

Trust Laws of the Cayman Islands

Constitution and Legal System

The Cayman Islands is a British Overseas Territory (OT). The legal system is based on English common law, and appeals from local courts ultimately lie with the Privy Council in the United Kingdom.

Applicable Trust Laws

The applicable Cayman laws are set-forth in the Trusts Law,¹ the Perpetuities Law,² and the Banks and Trust Companies Law.³ The asset protection laws are set-forth in the Fraudulent Dispositions Law.⁴

Perpetuity Period

The maximum trust period is 150 years, and STAR trusts may be of indefinite duration.

Reserved Powers

The Trusts Law provides for extensive settlor *reserved powers*,⁵ which are deemed not to invalidate the trust or cause the trust to be treated as a testamentary trust. These powers include the power to revoke, vary or amend the trust, powers of appointment, power to give investment directions to the trustee, power to add or remove trustees, protectors or beneficiaries, power to change the governing law, power to consent to trustee actions, etc.

Disclosure of Information to Beneficiaries

English common law rules apply in Cayman to the disclosure of information to Beneficiaries. The leading case, *Schmidt v Rosewood*,⁶ established that a beneficiaries right to information should not turn on whether the beneficiary has a proprietary interest in the trust, and should include discretionary beneficiaries as well as objects of powers of appointment depending on a number of factors, including the nature of the beneficiary's interest in the trust, the reasons for the request, the effect of disclosure on the other beneficiaries, etc. Beneficiaries do not have rights to information under the STAR trusts regime.

Private Trust Companies

Private Trust Companies (PTCs) are exempt from the requirement to obtain a trust license.⁷ PTCs are only authorized to conduct trust business for a family group, referred to as "connected trust business" and are not authorized to offer trust services to the public. Registered PTCs may act as trustees of STAR trusts.

¹ The Cayman Islands Trusts Law (2020 Revision)

² The Perpetuities Law (1999 Revision)

³ The Banks and Trust Companies Law (2020 Revision)

⁴ Fraudulent Dispositions Law (1996 Revision)

⁵ *Id.*, Section 14.

⁶ *Schmidt vs. Rosewood* (2003) UKPC 26

⁷ Private Trust Companies Regulations (2020 Revision), Section 4

Purpose Trusts

Purpose trusts are permitted in Cayman under the STAR regime. The STAR trust regime applies if the trust instrument contains a declaration that it is to apply.⁸ The objects of STAR trusts may be purposes or natural persons as beneficiaries.⁹ The authorized purposes are any lawful purpose not contrary to public policy. STAR trusts are required to have enforcers, who enforce the terms of the trust and have fiduciary duties. A beneficiary of a STAR trust does not have standing to enforce the trust, and no right to information.¹⁰ The trustee of a STAR trust must be a licensed Cayman Islands trust company or a registered Cayman Islands private trust company.

Firewall Provisions

Cayman has not ratified the Hague Convention on Trusts and their recognition. The Cayman conflicts of laws rules, also known as *firewall* legislation, are set out in Articles 90-93 of the Act. The firewall legislation contains a governing law provision that states that all questions regarding trusts governed under Cayman law, including the capacity of the settlor, the validity of the trust, the administration of the trust, and the existence and extent of powers, shall be determined in accordance with Cayman law without reference to the laws of any other jurisdictions.¹¹ The governing law provision does not affect the recognition of foreign laws in determining whether the settlor owns the property,¹² or the recognition of foreign law prescribing the formalities required for transfers,¹³ and does not validate dispositions of real property situated in a foreign jurisdiction which would be invalid according to the laws of such jurisdiction.¹⁴

The *firewall* legislation of Cayman contains a broad foreign law exclusion clause that precludes foreign law from invalidating trusts governed under Cayman law where foreign law does not recognize trusts, or the trust defeats rights conferred by foreign law by reason of a *personal relationship* to the settlor or by way of *heirship*, or contravenes foreign law or foreign judicial orders recognizing such rights.¹⁵ In addition, heirship rights are expressly excluded from affecting the ownership of immovable property in Cayman or moveable property wherever situated, and do not constitute an obligation for purposes of the Fraudulent Dispositions Law.¹⁶ Finally, foreign judgements are not recognized where they conflict with the foreign law and heirship exclusions.¹⁷

Asset Protection

The *asset protection* laws of Cayman are set-forth in the Fraudulent Dispositions Law,¹⁸ and provide that dispositions of property made with an intent to defraud the creditor and at an

⁸ Id., Section 96

⁹ Id., Section 99

¹⁰ Id., Section 100

¹¹ The Cayman Islands Trusts Law, Section 90

¹² Id., Section 90(i)

¹³ Id., Section 90(iv)

¹⁴ Id., Section 90(v)

¹⁵ Id., Section 91

¹⁶ Id., Section 92

¹⁷ Id., Section 93

¹⁸ Fraudulent Dispositions Law (1996 Revision)

undervalue shall be voidable at the instance of the creditor.¹⁹ The creditor has the burden of proof to establish intent to defraud,²⁰ and must meet this burden “on the balance of the probabilities,” and must bring the claim within 6 years from the date of the disposition.²¹ If the claim succeeds, the disposition shall be set-aside only to the extent necessary to satisfy the obligation owed to the creditor.²² The obligation must have existed on or prior to the date of the disposition and the transferor must have had notice.²³ Thus, claims not existing at the time of transfer or disposition are barred. The Law recognizes that foreign law may be applied to determine whether the transferor owns the property or holds powers to transfer the property.²⁴

¹⁹ Id., Section 4(1)

²⁰ Id., Section 4(2)

²¹ Id., Section 4(3)

²² Id., Section 6

²³ Id., Section 2

²⁴ Id., Section 7