurring points of discussion was the importance of getting the fundamentals right, from taking time to truly understand a client's background and explaining how a trust works, to the use of reserved powers and working effectively with onshore counsel. In this Q&A, Anthony summarises the main points.

### **How important is it to ask about the client/settlor's family background?**

I think this is incredibly important for a number of reasons. As private client lawyers we need to start building a rapport with the client straight away, almost as soon as you meet them. When I meet a client for the first time I know that I am going to get a lot of information within a short space of time, and possibly not in the most coherent way, so it's also necessary to be able to drill down on the essential pieces of information that a potential settlor is providing to work out (a) what is relevant and irrelevant for present purposes, (b) what will assist in determining the kind of trust structure that would be best suited to their needs and (c) the sort of trustee we should be introducing our settlor to. The geographic location of the settlor and beneficiaries and the nature and type of assets and also where they are located may have some bearing on the choice of trustee and who might be best suited to handle particular types of settlors/structures.

### **For someone that has never had a trust before, where do you start? How do you explain what a trust is?**

This is interesting, because sometimes we have clients that are very well informed, have done their research and are familiar with the concept of trusts for succession planning, asset protection and who seemingly understand the benefits. But when it comes down to the crunch and you provide the advice that they are actually handing over legal ownership of their assets, there is almost that moment of 'loss of consciousness'. For new clients, I try to appreciate that this is all going to be incredibly new. I think we all need to be mindful that there are going to be sensitive issues that will come up when dealing with settlors and their families. Some are just more difficult than others.

So, no matter how sophisticated your settlor is, I think you need to start at the very beginning, and explain that trusts in the Cayman Islands are not separate legal entities in their own right, and legal title to the trust property is transferred by the settlor to a trustee who is then responsible for administering those assets for the benefit of the beneficiaries of the trust in accordance with the terms set out in the trust deed.

My initial advice to clients seeking to establish a trust in Cayman is that the process breaks down roughly into three parts:

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### **Are reserved powers often high on the agenda?**

Yes definitely, I don't think there are any trusts that Cayman lawyers draft that don't involve some form of reserved powers. This really leads on from the previous question of explaining what a trust is, but it is also an education process of working through the reserved powers provisions of the Trust Law with your client and explaining to them how that works and what it might look like in practice during the life of a trust. Of course if the settlor wants to retain absolute control over the trust then we know that's never going to cut it, and there needs to be a balance of powers reserved by a settlor or protector - this really came under the spotlight a couple of years ago in Pugachev.

With that being said, I think we could help a settlor to get comfortable with having at least a power of veto over distributions and either a power to add/exclude beneficiaries or a power of veto. Or a trusted individual could be appointed as the protector of the trust and hold those powers, in addition to having a role as the investment advisor of the trust. The other common reserved powers that settlors may have are the power of amendment and a power to hire and fire the trustee.

### **Cayman is such a sophisticated trust jurisdiction that settlors have a plethora of options when it comes to choice of trustee, from licensed trust cos to PTCs. How do clients typically decide?**

Without a doubt one of the main drawcards for clients choosing Cayman as a jurisdiction is the world-class industry professionals that we have living and working here. Cayman offers a wide selection of professional trustees, ranging from those affiliated to major international banks and PE firms to independents and smaller, more boutique operations. I find that the choice of trustee will depend on a number of factors, including the reasons for establishing the trust, the nature of the assets and the activities the trustee will be asked to undertake. Sometimes settlors arrive with an existing relationship somewhere, or with a recommendation. I have had settlors come through the door who only want to talk to trustees that are household names such as bank-affiliated trustees, whereas there are some the

other way around that prefer a boutique. Global footprint can be a factor, alongside language capabilities, or expertise in certain areas, such as digital assets or Cayman's relatively new foundation companies law. Obviously when the client and particular structure warrants it, a discussion about PTCs will come into play, and it may be very important that the trustee service provider is able to provide a director to serve on the board of the PTC.

### **Are letters of wishes the norm?**

Trustees here in Cayman are typically well versed on letters of wishes and know that they are non-binding but nevertheless helpful in knowing what the settlor's thoughts and wishes were at the time the trust was established as to how the trustee might exercise its discretionary powers. In the modern international trust context, on most occasions I would say that a letter of wishes would be seen as almost a companion to the trust instrument, and we have all seen instances where letters of wishes have been updated multiple times during the course of the settlor's lifetime. Clients often find it quite cathartic to update their wishes as circumstances in their lives change. I would say that letters of wishes are the norm in the Cayman trusts market.

### **Can you explain a little bit about the relationship between Cayman counsel and a settlor's onshore advisors?**

I can't recall an occasion in recent memory when I haven't worked with a settlor's onshore counsel in establishing a new structure - it's just a given and part of the set-up process. If a new client comes directly to me as Cayman counsel, part of that education process will be getting them to understand how important it is to get the structure right, and that's from the outset. The starting point is getting the tax advice, preparing the trust deed and obtaining advice in the jurisdictions where the beneficiaries are resident or domiciled, as necessary. Advice may be needed in the jurisdictions where the assets are located to determine whether there are any challenges or consequences with the structuring and transfer of assets into trust. I find it's a real mix of clients coming to us, some with appropriate advisors who understand international planning and those who don't. Obviously having the right onshore advisors is key.

### **Practically, at this initial stage, what do you say to a settlor who wants to know how the day-to-day administration of their trust will be carried out?**

Once the trust is established and the assets are transferred into trust, we should have a sit down meeting with the trustee to establish what the lines of communication are going to be. Every trustee is going to be different, but I would expect that there would be one point of contact for the settlor but obviously with clear access to the director/partner who has the relationship for that client. I know that we have trustees here in Cayman that have literally had their client families for decades, and from one generation to the next, and for some trustees and clients, that's a very special relationship that they have with these families.

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