



# FOCUS

HIGGS & JOHNSON COUNSEL & ATTORNEYS-AT-LAW | VOLUME 62, ISSUE 1/2018

## Trusts in the Cayman Islands



*The information contained in this newsletter is provided for the general interest of our readers, and is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This newsletter can in no way serve as a substitute. For additional copies of FOCUS, please contact us at [info@higgsjohnson.com](mailto:info@higgsjohnson.com) or at 242 502 5200.*

**A** trust is a legal relationship where one party (the “Settlor”) transfers property to the Trustee to hold the legal title to the Trust assets for the benefit of one or more persons (the “Beneficiaries”) or for a specified purpose.

### **Why Cayman?**

The Cayman Islands is an offshore tax- free jurisdiction that has been an attractive place to do business for many years. Cayman is a British Overseas Territory, with

an elected government and legal system rooted in the English common law. Cayman is the fifth largest financial center in the world, with world class lawyers, accountants, bankers, investment advisers, and trust administrators that can assist with the set- up, maintenance and management of your trust.

### **Advantages**

Some advantages of establishing a Cayman Trust are:

- *Tax Benefits*

The establishment of a Trust may create tax benefits for the Settlor and the Beneficiaries. There is no income tax or capital gains tax payable in relation to Trust assets in the Cayman Islands. There is also no inheritance/estate tax in the Cayman Islands which would apply upon the death of the Settlor.

- *Confidentiality*

Save for exempted trusts, Trusts are not registrable with the Cayman Government authorities. Information in relation to the Trust and the Settlor are held strictly confidential unless the Trustees are under a legal duty to disclose the information or the Settlor has requested the disclosure of the Trust information.

- *Asset Protection*

Due to the transfer of the ownership of the assets to the Trustee, the Trust assets may be protected from claims being made against it by the Settlor's future creditors.

- *Estate Planning*

A Trust enables a Settlor to provide for his spouse or dependents during his lifetime and after his death. It also enables the preservation of family wealth and continuity of family business.

In some countries, freedom of testamentary disposition is restricted by heirship laws. Such heirship rights are not recognized in the Cayman Islands as being enforceable against a Cayman Trust. Thus, a Settlor may avoid these restrictions by transferring assets to a Cayman Trust.

- *Avoidance of Probate*

On the death of the Settlor, Trust assets

will remain vested in the Trustee and dealt with in accordance with the Trust Deed. Therefore, there will be no need to obtain a grant of probate on the death of the Settlor.

- *Flexibility*

The trust structure enables a settlor to tailor the Trust to meet his needs. The Trust may provide a fixed interest for each beneficiary or it may confer wide discretionary powers on the Trustee to distribute the assets to the beneficiary. The Trust may also include a power of revocation or amendment which may be vested in the Settlor or Protector.

### **Types of Trusts**

- *Discretionary Trust*

A Discretionary Trust provides a flexible and efficient structure for the Settlor and the Beneficiaries. It gives the Trustees wide discretionary powers to decide when and which beneficiaries should receive benefits under the Trust. The Trustees may be guided by a letter of wishes prepared by the Settlor which sets out how the Settlor wants the Trustees to distribute the assets. The Settlor may also appoint a Protector, who is a trusted friend or adviser, whose role it is to monitor the activities of the Trustees.

- *Fixed Interest Trust*

In a Fixed Interest Trust, the Trust Deed would stipulate the beneficiaries and the share or asset that each beneficiary should receive upon an eventuality occurring.

- *Exempted Trust*

Exempted Trusts must be registered in Cayman with the Registrar of Trusts. The

Governor in Cabinet may give an undertaking to the trustees of an exempted trust that no law may be enacted in Cayman imposing any estate duty or inheritance tax for a period not exceeding 50 years from the date of creating the exempted trust.


- *Charitable Trust*

A Charitable Trust is established for the benefit of a charitable institution or purpose pursuant to Cayman Laws.

### **Special Trusts Alternative Regime (STAR) Trust**

A STAR Trust provides an alternative to the traditional trust structure by providing a sophisticated framework for benefitting beneficiaries and/or achieving a wide range of charitable and non-charitable purposes.

STAR Trusts are useful in both private and commercial contexts including where the Settlor wishes:

- The Trust to hold shares of an operating company or the family business;
- To establish a traditional trust with an indefinite trust period;
- To retain control over the Trust Fund;
- To exclude the beneficiaries right to enforce the Trust;
- To create a charitable trust, which may not be solely charitable;
- To hold shares in a special purpose vehicle. 



For more information, contact  
Country Managing Partner,  
Gina M. Berry  
[gberry@higgsjohnson.com](mailto:gberry@higgsjohnson.com)