STRENGTH IN DEPTH

Find out why the Cayman Islands is a world leader in trusts and financial services

Will to win
HOW CAYMAN IS STAYING AHEAD OF OFFSHORE RIVALS

Cayman in the middle
WHY CAYMAN TRUSTS ARE INVALUABLE FOR INTERNATIONAL WEALTH PLANNING

Relative merits
WHAT MAKES CAYMAN A TOP CHOICE FOR FAMILY OFFICES?
BEFORE YOU SELECT A WEALTH MANAGEMENT FIRM, GIVE THEM THIS TEST.

Q. Is the firm privately or publicly held?

Q. What percentage of the firm’s revenue is generated by its wealth management business?

Q. Do the owners and employees invest their own wealth alongside that of clients?

Q. Are client relationship managers paid for sales or service?

Q. Are portfolio managers paid based on assets under management or on long-term performance?

Our answers are clear and concise: we are privately owned and independent; we only focus on private wealth management; our interests are aligned because our clients, owners, and employees invest side-by-side; our relationship managers are rewarded for their client service, not sales; and our portfolio managers are measured on long-term performance, not assets under management. These key principles have guided our firm since its founding. Bessemer Trust is a multifamily office that has served individuals and families of substantial wealth for more than 100 years. Through comprehensive investment management, wealth planning, and family office services, we help clients achieve peace of mind for generations.

To learn more, please call Peter Frischman, Managing Director, at 345-949-6674 or 212-708-9357, or Jackie Stirling, Senior Vice President, at 345-949-6674 or visit us at www.bessemer.com. Minimum relationship $10 million.
Welcome to the second STEP Cayman Islands supplement to the STEP Journal.

Since the last supplement, there has been increased pressure on international finance centres (IFCs) to justify the use of trust structures. The consensus in the Cayman Islands is that the trust is uniquely useful and relevant, and will continue to thrive. Our talented trust professionals have been reviewing new legislation and updates to ensure that we remain the jurisdiction of choice for trusts. And we continue to remind our clients and their advisors of the benefits of trusts for managing their financial affairs.

The many advantages of setting up trusts in the Cayman Islands include: the jurisdiction’s stable political environment; its established legal framework for trusts, based on common law; and the availability of settlor-directed trusts and STAR trusts, which can be established for purposes, as well as persons. There is also no direct taxation, and the exempted trust regime ensures exempted trusts will be tax-free for 50 years. The jurisdiction and its clients benefit, too, from the expertise of the trust industry regulator and licensed trust companies, and a highly talented pool of trust professionals. Furthermore, the Cayman Islands is an early adopter of the US Foreign Account Tax Compliance Act and the Common Reporting Standard.

Finally, those seeking to establish a presence here will find that the jurisdiction offers world-class accommodation, restaurants and schools.

As this publication shows, Cayman trust structures remain a vital instrument in the wealth planner’s toolkit, and have a justified place in the modern age.

Nevertheless, the world is changing. And, in recognition of changing perspectives on client confidentiality, the Cayman Islands has introduced the Confidential Information Disclosure Law, 2016. This law revises the Cayman Islands’ approach to confidential information so that it is in line with that of the UK and most common-law jurisdictions. Notably, the law introduces a ‘whistle-blower’ defence for disclosures made in good faith in certain scenarios.

The Cayman Islands also recognises that the vulnerability of entities operating in IFCs is perceived to have increased due to hacking and security breaches. As such, the Cayman Islands Monetary Authority, which regulates the trust industry, has reviewed and strengthened its security strategy; in future, it will review the approach of trust licensees to data-security risk management.

We hope you enjoy finding out more about the Cayman Islands.

Alan Milgate is Chair of STEP Cayman Islands and a Partner at Rawlinson & Hunter
The 2016 Olympics in Rio showed the world how good genes, hard work and expert coaching can pay off. Those ingredients are just as important for success in the financial-services arena.

Today, while the Cayman Islands has ‘good genes’ in the form of decades of financial-services experience, we still put in the hard work that allows us to continue winning medals across the full range of financial-services sectors. And, importantly, you — the people in industry who know what clients need — provide a key aspect of the expert coaching. These three elements allow the Cayman Islands to adapt to external factors and remain attractive to all lines of financial-services business.
One of those lines is trusts, and here we are pleased to have maintained our position relative to other international trust-services locations. Statistics indicate that in 2014 this sector grew by 5.7% on the year before. With our plans to bring amendments to the Trusts Law and Property (Miscellaneous Provisions) Law in October 2016, we expect the trust industry to grow further. Furthermore, my ministry is reviewing proposals from STEP Cayman’s legislative committee that aim to develop cutting-edge products for the trust and estate-planning sector.

Beyond legislation, the government is demonstrating its support for trusts by its sponsorship of the STEP Caribbean Conference 2017, which will be held on 1–3 May in Grand Cayman.

**Success in all sectors**

The trust sector is not the only one doing well in Cayman. In hedge funds, Cayman-authorized funds still dominate the global market. With the continuation of international downward trends, caused by structural changes to the sector, our banking industry nevertheless remains strong and competitive, while keeping pace with regulatory initiatives.

Cayman remains the second-largest offshore jurisdiction in terms of the number of international insurers, including captives, and it maintains its lead for healthcare captives.

Steady, strong growth characterises the remaining sectors. Securities investment saw a 3.9% increase in June 2015 over June 2014, and our companies register is now nearing the 100,000 mark. New partnerships also rose by 16.5% in 2015.

Finally, Cayman remains a key conduit for international finance, ranking sixth in the world based on the value of the banking sector’s international position on assets in 2015, and fifth based on liabilities.

**Innovative by nature**

Cayman’s success is partly attributable to its focus on innovation. Take, for example, the highly anticipated Limited Liability Companies Law, enacted in July 2016. As with a Delaware limited liability company (LLC), the Cayman LLC is a business vehicle with a separate legal personality, like a Cayman exempted company. The LLC also shares certain features, and its flexibility, with the Cayman exempted limited partnership.

**CAYMAN QUALITY**

What makes the Cayman Islands a world leader in financial services? **Jude Scott** of Cayman Finance explains

The Cayman Islands is a world leader in several areas of financial services, including investment funds and asset management, banking, trusts, capital markets and insurance. Cayman Finance aims to ensure that this success story continues.

Indeed, the role of Cayman Finance is to protect, promote, develop and grow the financial-services industry. Our past success in doing so has primarily been due to our commitment to global standards, and our engagement with domestic and global stakeholders, including political leaders, regulators and other organisations.

This approach has helped the Cayman Islands to maintain its status as the world leader in alternative investment funds; the second-largest domicile in the world for captives; the number-one domicile for healthcare captives; and a leading jurisdiction for trusts, banking, capital markets and fiduciary services.

In fact, the Cayman Islands has consistently been ranked among the top international finance centres. In 2015, The Banker crowned the Cayman Islands ‘Top Specialised Financial Centre’ for the seventh consecutive year. The Cayman Islands was also voted ‘Best Hedge-fund Services Jurisdiction’ at the Hedge Week Global Awards 2015, and was awarded the top prize in the offshore-captive-domicile category at Captivereview’s 2015 US Captive Services Awards.

**THE PROFESSIONAL TOUCH**

This success is, of course, underpinned by the quality and experience of the Cayman Islands’ professional service providers. Many of the top legal, accounting and fiduciary firms have offices here, giving the Cayman Islands ever-increasing connectivity with global financial markets and clients.

However, the Cayman Islands’ success in the international financial-services arena would not be possible without firm adherence to global standards on financial regulation and cross-border cooperation.

For example, the jurisdiction’s regulator, the Cayman Islands Monetary Authority, is represented in various global bodies, such as the Group of International Financial Centre Supervisors and the Caribbean Group of Banking Supervisors. The Cayman Islands also continues to demonstrate its leadership in cross-border cooperation as a party to the US Foreign Account Tax Compliance Act and the Common Reporting Standard, among other initiatives.

Meanwhile, Cayman Finance consistently supports innovation in the legislative framework, to enable new products and services to be introduced. A recent example is the Limited Liability Companies Law, 2016, which introduces a product similar to the Delaware limited liability company.

In keeping with our forward-looking legislative and regulatory approach, the Cayman Islands has recently also made changes to the Proceeds of Crime Law; abolished the ability to issue bearer shares; and amended the Public Accountants Law.

**A PROSPEROUS FUTURE**

With the full support of Cayman Finance, the government and other stakeholders, the Cayman Islands continues to thrive commercially, while maintaining its leadership role in global regulatory standards, benefiting our private-wealth clients around the world. The future looks remarkably promising.

**Jude Scott** is Chief Executive of Cayman Finance
Specialists in the creation of all types of Cayman Islands trusts and other private wealth solutions.

Henry Mander
Partner - Head of Trusts
henry.mander@harneys.com
+1 345 815 2927

“The firm acts for a vast number of high net worth individuals on the establishment, maintenance and restructuring of a variety of trusts.”

Chambers High Net Worth

[Image of fish in the ocean with text overlay]

harnes.com | harneysfid.com

[Images of awards and map]
including, with reference to the nature of a member’s interest in an LLC, the manner in which accounts are maintained. Parties also have substantial freedom of contract among themselves to determine the LLC’s governance and other internal workings.

In a development of interest to trust practitioners, the Cayman Islands has modernised its intellectual-property laws too, to provide better protection of the rights of persons involved in creative endeavours. The Copyright (Cayman Islands) Order 2015 commenced on 30 June 2016; and, in October 2018, the Trade Marks Bill (an amendment to the current patents law) and new design-rights legislation are expected to be approved in the Legislative Assembly.

The legislation that created these new products and services was developed with the industry’s input. Cayman is proud that, as part of our law-making process, you are willing to contribute your local and global expertise through our formal associations and informal conversations. This enables our jurisdiction to maintain its edge in providing blue-chip products and services to the market.

Regulatory process
As well as commercial legislation, the government has worked with regulators, including the Cayman Islands Monetary Authority (CIMA), to prepare legislation that will further sharpen our regulatory edge. We plan to introduce amendments to the Monetary Authority Law and the Auditors Oversight Law, both of which are intended to enable the introduction of regulations governing an administrative penalty regime.

And, as part of Cayman’s preparations for assessments by international standard-setting bodies in 2017, a new Non-Profit Organisations Bill is intended to regulate these entities in line with the Financial Action Task Force’s Recommendations.

In terms of our assessments, Cayman is well prepared for the careful examination of our technical compliance and the effectiveness of our anti-money laundering (AML) framework. The work that we invested in building our AML regime continues to be recognised, even as we employ a multi-agency process to further strengthen it.

Cayman has already received favourable ratings for its framework, and for the industry’s compliance with this framework, from the three international bodies that will reassess it in 2017: the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum), the International Monetary Fund, and the Caribbean Financial Action Task Force.

Our partners in industry, and their clients, know that well-developed, globally practised regulation strengthens the overall financial-services industry. As such, the Cayman Islands continues to closely monitor developments and provide input. Key global regulatory developments include the Alternative Investment Fund Managers Directive (AIFMD); the Common Reporting Standard (CRS); and information on beneficial ownership.

In its July 2016 advice to the European Parliament regarding extending the AIFMD passport to non-EU alternative investment fund managers and alternative investment funds, the European Securities and Markets Authority (ESMA) acknowledged that Cayman has frameworks in place to address systemic risks. At that time, ESMA said it could not provide definitive advice to the European Parliament as Cayman is in the process of implementing its new regulatory regimes; our implementation, however, should be complete by early 2017.

Currently, Cayman’s investment funds are marketed in the EU under national private placement regimes (NPPRs). The NPPR and passport regimes will coexist until at least 2018, by which time ESMA will have decided whether the passport regime should entirely displace NPPRs and acted accordingly.

Implementation of CRS is also in sharp focus for Cayman. As one of over 50 ‘early adopters’, we have already put in place legislation covering the due-diligence and reporting procedures, gearing up for the first exchanges of CRS data in 2017. Currently, 101 jurisdictions are committed to CRS, and monitoring of all jurisdictions’ implementation schemes is taking place by the Global Forum.

As regards information on beneficial ownership, it is well known that, for over 15 years, Cayman’s trust- and corporate-service providers have collected and verified data on the beneficial owners of corporate and legal entities incorporated here. This regime has been acknowledged as industry-leading.

With a clear view of the direction of regulatory standards, Cayman is building on its commitment to uphold global standards and to ensure effective cooperation with international partners in the fight against serious crimes, including money laundering and tax evasion. This is why, in April 2016, the Cayman Islands signed an agreement with the UK to enhance the sharing of beneficial-ownership information. The agreement, which is reciprocal, holds the UK to the same standards when our law-enforcement officials need information on companies incorporated in the UK. Cayman is also supportive of the UK lead initiative to automatically exchange information on beneficial ownership, provided it is a global standard.

While some may say that global regulation has gone too far, Cayman’s view is that its aim – broadly, to ensure the viability of financial services and protect citizens from crime – is unarguable, and that discussions to ensure fairness, appropriately flexible application and widespread adherence must continue. Cayman is taking an increasingly vocal role in these discussions.

Going for gold
With our new and amended legislation, and an increasingly robust regulatory framework, Cayman’s financial-services industry is prepared to compete well into the future. We respect our worthy competition, but make no mistake: we are out for more gold medals.

‘With our new and amended legislation, and an increasingly robust regulatory framework, Cayman is prepared to compete well into the future’

Wayne Panton is the Cayman Islands’ Minister of Financial Services, Commerce and Environment
Cultivating relationships that last

Rawlinson & Hunter in the Cayman Islands is uniquely placed in the offshore market as an independent service provider with fully licensed trust companies, unprecedented private client and fund fiduciary experience and the support of a strong international network of professional services firms.

Our clients know that they are receiving the benefit of management and advisory expertise that is built on years of first-hand experience in the offshore financial services industry. Our diverse offerings currently include:

- a comprehensive range of traditional trust and corporate services
- the provision of directors to private trust companies
- a full range of accounting and administration services including services tailored to private trust companies
- the provision of protectors and enforcers
- fiduciary services to traditional open and closed ended investment funds, hedge funds and special purpose vehicles
- a full range of administration services to private fund structures
- corporate advisory and restructuring, liquidation, asset tracing and recovery

The depth of our professional team sets us apart from the competition and provides clients with a level of expertise, independence and personalised service that is second to none.

www.rawlinson-hunter.com

Australia, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Jersey, New Zealand, Singapore, Switzerland (Geneva and Zurich), United Kingdom
It is not uncommon for professionals and entrepreneurs to move to the US to make their fortunes. These successful, first-generation Americans often leave behind wealthy relatives in their native countries. This can lead to a number of wealth-planning challenges, but there are ways to protect family wealth from US gift and estate taxes.

To implement an effective wealth-transfer strategy for a multinational family, it is critical to understand how the US Internal Revenue Service (IRS) treats various types of wealth transfer by non-resident aliens. The classification by the IRS of assets as 'US situs' or 'non-US situs' is key to whether the assets will incur gift or estate tax. A US-situs asset is one located within the jurisdiction of the US, either physically (for tangible assets, such as real estate or jewellery) or legally (for brokerage accounts, or shares of stock in US companies). An applicable gift- or estate-tax treaty may modify the types of assets classified as US-situs (see table overleaf).

For example, the estate-tax exemption for transfers of US-situs assets is only USD60,000 for non-resident aliens, and there is no exemption from gift tax. There is also a common misconception that gift tax will be imposed on wealth transferred to someone in the US by a relative living abroad. In fact, such a transfer may often be made tax-free (although there may be some reporting requirements, depending on the size of the transaction).

The various IRS rules around such transfers can be difficult to navigate, particularly now that the US government is being more diligent.
about tracking the flow of foreign wealth. Too often, families act on incorrect information. The consequences can be significant.

**Use of irrevocable US trusts**

Setting up a US-based trust is perhaps the most effective means of making gifts to family members who reside in the US. For example, if a non-US person were to simply transfer their non-US-situs assets to a child living in the US, the child would be taxed on all future income from those assets. And, at the child’s death, those assets would be part of their taxable estate. But, if an irrevocable trust were set up in a state like Delaware or Florida (which do not impose income tax on trusts and no longer have the traditional rule against perpetuities), assets transferred into the trust could grow without ever being subject to US gift, estate or generation-skipping transfer taxes.

When seeking to establish a US-based trust, multinational families may benefit from the advice of a US advisor, who is likely to be familiar with the various protections and tax benefits in different US jurisdictions. A US-based trust can provide better access to assets, more direct contact with the trustee and, in many cases, a greater feeling of security.

To avoid the estate tax on US-situs assets, a trust must be irrevocable. This means the ability to change aspects of the trust in future is very limited. Otherwise, the transfer will be considered incomplete until the grantor dies, when the IRS will assess the estate tax as though there had been no trust at all. Non-US-situs assets can be transferred to the trust with no gift-tax implications.

**Case study one**

Mr Patel, an Indian citizen, has a son, John, who works in New York and has a green card. Mr Patel wishes to leave USD10 million to John’s young children, who were born and live in New York. If Mr Patel were to wait until death to pass this money to his heirs, some or all of it may be subject to US estate and generation-skipping transfer tax, depending on the type of assets and their situs.

If Mr Patel were to make an outright gift to his son during his lifetime, he may avoid gift tax on some or all of the assets, but John’s children would receive significantly less, as the full amount would be subject to US estate tax on John’s death. Further, Mr Patel may not be willing or able to gift the full amount in one lump sum, as India’s exchange controls may limit the amount of money he can transfer out of the country in a given year.

In this situation, Mr Patel could create an irrevocable life insurance trust (ILIT) in Delaware or Florida. The trust’s only asset would be a US-compliant life-insurance policy on John’s life, acquired by the trustee. Each year, Mr Patel would transfer non-US-situs assets into the trust to cover the insurance premiums. As the insurance policy would be the only asset in the trust, there would be no income taxes during Mr Patel’s life and no transfer taxes on his death. If Mr Patel were to transfer more than USD100,000 into the trust in a given year, the ILIT would need to file Form 3520 with the IRS.

When John dies, the death benefit would be payable to the trust, which could then make distributions to John’s children or retain the funds for future generations.

**Lifetime or posthumous funding?**

Depending on the type of assets transferred, it may be more advantageous for Mr Patel to fund this trust or make gifts to John and his children during his own lifetime, rather than waiting to leave them the assets after his death.

As a non-US person, Mr Patel would only be assessed for gift tax on lifetime transfers if he were to give his son tangible property (such as US real estate or cash in a US bank account). But he could fund the trust or make outright gifts with US-situs intangible assets (such as stock in US companies) without any gift tax.

Were Mr Patel to die owning more than USD60,000 of US-situs intangible personal property, John’s inheritance would be reduced by US estate tax, as the rules are different for transfers on death and during life.

There is another way for Mr Patel to transfer US real estate without incurring gift tax. If he wanted to transfer a US vacation home to John, he could establish a non-US corporation to buy the home, thus converting the real estate into an intangible asset. Instead of giving John the home, Mr Patel could give him shares in the corporation. Such an arrangement would also help Mr Patel if he

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**PROPERTY TRANSFERRED BY NON-RESIDENT ALIENS**

*(Note that situs rules might be varied by treaty)*

<table>
<thead>
<tr>
<th>US SITUS VERSUS NON-US SITUS</th>
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<tbody>
<tr>
<td><strong>TYPE OF ASSET</strong></td>
</tr>
<tr>
<td>Real property in US</td>
</tr>
<tr>
<td>Tangible personal property in US</td>
</tr>
<tr>
<td>Stock in US corporation</td>
</tr>
<tr>
<td>Stock in foreign corporation</td>
</tr>
<tr>
<td>American depositary receipts</td>
</tr>
<tr>
<td>Shares of US mutual fund</td>
</tr>
<tr>
<td>US business interests (including partnerships)</td>
</tr>
<tr>
<td>Deposits in US banks</td>
</tr>
<tr>
<td>Special deposits (brokerage accounts)</td>
</tr>
<tr>
<td>Deposits in foreign banks</td>
</tr>
<tr>
<td>Cash or property in a safety deposit box in US</td>
</tr>
<tr>
<td>Debt obligations of US persons</td>
</tr>
<tr>
<td>Debt obligations of US government</td>
</tr>
<tr>
<td>Life-insurance proceeds</td>
</tr>
</tbody>
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‘Regardless of the type of trust that a non-US resident selects, it will be important to pay special attention to the choice of trustee, to maximise value’
preferred to wait until death to transfer those assets. However, there are some income-tax drawbacks to this strategy and Mr Patel would be wise to first consult with an expert.

Use of Cayman grantor trusts
Non-US grantor trusts such as those set up in the Cayman Islands allow family members living outside the US to retain control of and use the funds in the trust during their lives, and then transfer their wealth to US family members on their death.

If structured properly, these trusts are tax-efficient for the US family members who receive distributions. Remember, though, that transfers to a Cayman grantor trust do not shelter US-situs assets from the US estate tax.

For a Cayman trust to be considered a grantor trust for the purposes of US income tax, the grantor must have the power to revoke the trust or restrict distributions to either the grantor or their spouse. All of the income and deductions attributable to a grantor trust are treated as those of the grantor, regardless of whether they receive any income from the trust. This allows for tax-free growth in the trust and tax-free distributions to beneficiaries.

Case study two
Mr Patel has changed his mind. He now wishes to retain control over the USD10 million during his lifetime, with the aim of passing it to John on death. In this situation, a Cayman grantor trust could serve his needs.

Depending on the type of assets he wishes to hold in the trust, Mr Patel may need to set up an offshore private investment company (PIC) in the Cayman Islands to hold the assets of the trust fund — e.g. US equities and real estate are subject to US estate tax when held by a non-US person, while US Treasury bonds, other US bonds and non-US equities are not.

The trust would own the shares of the Cayman PIC. Any distributions to John (or to a US trust for his benefit) during Mr Patel’s life would not be subject to US gift tax, and, on his death, would avoid any US gift or estate taxes.

Mr Patel’s family should immediately consult with a tax advisor on his death. The advisor may recommend that the PIC be liquidated within 30 days of Mr Patel’s death to avoid application of the onerous US rules on

Use of Cayman non-grantor trusts
In contrast to a grantor trust, a non-grantor trust is treated as a separate taxpayer for tax purposes. The income of the trust is taxed either to the trust, the beneficiaries, or partly to both. The allocation of taxable income is achieved by permitting the trust a deduction for distributions of current income to beneficiaries of the trust. Trusts established in the Cayman Islands will have no tax liability.

However, distributions to US beneficiaries will be subject to tax and reporting. Any distribution will carry out trust income (interest, dividends and capital gains) and will be taxable to the beneficiary receiving it. Beneficiaries will be obliged to report distributions received on their individual income-tax returns, in accordance with US tax laws. The trustee chosen should understand these reporting requirements and provide the relevant reportable information.

Distribution of income accumulated in prior years from non-grantor non-US trusts are subject to the so-called ‘throwback rules’, the aim of which is to negate any tax-deferral benefit to a US person from the accumulation of income in such a trust. Advisors and trustees can avoid these onerous rules by carefully structuring and administering the trust.

Choice of trustee
Regardless of the type of trust that a non-US resident selects, it will be important to pay special attention to the choice of trustee, to maximise value. While family involvement may be appropriate, there are many advantages to having a corporate trustee or co-trustee of long-term trusts. Besides avoiding problems of mortality, a corporate trustee can provide the objectivity, experience and empathy that are the keys to a successful partnership with a family over generations.

Where a non-US trust is determined to be the best vehicle, it will add great value down the road if the corporate trustee is a ‘global’ trustee, has experience with US and non-US trusts, and has capabilities in both foreign and domestic jurisdictions. This can greatly assist in a seamless transition should there be a need to domesticate trusts in the US for US beneficiaries. Such trustees will also have a firm understanding of the rules applicable to US beneficiaries of non-US trusts.

Myriam Soto is Managing Director of International Wealth Management for BNY Mellon Wealth Management and President of BNY Mellon Trust Company (Cayman) Ltd. Joan K Crain is Senior Director and Global Family Wealth Strategist at BNY Mellon Wealth Management.
Cayman at a glance

PRIME POSITION

Highest average temperature (in August)

30°C

Lowest average temperature (in January)

25°C

1 HOUR FROM MIAMI BY PLANE

4 HOURS TO NEW YORK AND TORONTO ON A PLANE

116 WEEKLY FLIGHTS depart from the Cayman Islands (including direct flights to New York, London and Toronto)

8 DIFFERENT AIRLINES serve the Cayman Islands

INNOVATIVE BY NATURE

With a common-law legal system based on that of England and Wales, and the Privy Council as its final court of appeal, the Cayman Islands regularly updates its legislation to remain at the cutting edge of trust law and practice. Innovative elements of the Cayman trust regime include:

- **Settlor-reserved powers**, under the Trusts Law.
- **Firewall provisions**, under the Trusts Law, protecting trusts governed by Cayman law from the application of the laws of foreign jurisdictions.
- **An extended perpetuity period** of 150 years.
- **STAR trusts** (named after the Special Trusts (Alternative Regime) Law, 1997), which allow for the creation of mixed person and purpose trusts, with no perpetuity period.
- **Limited liability companies**, under the Limited Liability Companies Law, 2016, combining many of the key characteristics of standard Cayman Islands companies and limited partnerships.
- **Exempted trusts**, under the Trusts Law, guaranteeing that a trust that pays the applicable fees will pay no Cayman tax for a fixed period (usually 50 years).
- **Private trust companies**, under the Private Trust Companies Regulations, 2008.

THE ASIAN CONNECTION

- **75%** of the companies listed on the Hong Kong Stock Exchange in the past decade were incorporated in the Cayman Islands.
- **$3.2 billion** Foreign direct investment to China facilitated by the Cayman Islands.*
The Cayman Islands benefits from the expertise of:

- 40 ultra-high-net-worth individuals
- 98 licensed corporate-service providers
- 17 audit firms, including the Big Four
- 195 trust companies
- 140 banking institutions
- or law firms, eight of which are large international outfits


g$10 billion

The wealth held by the 40 ultra-high-net-worth individuals living in the Cayman Islands, much of which is managed by Cayman family offices

LocaL WELTH

The Cayman Islands is a Category 1 British Registry and the leading member of the Red Ensign Group (which collectively flags around 80 per cent of the world’s super-yachts, the majority of which are Cayman-flagged).

FInAnCIAL INdEPEndEncE

REAL-ESTATE ACQUISITION

IMMIGRATION REQUIREMENTS

that allow individuals to work and live in Cayman with the periodic renewal of a work permit

CALL CAYMAN HOME

The Cayman Islands offers a tiered approach to residency based on:

- NO RESTRICTIONS apply to foreign ownership of Cayman properties, which are competitively priced compared to those of other offshore locations

The Cayman Islands is a NO RESTRICtions

apply to foreign ownership of Cayman properties, which are competitively priced compared to those of other offshore locations

TAX-NEUTRAL

The Cayman Islands imposes no direct personal, corporate or property taxes.

Committed to Transparency

Cayman is party to 36 tax information exchange agreements...

... an early adopter of the OECD’s Common Reporting Standard...

... and a member of the Caribbean Financial Action Task Force, which is leading implementation of anti-money laundering and counter-terrorist financing measures.

The Confidential Information Disclosure Law, 2016 establishes several clear gateways through which confidential information may be disclosed.

* According to the Sharman report, citing 2008 data from the US-China Business Council

A WORLD LEADER IN WEALTH MANAGEMENT

One of the top 10 international financial centres (IFCs) in the world.

Sixth-largest IFC in terms of cross-border assets booked.

Fifth-largest international banking centre, and home to 40 of the world’s top 50 banks.

Number-one domicile for investment funds.

Number-one domicile for healthcare captives.

FINANCIAL INDEPENDENCE

REAL-ESTATE ACQUISITION

IMMIGRATION REQUIREMENTS
Sackville Bank is a boutique private bank and trust company. International in outlook, we offer highly personalised solutions to affluent families, going that extra mile to ensure that all their needs are addressed.

With a dedicated team, we firmly believe in nurturing strong client relationships that span not just years, but generations.

Sackville Bank is an independent fiduciary service provider with the capability of making immediate decisions. We deliver superior service that our clients and advisors rightly demand.

Alexandria's products and services are available only in those jurisdictions where they may be legally obtained or offered. Barbados: Alexandria Trust Corporation is licensed and regulated by the Central Bank of Barbados to provide trustee services under the Financial Institutions Act, Cayman Islands: Alexandria Bancorp Limited is licensed and regulated by the Cayman Islands Monetary Authority ("CIMA") to provide trustee and foreign banking services under the Banks and Trust Companies Law, and Alexandria Global Investment Management Ltd. is licensed and regulated by the CIMA to provide securities and investment services under the Securities Investment Business Law. Alexandria is wholly-owned by Guardian Capital Group Limited, a Canadian public company (TSX:GCG).
Justice on display

The Cayman court demands compelling reasons to put parties’ desire for privacy before the principle of open justice, explain Morven McMillan and Maxine Bodden

Not that long ago, personal records were written by pen or typewriter. Copying them required more handwriting, carbon paper or a time-consuming and occasionally messy process involving a machine called a spirit duplicator.

For third parties, obtaining copies of personal documentation would not have been straightforward. And, over time, the documentation would often be destroyed, misplaced or thrown away.

How times have changed. Technological developments, national security concerns, political pressures, changing business practices and generational factors have combined to create a wealth of accessible personal information, and, at the same time, to gradually erode traditional notions of privacy and confidentiality. Legislation is being passed in a bid to keep up with technological advances and our response to them – e.g. to force social-media sites to allow children to erase online records so that their indiscretions do not come back to haunt them as adults.¹

There is now widespread acceptance that respect for personal privacy must be balanced with notions of public justice; the necessities of the war against international terrorism and crime; a developing belief in the ‘right’ to access information on the web; press freedom; freedom of information; and the drive to increase nations’ domestic revenue base by tracking down tax evaders. Transparency has become key to compliance with international legal and regulatory standards.

This is a developing area of the law that has profound implications for private clients and those who advise them. Our personal information has never been so accessible by so many. Clients, not surprisingly, can have numerous concerns, one of which is: if the family’s trustee has to go to court, how public will those proceedings be?

Open justice

While duties of fidelity and confidentiality have long been central to the relationship between trustees and beneficiaries, the starting point in any civil, criminal or public-law proceedings in the Cayman Islands is open justice. The principle is enshrined in the Bill of Rights, Freedoms and Responsibilities, s7(1) providing that everyone has the right to a fair and public hearing in the determination of their legal rights and obligations. As is widely acknowledged, open justice helps to maintain public confidence in the administration of justice – not only is justice done, but it is seen to be done.

Case law in the Cayman Islands reflects this fundamental principle. As the Honourable Chief Justice Anthony Smellie QC found in AHAB v Saud Investments Co Ltd and Others,¹ citing Lord Haldane in Scott v Scott:² ‘In public trial is to be found... the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect.’

In the Cayman Islands, this approach requires a copy of every writ, originating summons or petition issued at court to be published in a register that is open to public inspection on payment of a fee. Copies of every final judgment handed down are also available to the public on payment of a fee.

Even non-parties can obtain an order from the court permitting them to access documents on the court file if they are able to demonstrate sufficient interest in the proceedings. Quoting then-Vice Chancellor Sir Donald Nicholls in Dobson v Hastings,³ the Chief Justice, again in AHAB, held: ’... for reasons of the proper administration of justice, only certain aspects of a case file are routinely made publicly available... all aspects may be made available to any person who applies, including non-parties, if the interests of justice or some other public...’

‘The starting point in any proceedings in the Cayman Islands is open justice’
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interest (such as investigative journalism) properly so require.’

A breach-of-trust trial, for example, would ordinarily be open to the public. However, trustees are also entitled to apply to court under s48 of the Cayman Islands Trusts Law (2011 Revision) for advice and directions on any question relating to the administration of trusts. As the Chief Justice put it in A v RTCL:2

‘It is a jurisdiction to which resort has been taken in a number of different circumstances and, while its boundaries have never been defined by the court, it has, from the decided cases, clearly come to be regarded as a remedial jurisdiction, for orders to be made as the justice of the case deserves.’

Such applications, while not necessarily contentious, can nevertheless involve discussion of highly sensitive matters: i) the strengths and weaknesses of a trustee’s claim or defence, in Beddoe applications; ii) issues of commercial sensitivity that, if they become public, might prejudice the value of the trust assets and, thus, the interests of the beneficiaries; iii) questions of personal security and fear of kidnap; iv) wealth of which minor beneficiaries may not yet be aware; v) issues of mental and physical incapacity, requiring reference to confidential medical reports; and vi) highly personal grievances or sensitivities that the family would prefer to be heard behind closed doors.

This is not, however, a question of the court allowing a family to hide its difficult history behind the protection of a private hearing or anonymity orders. As Mr Justice Morgan in V v T and A explained,3 the authorities clearly establish that ‘the fact that a hearing in open court may be painful, humiliating and a deterrent either to a party or to a witness is not normally a proper basis for departing from the open justice principle’.4

As a result, the court will require cogent and persuasive evidence in support of confidentiality orders before derogating from the fundamental principle of open justice.5 A pragmatic approach will nonetheless be taken and, in appropriate circumstances, the court will be prepared to make orders preserving the confidentiality of the proceedings, most commonly by restricting access to the court file or ordering the preservation of the anonymity of the parties.

‘In appropriate circumstances, the court will be prepared to make orders preserving the confidentiality of the proceedings’

by referring to them by random letters of the alphabet. The Cayman Islands court has not, however, followed the practice of other offshore jurisdictions in routinely anonymising the identity of the applicant trustee, as well as the respondent parties, when granting confidentiality orders in applications for directions.

A case in point

In Barclays Private Bank & Trust (Cayman) Ltd v C, K and the Attorney General,6 the trustee applied under Public Trustee v Cooper7 principles for the blessing by the court of a significant distribution, some USD750 million, from the trust fund to charity. The application was supported by two of the three adult beneficiaries and not opposed by the third; he was also the representative of the minors and unborn beneficiaries.

The Chief Justice agreed in that case to make anonymity orders. Had the identity of the family and the charity concerned been made public, it would not only have revealed the magnitude of the family’s wealth, but risked bringing unwanted attention on the family, raising justifiable concerns about personal security and kidnapping. It also gave rise to concerns that the minor beneficiaries could be adversely influenced by knowledge of the extent of their family’s wealth, in turn affecting the development of their personal values and attracting undesirable friends who might seek to take advantage of them.8

The trustee was, therefore, ordered to file two different versions of the application – one using random letters of the alphabet to represent the family names, which would be kept on the publicly accessible register of writs and originating process, and another with the family identified, which was to be kept sealed on the court file. It was also ordered that the court file should not be unsealed without an order of the court, and only on prior notice of any such application to the trustee. A written judgment on the substantive application was published but again used letters of the alphabet to disguise the identity of family members.

Open discussion

As advisors with clients who may be involved in an application for trustee directions, we must be prepared to have frank discussions with our clients about their concerns, their expectations of privacy and what they are trying to protect from public scrutiny and why, even if that discussion necessarily involves sensitive topics. The court in the Cayman Islands will primarily be concerned to do justice to the parties in an open forum, and will not be persuaded otherwise unless clients are prepared to be similarly frank with the court about their concerns and the basis for them.9

Honourable Chief Justice Anthony Smellie QC has stressed that open justice underpins public confidence in the legal system.


Morven McMillan is a Partner in Maples and Calder’s Cayman Islands office, where she is Co-head of the Maples and Calder Trusts Team. Maxine Bodden is a Member of the Maples and Calder Trusts Team in the Cayman Islands.
Family wealth globally continues to grow; Forbes added 198 new names to its World’s Billionaires list in 2016 alone. As such, we can expect to see a rise in the number of family offices.

Indeed, wealthy families often create family offices to manage their wealth for current and future generations, and to facilitate succession planning. Family members tend to have different interests, aims and objectives, so a family office can be used to protect and sustain family wealth, providing governance to support the overall objectives of the family and reduce the likelihood of conflicts. The many functions of the family office are illustrated here.

There are generally two kinds of family office: a single family office (SFO) and a multi-family office (MFO). An SFO manages the affairs of one family. MFOs are often SFOs that offer their services to other families. However, there are now many fiduciary service providers that offer MFO services. These fiduciary firms have the qualified staff, expertise and advisors in place to make them a logical choice for many families. And, with a wealth of such fiduciary firms, the Cayman Islands is the ideal jurisdiction for the establishment of a family office.

Some of the benefits of proper governance in a family office include the:

- creation of a cohesive family vision for the future, which can reduce conflicts between family members;
- provision of clarity as to the composition of the board and senior management, their responsibilities and their relationship with the family and other stakeholders;
- establishment of formal policies and practices, which creates accountability; and
- promotion of effective risk management via the implementation of internal controls.

There may be two levels of governance: corporate governance in the family office and family governance.

Corporate governance

‘Corporate governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”

The family office’s management and advisors are key to the overall success of day-to-day operational matters. In many family offices, a family member will act as CEO; in others an independent CEO will be appointed. Whatever approach is taken, the CEO and senior management must have excellent communications with both the family council and the board of directors of the operational business.

Functions of a family office

The family office will interact with the trustees and/or board of directors of the asset-holding structures. This includes relaying any needs of the family, sharing any tax or legal advice that may affect the structures, and providing financial information in respect of any operating or investment-holding structures.

A family office will need a team to handle extensive administrative, reporting and investment tasks, which require a great deal of efficiency, as well as strong internal controls. Administrative functions include:

- liaising with the trustees and/or directors, and external advisors such as lawyers, tax advisors, investment managers, accountants and auditors;
- reviewing investment performance against benchmarks or other investment functions, depending on the extent of the investment role;
- routine matters – e.g. payment of invoices;
- assistance with international reporting obligations;
- budget preparation, reporting and other accounting functions, such as maintenance of general ledgers and preparing management accounts;
- opening bank accounts and liaising with the banking team;
- compiling reports to the family council;
- general concierge services – e.g. household management and arranging vacations; and
- evaluation of external service providers to ensure that their services meet the needs of the family and any performance criteria, and that fees remain competitive.

In the current climate, compliance and regulatory requirements are becoming more
Family governance

To ensure harmony in the family, including the underlying business and structures, it is common to create a family assembly, family council, and a family charter or constitution. A family assembly embodies the wider family and will generally meet at least annually. The sheer size of many families, and their members’ disparate ages and experience, often means it would be counterproductive to involve them all in the executive functions of the family office. The assembly provides the opportunity for the interests of the wider family to be discussed and information to flow through to the family council members.

The assembly is the forum in which the family council can disseminate information, such as the financial position of the family business and investments, as well as the longer-term strategy.

The family council is an elected committee of family members that acts as the voice of the family. It is akin to a board of directors. The family council’s responsibilities can be extensive, and will vary between families, but include:

- relaying the family’s wishes about the strategic positioning of the business or investment interests to the board of directors and/or family office;
- advising the board of directors and the family office on succession planning;
- advising and educating the family assembly on the financial aspects of the family business;
- reviewing financial statements and investment performance;
- defining the family’s philanthropic goals; and
- considering the financial needs and requirements of family members.

Often families will establish formal policies or a family charter or constitution to govern involvement and define the vision of the family. This will provide guidance to the board of directors and family office on the wishes of the family, and assist in the strategic planning of the overall family structure.

Why the Cayman Islands?

The Cayman Islands benefits from a wealth of experienced financial-service providers, including some of the world’s best lawyers, accountants and trustees. These professionals can assist families in creating an efficient and effective strategy to establish structures in, or move them to, the jurisdiction.

Furthermore, the Cayman Islands has a number of private and international schools that follow the UK and US educational models too. They boast great results, with students routinely heading to overseas colleges and universities.

Conclusion

Wealthy families are complex. The more complex the family and its assets, the greater the importance of a family office and a formal governance structure. Family circumstances are continually changing and, therefore, the family- and corporate-governance structure should be reviewed over time by stakeholders and their advisors to ensure it remains suitable for the family’s vision. The expertise of wealth advisors, trustees and other experts can assist with the creation and governance of the family-office function.
FEELING CONFIDENT?

AT GENESIS WE TAKE A HANDS-ON APPROACH
Much has been written about the US Foreign Account Tax Compliance Act (FATCA) and the OECD’s Common Reporting Standard (CRS) in recent years, but, as far as trusts are concerned, a number of areas of uncertainty remain.

FATCA and CRS are now entrenched in Cayman Islands law, so trustees, settlors, beneficiaries and advisors need to be aware of their impact on Cayman trust structures. Some of the consequences may be unexpected.

Firstly, for the purposes of automatic exchange of information (AEOI), trusts are entities. Under AEOI rules, a Cayman Islands trust (and, thus, entity) is any trust with a Cayman Islands trustee; the governing law of the trust is not relevant.

For AEOI, all entities, and thus all Cayman trusts, must either be a ‘financial institution’ (FI) or a ‘non-financial entity’ (NFE). Entities that are FIs have obligations under AEOI; NFEs do not.

How will a trust be classified for AEOI? This is a complex subject. There are four categories of FI for AEOI purposes. The relevant one for trusts is ‘investment entity’.

Most Cayman trustees will be FIs. As per the AEOI definitions, a trustee will likely meet one or more of the following conditions.

(a) be conducting, as a business, the investment, administration or management of funds for or on behalf of customers; or
(b) primarily be conducting, as a business, the investment, administration or management of financial assets for or on behalf of customers; or
(c) earn at least 20% of its gross income from the holding of financial assets for the account of others, and from related financial services.

In the case of a Cayman trust, it is hard to see that the trust itself conducts anything ‘as a business’. However, having established that the trustee of the trust is most likely an FI, it is necessary to look at the remainder of the definition of ‘investment entity’. The definition of investment entity also catches entities that are themselves ‘managed by’ other FIs. In the case of trusts, it would seem logical that a trust is ‘managed by’ the trustee. Thus, in the case of a Cayman trust, it is necessary to consider whether the trust is:

(a) managed by an FI and invests, administers or manages funds for or on behalf of customers; or
(b) managed by an FI and more than 50% of its gross income is attributed to investing, reinvesting or trading in ‘financial assets’.

Again, this would seem to catch the majority of Cayman trusts.

So, if most Cayman trustees and trusts will be FIs, what are the obligations of an FI under AEOI? Unless an FI is non-reporting, its obligations are to:

(a) register with the US Internal Revenue Service to obtain a global intermediary identification number (GIIN); (b) register with the Cayman Islands Tax Information Authority (TIA); (c) have in place suitable AEOI due-diligence systems (as described below); and (d) make reports to the TIA on an annual basis.
 Parties should be aware that confidential account and personal data will be reported

At this juncture, it is necessary to note the concept of a ‘non-reporting FI’. These are FIs that do not have the above obligations because of a specific exemption. The main exemption applicable to trusts is the “trustee-documented trust”; it is available to all Cayman trusts with a reporting FI as trustee.23 In this case, the trustee undertakes to do all the due diligence and reporting ‘on behalf of’ the trust but without the separate registration of the trust. In my view, the vast majority of Cayman trusts will avail themselves of this exemption.

Due diligence and reporting

The main issues for trusts, therefore, are due diligence and reporting. The due-diligence requirements are separate from those under anti-money laundering legislation,24 but for trustees there will be a large overlap in the information required.

To comply with AEOI, the FI is required to identify and report ‘financial accounts’ held by ‘reportable persons’25 or ‘passive NFEs’26 with one or more ‘controlling persons’ who are reportable persons. A reportable person is a person who is tax-resident27 in a ‘reportable jurisdiction’.28

The first step is to ascertain the reportable persons.29 This involves using documentation already held, together with, in most cases, self-certifications from all parties in all structures.30 Such self-certifications will confirm, inter alia, the tax residence31 of the individuals, and any controlling persons of any passive NFEs. For minors and incapable persons, self-certification will not be possible and, in the absence of guidance, a common-sense approach should be adopted to ensure accurate records are maintained.

If there are reportable persons, the FI must report certain information about their ‘financial account’. In the case of a trust that is an investment entity, a ‘financial account’ is the ‘equity interest’ or the ‘debt interest’. In the case of trusts, financial accounts are held by the settlor,32 beneficiaries,33 and ‘controlling persons’.

‘Controlling person’ includes protectors,34 and any other natural persons who exercise ultimate control over the trust (directly or indirectly). It is not clear what ‘exercise ultimate control’ means in the context of a trust but it would appear to catch all kinds of power-holders, such as enforcers of Cayman STAR trusts and persons with the power to appoint and remove trustees.

The trustee, on behalf of the trust, will be required to report to the TIA the ‘account balance’ (i.e. the value of the financial account in the trust), together with any payments made in that reporting year. Under CRS, the settlor has an account balance equal to the entire value of the trust fund,35 as does a protector or other person who exercises ultimate effective control.36 A discretionary beneficiary has an account balance of zero but payments made to them in the current reporting year would be reported. There is no obvious relief from multiple reporting in the case of settlors and controlling persons who are also beneficiaries; a payment to a beneficiary who is also a protector would be reported twice.

The TIA will then report to the competent authority in the reportable jurisdictions. In the case of persons who are reportable persons in more than one jurisdiction, the information will be reported more than once.

The information is never public and there are strict confidentiality and data-protection provisions built into AEOI, but parties should be aware from the outset that confidential account and personal data will be reported.

The information reported is financial information and wider than ‘traditional’ tax information. Instead of income and gains (or deemed income and gains) being reported, the information in certain cases relates to principal – i.e. the value of the trust fund. Trustees should be covered as to this disclosure, as it is a requirement of Cayman law, but settlors should be made aware of it. Trustees should ensure appropriate due-diligence documentation is obtained and persons are reminded of their obligations to advise the trustees of any change. Protectors should also be made aware that, even if they are excluded from benefit, their financial account value will be the entire value of the trust fund. One can only speculate how this information will go down with recipients.

The first reporting period for FATCA has already passed in the Cayman Islands and the first reporting for CRS is in 2017. The area of trusts and AEOI is continually evolving. Hopefully, it will soon become less complex.

Richard Grasby is a Partner at Maples and Calder in Hong Kong
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