

New regulations in the Cayman Islands exempt Private Trust Companies from requiring a Trust Licence

After much debate and anticipation, new regulations relating to private trust companies have come into force in the Cayman Islands which exempt private trust companies from having to obtain a trust licence. In conjunction with the amendment to the *Banks and Trust Companies Law (2007 Revision)* (the "Law") in August, the *Private Trust Companies Regulations, 2008* (the "Regulations") came into force on 15 September 2008. The Regulations provide the new regulatory framework in which certain private trust companies incorporated in Cayman will no longer require a Restricted Trust Licence to be granted by the Cayman Islands Monetary Authority (the "Authority") and maintained annually.

Until now, a private trust company required a Restricted Trust Licence under the Law and the application process was, at times, found to be onerous and time consuming. Cayman was one of the few remaining offshore jurisdictions where a private trust company required a Trust Licence. For example, the British Virgin Islands ("BVI") enacted regulations effective 1 August 2007 which exempt BVI companies from obtaining a Trust Licence under the BVI's *Banks and Trust Companies Act 1990* (as amended) if certain conditions are satisfied.

Under the new regime, the Regulations provide that the private trust company must maintain its registered office in the Cayman Islands at the office of a company that holds a Trust Licence under the Law (the "Licencee") but the private trust company itself is not required to have a Trust Licence. The onus is on the Licencee to be ultimately responsible for ensuring all due diligence requirements are met in relation to the private trust company. It is also a requirement that the name of the company must include the words "Private Trust Company" or the letters "PTC".

In general terms, the new Regulations provide that a Cayman Islands company that carries on connected trust business does not require a Trust Licence under the Law. The term 'connected trust business' introduces into statute the concept of connected persons, which includes related persons. Instead of obtaining a Restricted Trust Licence, such a company will have the option to register with the Authority and make an annual declaration to the Authority setting out among other things, the name of the company, the names of the company's directors, and the name of the holder of the Trust Licence providing registered office services to the company etc. (It should be noted that it will still be possible to obtain a Restricted Trust Licence for a private trust company, if that is desired.)

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As an alternative to paying the CI\$7,000 (approximately US\$8,537) Restricted Trust Licence fee (payable on initial application and annually thereafter), a private trust company established under the new Regulations will be required instead to pay an initial fee of CI\$3,500 (approximately US\$4,268) to the Authority and an annual registration fee of CI\$3,000 (approximately US\$3,659) thereafter.

The Cayman Islands Branch of the Society of Trust and Estate Practitioners (STEP) has welcomed the introduction of the new regulatory framework as it is anticipated it will have a positive impact in the jurisdiction. Private trust companies have become increasingly popular in offshore financial centres in recent times. The Cayman Islands will now be able to offer a quick and efficient application procedure to those seeking a reputable jurisdiction in which to incorporate private trust companies.

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