

GUIDE TO BANKS AND TRUST COMPANIES IN THE CAYMAN ISLANDS

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PREFACE

This Guide is a summary of the law and procedures relating to the establishment and operation of banks and trust companies in the Cayman Islands.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

Appleby

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1. CAYMAN ISLANDS - JURISDICTION OF CHOICE

The Cayman Islands is a jurisdiction recognised worldwide as an international financial centre of the highest calibre. Leading financial institutions, Fortune 500 companies and private and public businesses from across the globe have chosen Cayman as their jurisdiction of choice for many reasons, including the following:

Reputation: due to its well established legal system, stability and strong financial services industry, the Cayman Islands have a reputation as a high quality offshore centre.

Flexibility: the Cayman Islands have the advantage of progressive “leading edge” legislation, developed in consultation and collaboration with industry stakeholders.

Central time location: the Cayman Islands’ central time location (GMT-5) is ideal for organisations operating their businesses from Asia, Europe and the Americas.

Tax neutrality: Cayman has no capital gains, income, profits, corporation or withholding taxes (whether on the offshore vehicle or on holders of securities issued by such vehicle). If the offshore vehicle is incorporated as an exempted company it can obtain an undertaking from the Cayman Islands Government that it will remain tax-free for a 20 year period and in the case of exempted trust or an exempted limited partnership the period is up to 50 years. Investors in Cayman vehicles must always obtain advice on the impact of taxation in the jurisdiction in which they are tax resident before investing.

Speed: once all necessary information, including ‘know your client’ documentation, is gathered and verified, a Cayman Islands company can be incorporated within a day.

Availability of world-class professional services: Cayman has a wealth of lawyers, accountants and other service providers with renowned expertise.

Trustworthy and reliable legal system: Cayman Islands law, derived from English common law and supplemented by local legislation, ensures that Cayman Islands entities are internationally understood and accepted. The Cayman court system is well developed with appeals ultimately going to the Privy Council in London.

Compliance culture: the Cayman Islands has long been committed to implementing best international practices and is compliant with the anti-money laundering and anti-terrorist financing requirements of the Organisation of Economic Cooperation and Development (**OECD**) and Financial Action Task Force. Cayman is on the OECD “white list” and has entered into a multitude of tax information exchange agreements.

Stable and business-oriented government: the Cayman Islands are a British Overseas Territory and have a history of stable government, committed to promoting the financial services industry.

Sensible and proportionate regulation by the Cayman Islands Monetary Authority (Authority): the Authority’s mission is to regulate and supervise the financial services industry in order to maintain a first class financial system. The Authority’s focus is on safeguarding the interests of investors in, and customers of, regulated institutions from undue loss. The Authority has regard to international standards and the need for operational freedom by financial services providers, with the focus on maintaining a dynamic and competitive industry.

Exchange controls: there are no exchange control regulations in the Cayman Islands. As such, money and securities in any currency may be freely transferred to and from the Cayman Islands.

With this extensive portfolio of advantages, it is unsurprising that the Cayman Islands has established itself as a leading offshore banking and trust companies centre.

2. TYPES OF LICENCES

2.1 Banking Licences

Banks and trust companies seeking to carry on banking business from or in the Cayman Islands must obtain a licence from the Authority pursuant to the provisions of the Banks and Trust Companies Law (the **Law**)¹. Banking business is defined under the Law as the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or other similar account money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise.

There are three types of banking licences:

Category “A” Banking Licence: This type of licence will normally only be granted to a branch or subsidiary of a major international bank. Most banks with category “A” licences offer retail commercial banking facilities in the Cayman Islands to local residents.

Category “B” Banking Licence: This permits the carrying on of banking business anywhere in the world except in the Cayman Islands. Business may be carried on from the Cayman Islands for clients outside the jurisdiction and all management and other functions may be carried on in Cayman. This type of licence will also normally be granted only to a branch or subsidiary of a major international bank.

Restricted Category “B” Banking Licence: This is a restricted form of the above banking licence and limits business to named clients outside the Cayman Islands usually having some connection with each other (i.e. companies within a group).

2.2 Trust Company Licences

Application is also made to the Authority if a trust licence is sought in order to conduct trust business. Trust business is defined under the Law as the business of acting as trustee, executor or administrator.

A restricted trust licence is issued on the same basis as a restricted category “B” banking licence: the trust business is limited to certain named clients. The restricted trust licence enables a “private” trust company to be established. This is particularly desirable for clients wishing to maintain an element of control over the trustees of trusts, particularly those trusts established for the benefit of their families.

3. TYPES OF COMPANIES

Under the Companies Law of the Cayman Islands, there are several different forms of company that can be incorporated or registered in the jurisdiction. Ordinary companies are those that are incorporated in the Cayman Islands typically with a store-front or physical presence, participating in the local retail economy of the islands. Exempted companies are those that are incorporated in the Cayman Islands but conduct their business outside of the jurisdiction. The law also permits foreign companies to be registered and licensed to carry on business in the jurisdiction.

¹ Exceptions apply to certain private trust companies, controlled subsidiaries and trustees of alternative financial instrument trusts.

3.1 Branches

In the case of a branch operation, the foreign bank or trust company must apply to register as a foreign company in accordance with the provisions of the Companies Law and obtain a banking or trust licence.

3.2 Exempted and Ordinary Companies

For applicants other than branches, a Cayman Islands company will be incorporated either as an ordinary company or an exempted company depending on the client's requirements. (Note, however, that all Category "A" Banking Licence holders must take the form of an ordinary company.)

Exempted companies are the most commonly used type of company for an offshore bank, and have several tangible benefits:

- The company receives a guarantee from the Government that it will not be taxed for twenty years after incorporation;
- It is permitted shares of no par value; and
- The name need not include the word "Limited" or "Ltd."

4. SUPPORTING DOCUMENTATION

The Authority requires extensive information and documentation for a branch licence, including (but not limited to) a copy of the applicant's charter and constitutional documents and full particulars (including references and personal declarations) of directors, shareholders and the major corporate officers. The Authority will require a complete picture of the applicant's financial position and business plans, as well as assurances of relevant experience of at least one director.

For the granting of a locally incorporated banking or trust licence, the Authority also requires considerable supporting documentation including (but not limited to) personal questionnaires and references for shareholders, directors and controllers, evidence of relevant experience of at least one director, letters of recommendation of established institutions and approval from the parent's supervisory authorities (where applicable). The Authority will also require the applicant's two year business plans and detailed documentation setting out:

- the applicant's business aims;
- a description of its customer base (e.g. corporate, private, related party, geographical distribution, etc.);
- its asset structure (loan portfolio, investment policy, liquidity guidelines, etc.);
- its management structure, base of operations and overall staffing; and
- its off balance sheet and fee earning activities.

Applications for restricted licences must specify all parties with whom the licensee will do business. For a restricted trust licence details of the ultimate settlors and beneficiaries of the trusts to be administered must be provided.

Any significant change in the scope of business after licensing should be authorised by the Authority.

The Authority has helpful checklists on its website setting out exactly what documentation is required to support licence applications.

5. NAME OF THE COMPANY

Except with the consent of the Authority, no company may be registered, or continue to be registered, with a name which contains the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives. If the company is to be an ordinary company, it must include in its name the word "Limited" or its abbreviation "Ltd."

6. SHAREHOLDER REQUIREMENTS

Any shareholder holding more than 10% of the licensee's issued share capital or voting rights that is a corporation is required to submit audited annual accounts for the two years immediately prior to the year of application, together with similar accounts for the parent body, if any, of each such body corporate.

If a shareholder is a privately owned company an undertaking will normally be required from the ultimate beneficial owners to the effect that there will be no issue or transfer of shares in the shareholder without the prior approval of the Authority.

7. AFFILIATES AND SUBSIDIARIES

The names of any affiliate or subsidiary companies of the licensee must be disclosed to the Authority. No branch, office or subsidiary of a Cayman licensed bank or trust company may be established without prior approval of the Authority.

8. CONSENTS

If the laws of the country of the parent or associate of a bank or trust licensee require the consent of any government authority for establishing a branch or subsidiary, that consent must be produced to the Authority. In other cases, the Authority will require notice of intention to establish the bank or trust licensee in the Cayman Islands to be given to the appropriate authority having jurisdiction over the parent or associate and written confirmation from such authority that no consents are required must be produced. Similarly, where the principal place of business of the licensee will be outside of the Cayman Islands, the authorities having jurisdiction over such place of business must consent to having such a principal place of business in that jurisdiction (or confirm that no such consent is required).

9. TIME FOR ESTABLISHMENT

It normally takes approximately two months to complete all aspects of establishing and licensing a bank or trust company or branch.

10. LOCAL PRESENCE

Each bank and trust company, other than one holding a category "B" banking licence, that is a subsidiary or branch of a bank licensed in a country or territory outside the Islands, is required to have a place of business in the Islands. A place of business in Cayman must have such resources (including staff and facilities) and such books and records as the Authority considers appropriate having regard to the nature and scale of the business. Each licensee is also required to have two individuals or a body corporate, approved by the Authority, resident or incorporated in Cayman to be its agents.

A bank holding a category "B" banking licence that is a subsidiary or branch of a bank licensed in a country or territory outside Cayman, in lieu of a local place of business, appoint a local category "A" licensed bank to provide facilities for the maintenance of its registered office, provide authorised agents for service as required under the Law, file the company annual return and perform other corporate services and supply all

information required by the Authority. Among the established banks and trust companies which provide these services are the following:

- Butterfield Bank (Cayman) Limited
- Cainvest International Bank Ltd.
- Cayman National Trust Co. Ltd.
- CIBC Bank & Trust Company (Cayman) Limited
- HSBC Financial Services (Cayman) Ltd.
- Royal Bank of Canada Trust Co. (Cayman) Ltd.
- Scotiabank and Trust (Cayman) Ltd.

11. **BALANCE SHEET PROJECTIONS**

To assist the Authority in determining the appropriate paid in capital for subsidiaries or branch bank licence applicants, the Authority requires an applicant to submit a detailed financial 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 the grant of the licence, together with an estimate of expected income.

12. **CAPITAL REQUIREMENTS**

The actual paid up share capital that is required of a licensee is at the discretion of the Authority. However, the statutory minimums are as follows (rounded):

Category "A" Banking licensee:	US\$480,000
Category "B" Banking licensee:	US\$480,000
Restricted Category "B" Banking licensee:	US\$24,000
Trust licence:	US\$480,000
Restricted Trust licensee:	US\$24,000

The above amounts are minimum amounts and the actual amount should be commensurate with prudent banking practices. The initial capital will be determined based upon the two year projected balance sheet mentioned herein.

The guidelines set by the Basel Committee for Bank Regulation and Supervisory Practices for the calculation of the capital adequacy ratio (risk asset ratio) have generally been adopted by the Authority. The Basel Committee recommends a minimum risk asset ratio of 8%. However, the Authority requires subsidiaries to maintain a minimum risk asset ratio of 12% and privately owned banks are required to maintain a minimum of 15%.

In the case of branches, since a branch is not a separate legal entity, no separate minimum requirements will apply and the Authority will review the relevant bank's overall strength. Some separate reporting to the Authority is required of branches.

13. **GOVERNMENT FEES**

Application fees are payable at the time of filing. Further fees are payable on the granting of the licence and annually thereafter. These fees vary according to the type of licence granted and are payable on or

before 15 January every year. In addition to licence fees, there are government fees payable on the incorporation of the company and annually thereafter. A schedule of fees can be provided upon request.

14. **AUDITORS**

Every licensee incorporated in the Cayman Islands is required to have its accounts audited annually by an auditor approved by the Authority and is required to forward its audited accounts to the Authority within three months of the end of its financial year. Quarterly unaudited financial reports on the prescribed forms will also be required.

Among the firms at present approved by the Authority are:

- Deloitte
- Ernst & Young
- KPMG
- PricewaterhouseCoopers

Other large international firms may be acceptable, but banks and trust companies incorporated locally are required to have resident auditors.

The auditor of any licensee is required to notify the Authority if it discovers or comes to suspect that the entity is unable (or likely to become unable) to meet its obligations as they fall due, acting in a manner prejudicial to its investors or creditors, not keeping adequate records, carrying on business in a fraudulent or criminal manner, or not in compliance with relevant laws.

15. **ANTI-MONEY LAUNDERING OBLIGATIONS**

The Cayman Islands legal system incorporates anti-money laundering laws and regulations in accordance with modern international best practice. Appleby (Cayman) Ltd. has always required certain information from our clients in all cases. Beyond that, we are required to obtain and keep on file extensive documentation of the identity of each client for whom certain specified types of business are conducted. In certain cases, it may be possible to rely on an exemption or on client identification carried out by another regulated service provider, and we will do so where appropriate. However, it will often be necessary to ask clients or prospective clients for documentary evidence of their identity, and often also that of related parties, as well as certain references.

We ask for the co-operation and understanding of our clients in this process, which is an important element of the drive by leading financial centres such as the Cayman Islands to ensure that they are not used for unlawful purposes.

For more specific advice on banks and trust companies in the Cayman Islands, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).