

The Offshore & International Taxation Review

A COMPARISON OF THE LAWS OF BERMUDA AND THE CAYMAN ISLANDS RELATING TO MANAGED TRUST COMPANIES

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The legislation compared in this article is, in relation to Bermuda, The Trust Companies Act 1991 as amended by the Trust Companies Amendment Act 1993 Act and in relation to the Cayman Islands, The Banks and Trust Companies Law (1995 Revision).

Bermuda: General

The Trust Companies Act 1991 (the "Act") as amended, which came into effect on 12th September 1991, introduced a new regime for the regulation of trust companies carrying on trust business from within Bermuda.

The focus of the legislation is to require a reasonable level of regulation in order to

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preserve Bermuda's reputation as a responsible jurisdiction without compromising the confidentiality of trust administration and documentation.

Cayman: General

The Banks and Trust Companies Law (1995 Revision) (the "Law") which came into effect on 4th July, 1995 revised and consolidated earlier legislation relating to the regulation of trust companies.

The policy of the Cayman Islands Government is to promote financial and commercial business whilst protecting the Islands' status as a reputable financial centre through rigorous examination procedures, licensing and close supervision of the business of existing licensees.

Bermuda: Licence Required to Conduct Trust Business

Any corporate entity carrying on or intending to carry on "trust business" in or from within Bermuda must apply to the Minister of Finance (the "Minister") for a licence to do so. "Trust business" is defined in the Act as "the undertaking, executing and administering of trusts, as a business, trade, profession or vocation carried on or practiced in the service of the public generally".

There is a prohibition in respect of the use of the words "trust" or "trustee" in the name of a business unless:

- (a) such name was already in use prior to the enactment of the Act; or
- (b) such name relates to the business of a unit trust scheme; or
- (c) the business in question is being carried on by a trust company licensed under the Act.

A company which has limited powers to act as a trustee of a specifically named trust or trusts (commonly known as a private trustee company) is not required to hold a licence.

Cayman: Licence Required to Conduct Trust Business

Any trust company carrying on “trust business” in or from within the Cayman Islands must apply to the Governor of the Cayman Islands (the “Governor”) for a licence to do so. The licence requirement does not apply to individuals or partnerships carrying on trust business. “Trust business” is defined in the Law as the business of acting as trustee, executor or administrator and “trust company” means a company carrying on trust business.

There is a prohibition in respect of the use of the words “banks”, “trusts”, “trust company”, “trust corporation”, “savings” or “savings and loan” in the name of a business unless:

- (a) the approval of the Governor has been obtained for the use of the name; and/or
- (b) the business in question is being carried on by a trust company licenced under the Law.

A trust company may seek a Restricted Trust Licence which permits it to act only for those persons listed in an undertaking accompanying the application for the licence.

Comment

A private trustee company in Bermuda does not require a trust licence, whereas in the Cayman Islands such a company must obtain a Restricted Trust Licence. In each case the private trustee company is permitted to act only on behalf of a restricted number of persons, usually, but not necessarily, a family group.

Bermuda: Managed Trust Companies and Authorised Agents

In Bermuda there are three categories of licensed trust companies: local trust companies, exempted trust companies, managed exempted companies. An exempted company may not carry on business within Bermuda except in so far as may be necessary for the carrying on of its business with persons outside Bermuda, and

certain other limited activities. At the present time all managed exempted companies are managed by local licensed trust companies. It seems that there is no policy reason why an exempted company *per se* should not fulfil their management role. Such an exempted company would have to be considered fit and proper, and in all likelihood would be a leading bank or international institution.

Cayman: Managed Trust Companies and Authorised Agents

Whilst trust companies carrying on business from the Cayman Islands need not necessarily be incorporated in Cayman, all trust companies must establish and retain a principal office in the Islands and must act through an authorised agent or authorised agents in the Cayman Islands (who can be either two individuals or another trust company). The address of the principal office can be the office of the authorised agent.

Comment

A principal difference between Bermuda and the Cayman Islands is that the Cayman Islands Law does not require incorporation of the managed trust company in Cayman. This has obvious benefits in terms of establishment costs.

In Bermuda, at present, all managed trust companies are managed by a local trust company. It is probable that an exempted trust company could also act as manager. However, it is unlikely that an individual would be permitted to manage a trust company in Bermuda. In Cayman, however, the "authorised agent" may be either two individuals or another trust company. As such, there is no policy bias against individuals acting as manager or agent in the Cayman Islands.

Bermuda: Application for a Licence

The following six requirements must be fulfilled before a licence will be granted:

1. the company must have a paid up share capital of at least \$250,000;
2. the company's objects and powers must empower it to carry on trust business

and carry out all activities necessary for, or necessarily incidental to, carrying on such business;

3. the company must have satisfactory insurance;
4. the company's premises must be adequate for its business;
5. the company must have sufficient personnel available to it with adequate knowledge, skill and experience to carry on its business; and
6. the company must have an approved auditor (i.e. a local accountant approved by the Minister).

Even if the above six requirements are fulfilled, the Minister may reject an application if he feels that it would be in the public interest to do so. In reaching such a decision, the Minister is entitled to take into account, inter alia, the economic situation in Bermuda and the nature and previous conduct of the Company or any party having an interest in the Company.

Cayman: Application for a Licence

The following requirements must be fulfilled before a licence will be granted:

1. the company must have a paid up share capital of at least CI\$400,000; CI\$20,000 in the case of the Restricted B Licence or Restricted Trust Licence, or CI\$1100 in the case of a Nominee (Trust) Licence;
2. evidence of the Governor's approval of any name containing the words "bank", "trusts", "trust company", "trust corporation", "savings", or "savings and loan";
3. the company must produce the address of its principal office and its registered office (if it is different), the names and addresses of two individuals or the company which will act as its authorised agents (if relevant) in the Islands and (in the case of the branch of a foreign company) the names and addresses of persons authorised on its behalf to accept service of process or notices.

Even if the above requirements are fulfilled, the Governor may reject an application in the public interest.

Comment

The requirements of both jurisdictions are similar but differ in three important respects:

1. Significantly, a Cayman company must have a substantially higher paid up share capital than a Bermuda company.
2. In the Cayman Islands in addition to approving a licence, the Governor must approve the use of prohibited words.
3. The legislation in Cayman envisages a lesser role for the authorised agent than that played by a manager in Bermuda. In the latter jurisdiction the manager must provide the required personnel with adequate “knowledge, skill and experience”, whilst in the Cayman Islands the authorised agent’s principal role is to provide an office and accept service of proceedings.

Bermuda: Nature of Application

An application for a licence to conduct trust business must contain:

- (a) a business plan outlining the nature and scale of the proposed trust business and arrangements for its operation (an outline of the specific areas to be covered in a business plan is attached hereto as Schedule A);
- (b) such other information as the Minister may require (e.g. financial statements and information on key senior executives);
- (c) An application fee of \$170 is now payable to the Bermuda Monetary Authority.

In the case of a “managed” trust company, the business plan must indicate clearly the

nature and scope of management, provide details about the manager and a draft management agreement between the managed trust company and its manager.

In addition, once the application has been received by the Minister, he may give the applicant written notice requiring additional information before making a decision. It is important to note that this information and the information required to accompany the licence application may differ from application to application. Furthermore, the Minister may require the applicant to provide a report by an accountant or some other person approved by the Minister on any aspects of the information provided by the applicant.

The Minister is not required to give any reasons for the granting or rejecting of an application. However, in the case of a rejection, an existing company may appeal to the Supreme Court.

Once submitted, an application can be withdrawn at any time before the Minister has made his final determination.

Cayman: Nature of Application

The nature of an application to conduct trust business depends upon whether the trust company is a company incorporated in the Islands or is a company incorporated outside the Islands.

If incorporated in Cayman, a copy of the memorandum and articles of association verified by a statutory declaration made by a director of the company or its secretary must be provided together with accounting information, references, and information in relation to directors and shareholders.

The presiding officer of any parent company or body must concur in writing to the application and such entity must accept legal responsibility for the obligations and liabilities of the applicant. The application must also state the objectives of the company (see further Schedule E below).

If the applicant is a company incorporated outside the Cayman Islands the application must, in addition to information about its registered office and authorised agents, provide the address of the principal office of the applicant in the Islands and details of its registered office outside the Island, the names and addresses of the two individuals or a company approved by the Cayman Monetary Authority resident or

incorporated in the Cayman Islands to be its authorised agent and the names and addresses of persons authorised on its behalf to accept service of process.

In addition, evidence of incorporation certified and authenticated under the law of the jurisdiction in which it was incorporated, along with a translation if necessary. In addition, a statement in a prescribed form is required from the authority responsible for the supervision of trust business in the country in which the applicant or its parent company is incorporated, along with financial statements for the applicant and its holding company. (For further requirements see Schedule F below).

The Governor is not required to give any reasons for granting or rejecting an application and there is no provision for appealing the Governor's decision. However, an appeal lies to the Grand Court from a decision of the Governor to revoke or withdraw approval in respect of an existing licence.

Comment

Whilst a trust company incorporated outside Cayman may act through an authorised agent, in order to do so it must engage in considerable disclosure about parent companies and related entities abroad. It may, depending on circumstances, be more practical to incorporate a Cayman Islands company.

Grant of Licence Subject to Conditions

It is possible for the Minister to grant a licence subject to certain conditions. This power to impose conditions includes the imposition of conditions preventing either the transfer of voting shares in the Company or the appointment of a "top executive" (i.e. one who carries out the activities of a Director, a Chief Executive Officer, a Chief Financial Officer, or a Company Secretary). However, in deciding whether to impose a condition restricting the transfer of voting shares or the appointment of a top executive, the Minister is only entitled to consider whether the public interest will be prejudiced by the transfer or appointment in light of:

- (a) the character and previous conduct of the transferee or the appointee as the case may be;
- (b) the likely impact of the transfer on the future conduct of the Company's affairs;

- (c) the appointee's knowledge, skill and experience in trust business.

Once a licence has been granted to an applicant no shares in the company or beneficial interest in such shares may be issued or transferred or disposed of in any manner without the prior approval of the Governor. However, the Governor may exempt a licensee from this restriction. The company must continue at all times to have a principal office in the Islands and may not change the site of its principal office without the approval of the Cayman Monetary Authority.

Comment

In Bermuda the Governor may see fit to impose restrictions on the transfer of voting shares in the trust company. In Cayman, on the other hand, such restriction is automatically imposed by the Law but may be waived in respect of any licensee by the Governor.

Bermuda: Appeals

Once granted, a licence remains in force until it is cancelled. Therefore, it is not open to the Minister to refuse to renew an existing licence; he must actually cancel it. Once issued, a licence to conduct trust business must be displayed at the company's registered office in Bermuda. (A sample licence is attached hereto as Schedule B.)

Cayman: Appeals

Once granted, a licence remains in force until it is cancelled.

Bermuda: Special Conditions Relating to Managed Trust Companies

The conditions attached to the licence of a "managed" trust company will differ slightly from the "standard" conditions attached to a trust licence (e.g. it cannot change its manager or cease to be managed without prior approval of the Minister).

Cayman: Special Conditions Relating to Managed Trust Companies

A managed trust company must retain an authorised agent and is not authorised to change its agent or, if it has two individuals as an agent, to change either of them, without the consent and approval of the Cayman Monetary Authority.

Bermuda: Fees

Every trust company must pay a licence fee of \$10,000 on or before 31st March in every year following the year in which the company was licensed. Trust companies which are formed as exempted companies will also pay an annual government fee which is usually \$5,340 (based on the minimum capital for a trust company of \$250,000).

An applicant must pay an application fee of \$170 now payable to the Bermuda Monetary Authority.

Cayman Island: Fees

Upon grant of a trust licence, a trust company must pay a fee which must also be paid annually thereafter. The amount of the fee depends on the licence obtained. Fees are currently CI\$15,000 for a Trust Licence; CI\$1,640 for a Restricted Trust Licence, and CI\$1100 for a Nominee (Trust) Licence.

All applications to the Governor for a trust licence must be accompanied by the fee referred to above. If the application is unsuccessful the fee will be refunded.

In addition, an exempted company is required to pay an annual government fee at the time of its incorporation and in January of each year thereafter. The fee is calculated on a sliding scale, based on the type of company and its capital and varies between CI\$470 and CI\$1,968.

Comment

The annual licence fee in the Cayman Islands is, in US\$ terms, more than 50% higher

than its Bermuda equivalent. Subject to the reporting requirements discussed above, it is not necessary for a managed trust company to be incorporated in Cayman. If the company is incorporated in Cayman an annual fee of \$2,000 will be payable. This figure is considerably less than the equivalent Bermuda sum.

Bermuda: Role of the Monetary Authority

The Bermuda Monetary Authority ("the BMA") is charged with the responsibility of supervising trust companies in accordance with the powers and duties conferred upon it under the Act. The BMA must report to the Minister information brought to its attention concerning any matter connected with the trust business of a company including, but not limited to, information pertaining to that company's financial statements or auditors' report.

Cayman: Role of the Monetary Authority

The Cayman Monetary Authority ("the CMA") is charged with the responsibility of receiving regular returns from and examining the affairs of licensed trust companies. The CMA must examine audited annual accounts and report on them to the Governor. In addition, it is the role of the CMA to examine and make recommendations to the Governor with respect to applications for licences.

Bermuda: Reporting to the Monetary Authority, Accounts and Certificates

A trust company is required to keep an accounting of the company's transactions and balances separate from the transactions and balances of the trusts which it administers.

Every trust company must deliver to the BMA within 120 days after the last day of each financial year a copy of the following:

- (a) the company's audited financial statements with auditors' report (financial statements must be prepared in accordance with section 84(1)(a) of the Companies Act 1981, and audited annually by an approved auditor);
- (b) the company's certificate of management (in the form prescribed by section

12(2) of the Act, attached hereto as Schedule C);

- (c) a special auditors' report relating to the certificate of management (a sample form is attached hereto as Schedule D).

The Certificate of Management is in a statutory form and certifies, inter alia, that the company has complied with any conditions/requirements of its licence, that the company has segregated the property and records relating to trusts which it administers, that proper records were kept for each trust of which the company was trustee, and that the affairs of those trusts were conducted in accordance with the terms of the respective trusts.

It is important to note that the Act specifies that the company's financial statements must be prepared in respect of each financial year in accordance with the Companies Act 1981. However, the provisions of section 88 of the Companies Act 1981 (the power to waive the laying of financial statements or auditor's report and appointment of auditor) are not applicable to licensed trust companies.

Cayman: Reporting to the Monetary Authority Accounts and Certificates

A trust company licensed in the Cayman Islands must have its accounts audited annually or at such other times as the Governor or the CMA may require by an auditor, who must be a professionally qualified accountant approved by the CMA. A trust company incorporated in the Cayman Islands must deliver to the CMA within three months of the end of the financial year of the company the audited accounts of the company, unless prior written approval for an extension has been granted by the inspector.

Every trust company which is incorporated outside the Cayman Islands must provide a copy of the audited annual accounts of its head office to the CMA within three months of the end of the financial year of such parent company unless prior approval for an extension has been granted by the CMA.

Comment

Both Bermuda and the Cayman Islands require annual production of audited accounts. Where a licensed trust company is incorporated outside the Cayman Islands the CMA

also requires production of the audited annual accounts of its head office.

Bermuda: Confidentiality

Under the Companies Act 1998 information submitted to BMA in relation to incorporation is treated as confidential. In general, the law relating to confidentiality in Bermuda follows that of England. Other than in a few specific circumstances, there is no statutory provision in Bermuda defining the extent of the duty of confidentiality owed by fiduciaries to their clients, or when such duty applies or when it may be waived or disregarded.

Where a trust is created in the ordinary course, the trustee has a paramount duty to beneficiaries. Generally the settlor (unless he is a beneficiary), in the absence of an express obligation, will have no power over the trustee with regard to confidentiality. In Bermuda there are no requirements to register trusts or to file accounts with any authority. Under the Act the BMA may require further information for the purpose of verifying financial statements and auditors' reports filed in relation to the trust company. As noted above, the Minister of Finance may appoint an inspector to examine the books and records of the licenced trust company. However, access by the Minister or the BMA to individual accounts is only permitted upon order of the Supreme Court. Proof that access is in the public interest is required. Application can be made *ex-parte*. Under the Act an order has effect notwithstanding any obligation of secrecy, save lawyer/client communications.

Bermuda is a party to a treaty with the United States relating to mutual assistance on tax matters. The Government of Bermuda may be required to provide information for the assistance of the United States Government in enforcing US laws relating to the prevention of tax fraud, the evasion of taxes and other fiscal laws. There are powerful safeguards. The US authorities are required to state the tax period in question and show that the request relates to a US person or to US fiscal laws. Except in cases of criminal tax liability and tax fraud, a senior official of the US Treasury must certify the information to be relevant. A fiduciary is not prohibited from immediately advising his client of any order for disclosure. The Bermuda Government has specifically stated that the object of the treaty is not to act as watch-dog or investigator for the Internal Revenue Service.

Bermuda is a party to the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. The English Evidence (Proceedings in Other Jurisdictions) Act 1975 was extended to Bermuda by the Bermuda (Evidence) Order 1987, allowing the Supreme Court in Bermuda to make orders requiring persons

(including trustees) to provide documents and give oral testimony in foreign proceedings involving civil or commercial matters. There are limitations to the procedure. It cannot be used to support “fishing expeditions” and an application must be limited to specific documents or information.

Orders will be made in respect of criminal cases only where proceedings have been instituted and this precludes, for example, orders being made in connection with a US Grand Jury investigation.

In January 1998, Bermuda enacted the Proceeds of Crime Act 1997 (“the Act”), which specifically addresses money laundering and other offences relating to the proceeds of criminal conduct. The Act provides the Minister of Finance, together with the National Money Laundering Committee may make regulations “for the purpose of detecting and preventing money laundering”. The Proceeds of Crime (Money Laundering) Regulations 1998 (“the Regulations”) came into force on 30th January 1998 and apply only to “*regulated institutions*” which include *inter alia*, banks, deposit companies and licensed trust companies. Such institutions are required to ensure that their employees are periodically trained on the Act, the Regulations, and the procedures instituted in order to ensure compliance with the duties imposed thereunder.

The Act specifically provides that no liability will be incurred for breach of client confidentiality when reporting suspicions of money laundering. In addition, the Act imposes no obligation to disclose any information which is disclosed to an attorney in privileged circumstances.

Cayman: Confidentiality

Confidentiality of client information is protected in the Cayman Islands by common law and by the Confidential Relationships (Preservation) Law 1976, as amended. The confidentiality law imposes criminal penalties for breach and disclosure of confidential information. Trust companies are subject to the full rigor of the confidentiality Law. Pursuant to the provisions of the legislation, confidential client information may only be disclosed:

- (i) to the client;
- (ii) to those entitled or permitted by express or implied consent of the client;

- (iii) to those entitled or permitted under the laws of the Cayman Islands;
- (iv) to those authorised or permitted pursuant to an Order or direction of the Grand Court of the Cayman Islands.

The Cayman Monetary Authority is entitled to access to books, documents and records of a licensed trust company. However, access by the CMA to such books and accounts is only permitted on the order of a judge of the Grand Court and, if necessary, a warrant can be obtained to seize the trustee's books and records. The CMA is, however, prohibited from disclosing any such information to a third party except in limited circumstances, e.g. pursuant to an order of the Grand Court.

Under the Mutual Legal Assistance (United States of America) Law 1986 the Government of the Cayman Islands agreed to provide assistance in relation to serious crime to US federal authorities. The Mutual Legal Assistance Law does not require or permit assistance to be given thereunder with respect to pure tax offences. Crimes punishable by more than one year's imprisonment under the laws of both the Cayman Islands and the USA, such as fraudulent securities practices, narcotics trafficking, racketeering, dishonesty offences, obtaining money by fraudulent promotion of tax shelters and filing false tax returns relating to unlawful proceeds of criminal offences, are covered by this Law. Under the Law all requests for information from the US must be submitted to and reviewed by the Cayman Mutual Legal Assistance Authority (being a judge of the Grand Court) to ensure compliance with the provision of the Law.

Under the Misuse of Drugs Law (1995 Revision), as amended, a person may disclose to a senior Cayman police officer a suspicion or belief that a customer's funds or investments are derived from or used in drug trafficking, whether carried on inside or outside the Cayman Islands.

A further step forward this end has been taken with the implementation of the Proceeds of Criminal Conduct Law 1996 (the "PCCL"). The PCCL seeks to prevent money laundering and related offences by, *inter alia* establishing an Authority to whom suspicious transactions may be reported. Such reporting is voluntary, not compulsory, but is necessary if the absolute statutory protection from prosecution for assisting in money-laundering or receiving the proceeds of criminal conduct is to be available. Provision is made under PCCL for issuing a Code of Conduct for the purpose of giving practical guidance with respect to the requirements of the law and the appropriate level of "due diligence" that should be undertaken. With this in mind a committee has been established with representatives from the private and public

sector to produce a code which is acceptable to all the professions and business sectors potentially affected by the law although to date, the Code has not yet been finalised. In the interim, however, the institutions concerned follow a number of recommendations based mainly on communications from the UK Foreign & Commonwealth Office.

Bermuda: Incorporation Approvals

The approval of the BMA must be obtained in connection with the issue or transfer of shares of all exempted companies (including the issue of shares at the time of incorporation). Personal declaration must be provided by individuals who have a 5% or greater beneficial interest in the company. The beneficial owners' identity must in all instances be disclosed. All information submitted with the application (with the exception of the matters contained in the memorandum of association) is required by statute to be treated as confidential and is not a matter of public record. Certain business activities may require licensing or special approvals.

Cayman: Incorporation Approvals

No governmental approval is required for the incorporation of a company.

Bermuda: Incorporation Procedure

An application for consent to incorporate an exempted company together with the appropriate personal declarations of the beneficial owners is submitted to the BMA (on behalf of the Ministry of Finance). On receipt of such consent, the memorandum of association is registered with the Registrar who issues a certificate of incorporation.

The incorporation process may take three to five business days to complete.

Cayman: Incorporation Procedure

There is no requirement to publicise an intention to incorporate a company in the Cayman Islands.

A company is generally incorporated by delivery of two signed copies of the memorandum of association to the Registrar. A proposed director of the relevant exempted company must submit to the Registrar a signed declaration to the effect that operation of the proposed exempted company will be conducted mainly outside Cayman.

The incorporation process can generally be completed within 24 hours.

Comment

The incorporation process in the Cayman Islands is usually quicker and simpler than in Bermuda.

Bermuda: Continuations and Discontinuations

Bermuda law provides that companies may continue into, and discontinue out of, Bermuda. Procedures similar to those on incorporation of an exempted company apply to a foreign company applying to continue into Bermuda. Certain governmental approvals and creditor protection requirements apply to an exempted company applying to discontinue out of Bermuda.

Cayman: Continuations and Discontinuations

Cayman law provides that companies may continue into, and discontinue out of, Cayman.

Bermuda: Business Restrictions

An exempted company may not carry on business within Bermuda except in so far as may be necessary for the carrying on of its business with persons outside Bermuda, and certain other limited activities.

Cayman: Business Restrictions

An exempted company is not entitled to trade in Cayman with any person except in furtherance of business “carried on outside” Cayman and may not offer any of its shares or debentures in Cayman. An exempted company is not, however, prohibited from effecting or concluding contracts in Cayman or exercising any of its powers in Cayman for the carrying on of its business outside Cayman.

Bermuda: Name

The proposed name of the company can be reserved with the Registrar.

The name reservation can usually be confirmed within 24 hours. The reservation of the name will subsist for a period of three months from the date of reservation. Thereafter, the reservation may be renewed. The Bermuda Act contains certain restrictions on names.

The name of an exempted company must generally end with the word “Limited” or “Ltd”.

Cayman: Name

The proposed name of the company cannot be reserved with the Registrar but the availability of a name can readily be checked. As discussed above, the Cayman Law contains certain restrictions on names.

An exempted company need not have the word “Limited” or “Ltd” at the end of its name.

Bermuda: Registered Office

Every company must have a registered office in Bermuda, the address of which is registered with the Registrar.

The situation of the office is a matter of public record. A post office box cannot be used as a registered office.

Cayman: Registered Office

Every company must have a registered office in Cayman recorded by the Registrar and published by public notice. The situation of the registered office is a matter of public record. A post office box cannot be used as a registered office.

Bermuda: Directors, Officers & Representatives

The minimum number of directors of a company is two. An exempted company must satisfy *one* of certain Bermuda residency requirements, namely, appoint:

- (i) two directors, or
- (ii) a secretary and a director, or
- (iii) a secretary and a resident representative, each of whom must be individuals ordinarily resident in Bermuda.

Public companies may appoint a resident representative only, whether a corporation or an individual. Corporate directors are not permitted.

An exempted company must appoint two directors to the offices of president and vice-president, or chairman and deputy chairman, respectively.

Cayman: Directors, Officers & Representatives

The minimum number of directors of a licensee company is two. There is no general requirement that any of the directors be resident in Cayman and corporate directors are permitted. However, as stated earlier, trust companies licensed in the Cayman Islands must act through an authorised agent(s) in the Cayman Islands.

An exempted company must have a secretary; otherwise it requires only such officers as are prescribed by its articles.

Bermuda: Shareholders

An exempted company must have at least one shareholder. Nominee shareholders are permitted.

The names of all shareholders of an exempted company must be maintained in a register of members. The register of members of an exempted company must generally be kept at its registered office and, except in the case of a mutual fund company, is open to public inspection.

Cayman: Shareholders

An exempted company must have at least one shareholder. Nominee shareholders are permitted.

The names of all shareholders of an exempted company must be maintained in a register of members. The register of members of an exempted company need not be kept at the registered office, and need not be available for inspection by the public or any governmental authority.

Bermuda: Constitutional Documents

The constitutional documents of an exempted company are its memorandum of association and bye-laws.

The memorandum of association will set out the objects clauses of the exempted company. Generally, companies will adopt the standard objects contained in the Second Schedule to the Bermuda Act. These objects are fairly broad. However, where the company proposes to engage in particular activities, it is advisable to include specific objects covering those activities. An exempted company is not permitted to adopt objects of a natural person.

The powers of the company also appear in the memorandum of association. The standard powers as set out in the First Schedule to the Bermuda Act will apply unless expressly excluded. The powers are ancillary to the objects and are exercisable only in furtherance of the objects.

The memorandum of association is filed with the Registrar and is available for public inspection.

The bye-laws will generally prescribe the rights and duties as between the company, the shareholders and the directors. The bye-laws of a Bermuda company are not filed with the Registrar and are not available for public inspection.

Cayman: Constitutional Documents

The constitutional documents of an exempted company are its memorandum and articles of association.

The memorandum of association must specify the name and registered office of the company and may specify the objects. Unless expressly restricted by its memorandum of association, an exempted company can have unrestricted powers and is capable of exercising all the powers of a natural person. The unrestricted powers can be exercised regardless of corporate benefit; however, the articles can be drafted so as to restrict the authority of the directors to enter into transactions without corporate benefit. If no objects are specified, then the company shall have full power and authority to carry out any object not prohibited by law.

If no articles of association are registered with the Registrar, the provisions of Table A of the Cayman Law will apply as the company's articles. Table A will also apply to any articles registered to the extent that the provisions are not specifically excluded by the articles.

The articles of association provide for the regulation of a company's affairs and will set out the rights and duties as between the company, the shareholders and the directors. The articles of association are not generally available for inspection by the public.

Where articles have been registered, a copy of every "special resolution" must also be filed with the Registrar, either annexed to or embodied in the articles.

Bermuda: Auditors

The shareholders of an exempted company must appoint an auditor of the company

and such auditor must audit the financial statements of the company. However, these requirements may be waived if all of the shareholders and all of the directors, either in writing or at a general meeting, agree that there shall be no auditor.

An exempted company is not generally required to file accounts with the Registrar.

Cayman: Auditors

Generally, there is no requirement that an exempted company appoint an auditor or file financial statements with the Registrar or any other governmental authority. Standard articles may provide for the presentation of financial statements and a directors' report at annual general meetings, but this requirement may be waived by the shareholders. However, companies licensed and regulated under the Banks and Trust Companies Law (and other Cayman legislation) are obliged to provide annual audited accounts to the CMA.

Bermuda: Books of Accounts

An exempted company must keep proper records of account with respect to its business activities. These records, together with minutes and copies of resolutions, must be kept at the registered office or at such other place as the directors think fit, and are required to be available for inspection by the directors at any time. Where the books of account are kept outside Bermuda, the company must maintain sufficient records in Bermuda as will enable the directors to ascertain with reasonable accuracy the financial position of the company at the end of each quarter.

Cayman: Books of Accounts

An exempted company must keep proper records of account with respect to all monies received and expended, all sales and purchases of goods, and the assets and liabilities of the company, so as to give a true and fair view of the state of the company's affairs and explanation of its transactions. Such books and records, together with minutes and copies of resolutions, are generally maintained at the Registered Office.

Bermuda: Directors' Meetings

Meetings of the directors may be held in or outside Bermuda. The bye-laws generally provide that the directors may meet for the transaction of business and regulate their affairs as they see fit. *Notice of a meeting of the directors must be given to all directors.* A meeting of directors may be validly convened with two directors.

Cayman: Directors' Meetings

An exempted company must hold a directors' meeting in Cayman once in every calendar year, which may be held by proxy. Notice of a meeting of the directors must be given in accordance with the articles. A meeting of directors or any committee thereof may be validly convened, subject to the articles, with only one director present.

SCHEDULE A

BERMUDA

BUSINESS PLAN

Pursuant to Section 5(2)(i) of the Trust Companies Act 1991

Provide a full statement setting out the nature and scale of the trust business which is to be carried on by the Company and full particulars of the arrangements proposed for the operation of that business.

Details should cover the first (next) five years of operation and must include, but not necessarily be restricted to, the following:

- Aims and objectives for each consecutive year.
- Sources of and nature or scale of business expected. Provide details as to type of business by separating into sub-categories such as institutional (pension, unit trusts, etc.) and personal.
- Assumptions and basis for these assumptions.
- Balance sheet projections for each year.
- Profit & loss projections for each year.
- Staffing requirements for each year. Include information on management requirements, organisational structure, Bermudian vs. non-Bermudian staff, experience and expertise of staff, professional/legal expertise, etc.
- Proposed systems and operations for the proper financial accounting, management and administration of the Company's and its customers' affairs.
- Internal controls, including security arrangements.
- Separation/segregation of trust and company assets.
- Premises.
- Fixed assets and equipment.
- Capital structure and any other financing arrangements.
- Insurance.
- Intentions to delegate any responsibilities to any other person and/or entity.

SCHEDULE B**BERMUDA****EXAMPLE OF LICENCE****TRUST COMPANIES ACT 1991****LICENCE****Pursuant to Sections 6 and 7**

In exercise of the powers conferred upon him by sections 6 and 7 of the Trust Companies Act 1991, the Minister of Finance hereby grants to:

_____ **TRUST COMPANY LIMITED**

a _____ company incorporated and registered pursuant to

the Companies Act 1981 on the _____ day of _____ 199

A LICENCE

to carry on trust business in accordance with the provisions of the Trust Companies Act 1991, the Companies Act 1981, Regulations thereunder and in accordance with the requirements and directions of the Bermuda Monetary Authority in the exercise of its regulatory and supervisory powers pursuant to the Bermuda Monetary Authority Act 1969, Regulations thereunder and in the discharge of its supervisory duties pursuant to the Trust Companies Act 1991.

This Licence is subject to the following specified conditions:

1. The Company shall notify the Bermuda Monetary Authority and seek its concurrence before making any of the following changes:
 - (a) a change in the Company's ownership;

SCHEDULE C**BERMUDA****SECOND SCHEDULE (Section 12(2)(a))****TRUST COMPANY CERTIFICATE OF MANAGEMENT****THE TRUST COMPANIES ACT 1991**

To: The General Manager
The Bermuda Monetary Authority

As Chief Executive Officer and Director of [*name of trust company*] ("the Company"), we certify, in respect of the financial year ended [*date*], as follows:

1. This Certificate is given pursuant to section 12 of the Trust Companies Act 1991.
2. The Company complied with every condition and requirement of its licence.
3. The Company at all times kept property and records relating to the trusts of which it was trustee duly separate from property and records not so relating.
4. The Company at all times had in place procedures for ensuring that all persons involved in the carrying on of its trust business had adequate training and experience, and were adequately supervised.
5. The Company caused proper records to be kept for each trust of which it was trustee.
6. The affairs of each trust of which the Company was trustee were conducted lawfully.

Chief Executive _____

Officer (signature)

(typed name)

(date)

Director _____

(signature)

(typed name)

(date)

SCHEDULE D**BERMUDA****AUDITOR'S REPORT ON****TRUST COMPANY CERTIFICATE OF MANAGEMENT****THE TRUST COMPANIES ACT 1991**

To the General Manager,
The Bermuda Monetary Authority,
Hamilton, Bermuda.

1. This Report is made pursuant to Section 14(4) of the Trust Companies Act 1991 ("the Act") in respect of [*name of trust company*] (the "Company"), and is based on information available to [*date*], the date of our audit report to the shareholders on the financial statements prepared in accordance with generally accepted accounting principles.

2. In the course of the audit of the financial statements of the Company for the financial period from [*date*] to [*date*] that we conducted pursuant to Section 14(1) of the Act, nothing came to our attention that caused us to conclude that any statement in the Certificate of Management dated [] given on behalf of the Company in respect of that year is inaccurate or unreasonable in any material respect.

SCHEDULE E

CAYMAN ISLANDS

If the applicant is a company incorporated in the Islands:

- (a) the full names, addresses and nationalities of each shareholder who holds more than two percent of its share capital;
- (b) the annual accounts for the two years immediately preceding the year of application of each shareholder which is a body corporate to which paragraph (a) applies, together with similar accounts of the parent body, if any, of each such body corporate;
- (c) two or more references verifying the good financial standing of each shareholder who is a natural person to whom paragraph (a) applies;
- (d) the full names, addresses and nationalities of all directors, managers and officers of the applicant;
- (e) two character references for each of the persons referred to in paragraph (d) and, for each such person, a police or other certificate satisfactory to the Inspector that the person has not been convicted of a serious crime or any offence involving dishonesty;
- (f) evidence acceptable to the Inspector of the availability to the applicant at all times of adequate professional knowledge and experience in the banking or trust business, as the case may be, and the names of at least two of its directors actively engaged in the business of the applicant, one of whom shall possess a sound professional knowledge of, and experience in, the banking or trust business as the case may be;
- (g) the names and addresses of the registered offices of all subsidiary companies of the applicant together with a statement as to how much of the capital of each such company constitutes an asset of the applicant;
- (h) the name and address of the firm of auditors practicing in the Islands and

- approved by the Inspector appointed to audit the accounts of the applicant;
- (i) a statement giving the date for the drawing up of the annual accounts of the applicants;
 - (j) business references from two banks or two trust companies, as the case may be;
 - (k) details of the current business activities, if any, of the applicant and its proposed activities if the licence applied for is granted in including -
 - (i) its business aims;
 - (ii) a detailed statement setting out its proposed initial assets and its proposed assets and expected liabilities at the end of each of the two years next succeeding the date of such grant together with an estimate of expected income;
 - (iii) particulars of its management structure and personnel;
 - (iv) a statement as to its customer base, including, in the case of an application for a Restricted licence, the names and addresses of its customers; and
 - (v) a copy of its most recent balance sheet and details of its fee earnings, if any; and
 - (l) requests for any exemption from the requirements of the Law sought by the applicant.

SCHEDULE F

CAYMAN ISLANDS

If the applicant is a company incorporated outside the Islands:

- (a) a list certified by its secretary containing the names, addresses and nationalities of its directors and corporate officers;
- (b) a chart showing the relationship to its subsidiaries and affiliates and any holdings company;
- (c) the name and address of its auditors;
- (d) a statement giving the date for the drawing up of its annual accounts;
- (e) a copy of its latest annual accounts and those of its holding company, if any;
- (f) a letter, or letters, addressed to the Governor under the hand of its presiding officer containing -
 - (i) a statement describing in outline the history of the applicant and its present business activities;
 - (ii) a brief description of each of its subsidiaries and affiliates;
 - (iii) the reasons for wishing to obtain the licence sought and its business aims for the applicants;
 - (iv) evidence acceptable to the Inspector of the professional knowledge and experience in banking or trust business, as the case may be, of the directors and managers, and certificates satisfactory to the Inspector showing that none of them have been convicted of a serious crime or any offence involving dishonesty;
 - (v) confirmation in writing under the hand of the presiding officer of the

applicant and the presiding officer of its parent body, if any, that they concur in the making of the application; and

- (vi) requests for any exemption from the requirements of the Law sought by the applicant;
- (g) business references from two banks or trust companies of international repute, as is appropriate; and
- (h) a statement in writing in a form acceptable to the Inspector accepting legal responsibility for the obligations and liabilities of the applicant executed by and binding on the parent company, if any, of the applicant.