

Cayman Islands private trust companies

Briefing Summary: Private trust companies ("PTCS") are increasingly being used by high net-worth private clients as part of their wealth structuring. Many individuals and families prefer to establish their own PTC to act as the trustee of the trusts which they plan to create, rather than transferring assets to an offshore service provider's professional trustee company. This briefing note considers key issues relating to the establishment and use of a registered Cayman Islands PTC in the context of private wealth management.

Service Area: Acquisition and Leveraged Finance, Family Office, Private Client, Trusts and Private Wealth, Private Trust Structures

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The regulatory framework for private trust companies in the Cayman Islands

The Banks and Trust Companies Act (as revised) (the “BTC Act”) is the principal legislation regulating Cayman’s trust company industry. Amongst other things, it requires any company which carries out “trust business” in or from within the Cayman Islands to be licensed by the Cayman Islands Monetary Authority (“CIMA”). Under the BTC Act: acting as a trustee of an express trust on a professional basis is a regulated activity under the BTC Act, as is acting as an executor or administrator.

Since 2008, however, in a move towards ‘lighter touch’ regulation, Cayman PTCs which fulfil certain requirements have been exempt from the licensing requirement under the BTC Act. Such PTCs need only to register with CIMA having demonstrated that they fulfil the requirements for an unlicensed PTC. Under the Private Trust Companies Regulations (as revised) (the “PTC Regs”), a Cayman PTC is exempt from the licensing requirement provided it:

- is a company incorporated in Cayman under the Companies Act (as revised);
- conducts only trust business that is “connected trust business” as defined in the PTC Regs (see further below);
- maintains its registered office with a service provider that holds a full trust licence issued by CIMA under the BTC Act;
- includes in its registered company name the words “Private Trust Company” or the letters “PTC”; and
- does not solicit from or receive contributions in respect of trusts of which it is trustee from either the public or persons that are not, in relation to each other, “connected persons” as defined in the PTC Regs.

The registered PTC can conduct only “connected trust business”, and for these purposes the relevant consideration is whether the settlors/contributors of the property subject to the trusts of which the PTC is the trustee are all “connected persons” as defined in the PTC Regs. The concept of “connected persons” covers both individuals, companies and includes various family relationships and relationships between companies in a group and with their shareholders. As a rule of thumb, PTCs established to act as trustee of one or more trusts for a particular family will have no difficulty satisfying the connected trust business requirement. Unlicensed PTCs must keep at their registered office in Cayman in relation to the trusts of which they are trustee available for inspection by CIMA: up to date copies of the documents recording the terms of the trusts; the details of the trustees, contributors and beneficiaries receiving distributions from the trust; details of the settlor and any protector and / or enforcer; any instruments varying the terms of the trusts; and the financial and transactional records of the PTC and its connected trust business.

The key points to note include:

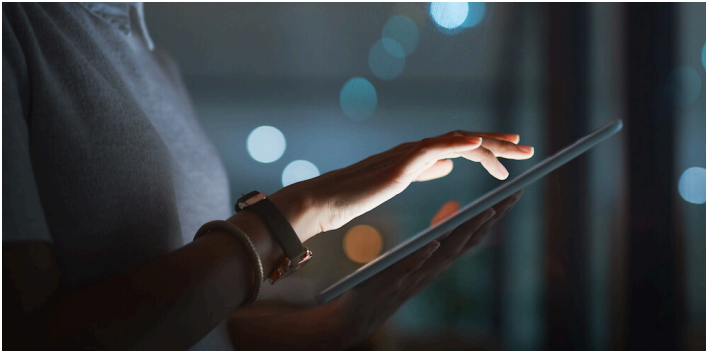
- in registering with CIMA and annually thereafter the PTC is required to file details of its name, the names and addresses of its directors and shareholders and the name of its registered office service provider which holds the full trust licence. It must also provide CIMA with confirmation that it is a private trust company eligible to be registered as an unlicensed PTC and is in compliance with the requirements in the PTC Regs. CIMA is entitled to review all documents and records of the PTC at its registered office;

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