



Conyers Dill & Pearman

Private Trust Companies:

Comparison of Laws of Bermuda, Cayman Islands and British Virgin Islands

Foreword

This Memorandum has been prepared to guide those professional advisors with clients who may be considering the formation of a private trust company in Bermuda, the Cayman Islands or the British Virgin Islands. It deals in broad terms with the requirements of Bermuda, Cayman Islands and British Virgin Island laws for the establishment and operation of such entities and related legal issues. It is not intended to be exhaustive.

With regard to any specific proposals, professional advisors, are advised to consider the implications in their client's home jurisdiction and should consult with other professional advisers as appropriate.

Of course, individual clients should seek legal advice in the appropriate jurisdiction on their specific proposals before taking steps to implement them.

This Memorandum has been prepared on the basis of the law and practice as at the date set out below.

Conyers Dill & Pearman

February 2012

TABLE OF CONTENTS

1	INTRODUCTION
2	EXEMPTION FROM LICENSING REQUIREMENTS
3	NAME
4	INCORPORATION WHERE NO LICENCE IS REQUIRED
5	INCORPORATION WHERE LICENCE IS REQUIRED
6	DIRECTORS, OFFICERS AND REPRESENTATIVES
7	SHAREHOLDERS AND SHARE REGISTERS
8	CONSTITUTIONAL DOCUMENTS
9	DIRECTORS' MEETINGS
10	INDEMNIFICATION OF DIRECTORS AND OFFICERS
11	PUBLIC RECORDS
12	SHARE CAPITAL

BERMUDA	CAYMAN	BVI
1. INTRODUCTION		
<p>This memorandum is a summary comparison of the regulations, legal issues and incorporation procedures applicable to establishing a Private Trust Company (“PTC”) in Bermuda, the British Virgin Islands (“BVI”) and the Cayman Islands (“Cayman”).</p> <p>For the purposes of this Memorandum, a PTC is defined as a company, incorporated in the relevant jurisdiction, which has as its limited business purpose acting as a trustee of either a single trust or a limited group of related trusts.</p>		
2. EXEMPTION FROM LICENSING REQUIREMENTS		
<p>In Bermuda, the primary legislation dealing with the regulation of trust companies is the Trusts (Regulations of Trust Business) Act.</p> <p>PTCs that limit their corporate capabilities to acting in the trusteeship of (i) a single trust or (ii) a limited class or group of trusts connected to a particular family or a corporate group, will essentially be deemed to not offer trustee services to the public generally.</p> <p>Accordingly PTCs are exempt from regulation and licensing under that Act. However, if a trust company offers its services to the public it would need to be licensed.</p>	<p>Cayman has two types of PTC, a licensed and a registered form. This memorandum deals with the latter although it should be noted that the licensed form (being a PTC which has been issued a restricted trust licence under the Banks and Trust Companies Law by the Cayman Islands Monetary Authority (“CIMA”)), can be a useful option for clients who wish to be able to demonstrate that their PTC is a fully regulated entity in its own right.</p> <p>In Cayman, a company which conducts only connected trust business and which is registered as a PTC with CIMA does not require a licence to carry on such trust business.</p> <p>To determine whether connected trust business is undertaken, one looks solely at the relationship between the settlors of the underlying trust assets: each settlor must be a connected person to each other.</p> <p>“Connected person” is broadly defined, including relationships by blood and marriage as well as</p>	<p>In BVI, a PTC is exempt from regulation and licensing under the BVI Financial Services (Exemptions) Regulations provided it carries on either unremunerated trust business or related trust business.</p> <p>‘Unremunerated trust business’ is carried on where no remuneration is payable or received by the PTC or any person associated with the PTC in consideration for providing trust services. Professional director services are not however considered as remuneration for these purposes.</p> <p>‘Related trust business’ means providing trust business to either a single or a group of related qualifying trusts. To be a qualifying trust, each beneficiary of the trust must either be connected to the settlor (as defined in the regulations) or a charity. Related trusts are defined as trusts the settlors of which are connected to each other.</p>

BERMUDA	CAYMAN	BVI
	<p>companies within the same group as well as certain shareholder and company relationships.</p> <p>There is no requirement for the beneficiaries to be connected persons.</p>	
3. NAMES		
<p>If a Bermuda PTC wishes to use the words “trustee” or “trust” in its name, it must qualify this by also including the word “private”.</p>	<p>The company must use the words “Private Trust Company” or the letters “PTC” in its name.</p>	<p>The name of a BVI PTC must end with the designation “(PTC)” placed immediately before the Limited or Ltd or other ending permitted under the BVI Business Companies Act.</p>
4. INCORPORATION WHERE NO LICENCE IS REQUIRED		
<p>In Bermuda, a PTC is typically incorporated as an exempted company. The application to incorporate is submitted for the approval to the Bermuda Monetary Authority (the “BMA”). The application must include background information on the owners of the PTC and the settlor of the underlying trust. The BMA requires a signed personal declaration to be submitted with regards to each ultimate beneficial owner of the PTC who will own, directly or indirectly, 5% or more of the PTC. All private information submitted with the application is required by statute to be treated as confidential and is not a matter of public record. The incorporation process is usually completed within 5 business days from submission to the BMA.</p>	<p>In the Cayman Islands, a PTC is typically incorporated as an exempted company.</p> <p>In order to register with CIMA, a PTC is required to file a declaration stating its name, the names of its directors and registered office provider, with confirmation that the PTC is compliance with the Regulations. Aside from this, there are no governmental approvals required either prior to incorporation or at any subsequent stage from CIMA or any other body.</p> <p>Anti-money laundering and know-your-client checks are carried out by the licensed trustee providing the registered office.</p> <p>The company is incorporated upon the filing of its Memorandum and Articles of Association with the Registrar.</p> <p>Express incorporation can be</p>	<p>In BVI, a PTC must be incorporated as a business company (“BC”).</p> <p>There are no governmental approvals required for incorporation. However, vigorous anti-money laundering and know-your-client obligations are placed on the PTC and its local registered agent.</p> <p>A BC is incorporated by filing the BC’s Memorandum and Articles of Association with the Registrar together with a certificate from its first registered agent. As such, the incorporation process for a BC can usually be completed within 24 hours</p>

BERMUDA	CAYMAN	BVI
	completed within 24 hours	
5. INCORPORATION WHERE LICENCE IS REQUIRED		
<p>The licensing application process for a PTC in any of the three jurisdictions is time consuming and adds significant costs to the process. In addition, it requires that the client disclose a substantial amount of personal information to the relevant authorities in each jurisdiction. As a minimum, it is likely to take at least 8 to 12 weeks in any of the jurisdictions to acquire a licence. Whether a restricted or unrestricted licence is applied for, examples of the types of documentation that the client would need to provide are e.g., police reference letters, financial reference from a bank/trust company, business plan, office procedures and office compliance manual. In addition, authorities generally require substantial information on all the proposed Directors, officers and managers of the PTC. Also, licensed PTC's will be subject to more stringent regulation and codes of conduct as well as annual licensing fees than that of an unlicensed PTC. Considerable fees are payable upon incorporation and annually thereafter.</p>		
6. DIRECTORS, OFFICERS AND REPRESENTATIVES		
<p>Each Bermuda exempted company is required to have at least one director and a secretary. A secretary of an exempted company may be an individual or a company. A director of an exempted company may be an individual or any type of legal person (including any company or association or body of persons, whether corporate or unincorporate). For practical reasons, it is most common for the office of director to be filled by an individual or a company.</p> <p>To satisfy the residency requirement contained in the Act, the secretary or one of the directors must be ordinarily resident in Bermuda. Alternatively, a company may satisfy the residency requirement by appointing either an individual or a company to act as its resident representative in Bermuda.</p>	<p>There must be at least one director of a Cayman company.</p> <p>There is no requirement that any of the directors be ordinarily resident in Cayman.</p> <p>The PTC must have its registered office in Cayman provided by the holder of a trust licence.</p> <p>The initial director is appointed by the subscriber to the memorandum of association. Thereafter, the addition or removal of directors will normally be effected in accordance with the provisions of the articles of association.</p> <p>Corporate Directors are permitted.</p>	<p>A BC must have at least one Director but there is no requirement that any of the Directors be resident in BVI.</p> <p>Other than a requirement that a BC must have at all times a licensed Registered Agent in BVI who holds a Class I trust licence, BVI does not require the appointment of any particular officer.</p> <p>The initial director is appointed by the subscriber to the memorandum of association. Thereafter, the addition or removal of directors will normally be effected in accordance with the provisions of the articles of association.</p> <p>Corporate Directors are permitted.</p>
7. SHAREHOLDERS AND SHARE REGISTERS		
<p>In all three jurisdictions it is necessary to have at least one Shareholder (unless the company is set up as one limited by guarantee). The names of all the shareholders must be maintained in a Register of Members which is maintained at the Registered Office of the relevant company. The Register is not open to public inspection in BVI or Cayman. In</p>		

BERMUDA	CAYMAN	BVI
<p>Bermuda the Register is open to public inspection during reasonable business hours. In all three jurisdictions it is possible to use a nominee to hold the shares.</p> <p>The ownership of a PTC is typically structured in one of two ways:</p> <p><i>An existing licensed trust company may be appointed trustee of a purpose trust which would then incorporate the PTC.</i> This is the most popular option as it allows clients to keep the administration of the PTC and the purpose trust in one office, providing a time and cost-efficient structure as well as maintaining a greater level of confidentiality. In addition, licensed trust companies in the various jurisdictions often have the option of using a nominee company to act as nominee of such licensed trust companies if desired. A further advantage of the purpose trust is that may avoid tax issues which would apply if the settlor or other family member were to be owner of the shares of the PTC. The Trustee of the purpose trust would of course be the sole Shareholder of the PTC and its role would be to hold the shares in the PTC and to appoint Directors. It would then be the appointed Directors who would have the day to day control and running of the PTC as well as any underlying companies. Many clients using this technique prefer to have the option of a protector. A protector is often a family friend or confidante who would have the power to appoint and remove the trustees of the purpose trust allowing the client to retain a higher level of indirect involvement.</p> <p><i>The PTC's shares in the name of an individual i.e. the settlor.</i> Where this option is taken, control issues will need to be considered carefully. Complications may arise upon the death of the individual as the shares of the PTC will be included in his personal estate. Where individuals own shares directly in a Bermuda PTC, each individual owning 5% or more of the PTC must also declare to the BMA their name, occupation, place of residence and any other information that BMA may require. This differs from where a licensed trust company acts as trustee of a purpose trust where information is not typically required on all persons involved.</p>		
8. CONSTITUTIONAL DOCUMENTS		
<p>In Bermuda, the constitutional documents of a PTC are its Memorandum of Association and Bye-laws. The Memorandum of Association will set out the object clauses of the PTC. Objects may be unrestricted, or the company may set out specified objects. A Bermuda company has the powers and capacities of a natural person, subject to any restrictions in its Memorandum of Association. The Memorandum of Association is filed with the Bermuda Registrar of Companies and is available for public inspection. On the other hand, Bye-laws, which generally</p>	<p>The constitutional documents of a Cayman PTC are its Memorandum and Articles of Association.</p> <p>These documents are not available to the general public.</p>	<p>The constitutional documents of a BVI PTC are its Memorandum and Articles of Association.</p> <p>These documents are submitted to BVI Registrar of Corporate Affairs and are available for inspection by the public.</p>

BERMUDA	CAYMAN	BVI
<p>prescribe the rights and duties as between the PTC, the shareholder and the Directors, are not filed with and are not available for public inspection.</p>		
<p>9. DIRECTORS' MEETINGS</p>		
<p>In all three jurisdictions, it is not necessary for the meetings of the directors to be held within the particular jurisdiction. In Bermuda and BVI, "reasonable" notice must be given of the meeting. In Cayman, notice of a meeting must be given in accordance with the Articles of Association</p>		
<p>10. INDEMNIFICATION OF DIRECTORS AND OFFICERS</p>		
<p>In Bermuda, it is possible to provide for exculpation and indemnification of a Director and officer in the By-laws of the PTC, (or any contract or arrangement between the exempted company and any officer) in respect of any loss arising or liability arising or liability attaching to such officer by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust for which the officer may be guilty in relation to the PTC, but such indemnity would not cover any fraud or dishonesty of the Director</p>	<p>Cayman law does not limit the extent to which an exempted company's Articles of Association may provide for the indemnification of officers and Directors except where such provision is contrary to public policy. In effect an officer or Director may not be indemnified for his own dishonesty or wilful default.</p>	<p>Under BVI law, a Director or officer may be indemnified where he has acted honestly and in good faith with a view to the best interest of the PTC and, in the case of criminal proceedings, the Director or officer had no reasonable cause to believe his conduct was unlawful.</p>
<p>11. PUBLIC RECORDS</p>		
<p>The following documents are public record for Bermuda exempted companies:</p> <ul style="list-style-type: none"> • Notice of the Registered Office; • Memorandum of Association; • Certificate of Incorporation; • Register of Charges; • Register of Members; and • Register of Directors and Officers. 	<p>In Cayman, only the Notice of the Registered Office is a public document.</p> <p>The Register of Mortgages is open to creditors and shareholders only.</p>	<p>In BVI, the Memorandum and Articles of Association (including the name of its Registered Agent and Registered Office) and the Certificate of Incorporation are of public record. In addition, a BC may elect to submit the following records to the Registrar and thus make them available for public inspection:</p> <ul style="list-style-type: none"> • Register of Members; • Register of Directors; • Register of Mortgages, Charges and Other Encumbrances.

BERMUDA	CAYMAN	BVI
12. SHARE CAPITAL		
<p>There is no statutory minimum authorised or issued share capital for a PTC. Bearer shares and shares of no par value are not permitted although fractional shares may be issued. However, the annual government fees payable under the Companies Act 1981 are calculated on a sliding scale and in order to benefit from the lowest fees, authorised capital should not exceed US\$12,000. Shares may be issued fully, partly or not paid.</p>	<p>There are no minimum requirements for the authorised or issued capital of a PTC. However, the annual fees payable under the Cayman Law for Exempted Companies are on a sliding scale based on levels of authorised capital and in order to minimise such fees the authorised capital should not exceed CI\$42,000.</p>	<p>There is no minimum authorised or issued share capital for a PTC. Bearer shares are permitted but must be lodged with licensed custodians. Fractional shares may be issued, and shares may or may not have par value. Annual government fees are payable on a sliding scale based on the number of shares that the company is permitted to issue. In order to minimise such fees the authorised number of shares should not exceed 50,000.</p>

This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

About Conyers Dill & Pearman

Conyers Dill & Pearman advises on the laws of the Cayman Islands, British Virgin Islands, Bermuda, Mauritius and Cyprus. Conyers' lawyers specialise in company and commercial law, commercial litigation and private client matters.

The combination of Conyers' structure, culture and expertise enables the highest quality, responsive, timely and thorough legal advice. Conyers' strategic global presence in major international business centres allows a seamless 24 hour service.

Conyers' sophisticated client base includes FTSE 100 and Fortune 500 companies. Working with leading local and international firms, Conyers advises on highly complex multi-jurisdictional projects.

Affiliated companies (Codan) provide a range of trust, corporate secretarial, accounting and management services.

Founded in 1928, Conyers has 600 staff, including more than 150 lawyers.

www.conyersdill.com