

PRIVATE TRUST COMPANIES: COMPARISON OF LAWS OF BARBADOS, CAYMAN ISLANDS AND BRITISH VIRGIN ISLANDS

Provided below are a comparative summary of the legal, regulatory and corporate procedures in some of the popular jurisdictions toward establishing a Private Trust Company (“PTC”). In this article we provide a comparison between Barbados, the Cayman Islands and the British Virgin Islands

For brevity, a PTC in this article is defined as a company, incorporated in the relevant jurisdiction, having limited business purpose of acting as a trustee for a single trust or a limited group of related trusts.

NAME OF THE ENTITY		
BARBADOS	CAYMAN	BVI
The company must use the words “Private Trust Company” or the letters “PTC” in its name.	The company name must include the designation “Private Trust Company” or the letters “PTC”.	The company must use the word “(PTC)” placed just before the Limited or Ltd or other ending permitted under the BVI Business Companies Act.

INCORPORATION WITHOUT LICENSE		
BARBADOS	CAYMAN	BVI
N/A	<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 at the time of the registration application, and on or before 31 January every year, stating its name, the names of its directors and registered office provider, with confirmation that the PTC is compliant with the Regulations.</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 completed within 24 hours.</p>	<p>A PTC in the BVI must be incorporated as a business company.</p> <p>Although the grant of exempt status does not require approval from the government, the onus for vigorous anti-money laundering and know-your-client lay with the PTC and its registered agents.</p> <p>A fairly simple process of incorporation is available which can usually be completed in just one day by filing the memorandum and articles of association with the Registrar along with a certificate from its registered agents.</p>

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INCORPORATION WHERE LICENCE IS REQUIRED

The licensing application process for a PTC in any of the three jurisdictions can be time consuming and add costs to the process.

BARBADOS	CAYMAN	BVI
<p>The Barbados application form is a simple two page document. Any Barbados PTC requires a 'Special Person', a Barbadian resident and duly qualified individual. The process and regulation is light-touch otherwise. Time taken: 2 to 4 weeks to acquire a licence; See: https://internationalbusiness.gov.bb/wp-content/uploads/2016/02/PTCapplication.pdf</p>	<p>In the Cayman, beneficial owners are required to disclose a substantial amount of personal information to the relevant authorities. Time taken: at least 8 to 12 weeks 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 include: police reference letters, financial reference from a bank/trust company, business plan, office procedures and office compliance manual.</p> <p>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.</p>	<p>Same as Cayman.</p>

DIRECTORS, OFFICERS AND REPRESENTATIVES

BARBADOS	CAYMAN	BVI
<p>Each Barbados exempted company is required to have at least one qualified Barbados resident director (e.g. lawyer or accountant) with a registered agent and registered office only.</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>

SHAREHOLDERS AND SHARE REGISTERS

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 Barbados 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.

The ownership of a PTC is typically structured in one of two ways:

An existing licensed trust company may be appointed trustee of a purpose trust which would then incorporate the PTC. 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 it 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 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.

The PTC's shares are in the name of an individual i.e. the settlor. 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.

CONSTITUTIONAL DOCUMENTS

BARBADOS	CAYMAN	BVI
<p>In Barbados, the constitutional documents of a PTC are its By-laws which are filed with the Barbados Registrar of Companies and is available for public inspection.</p> <p>By-laws are filed with the Barbados Registrar of Companies and is available for public inspection.</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>

DIRECTORS' MEETINGS

None of the jurisdictions require for the meetings of the directors to be held within the jurisdiction.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

BARBADOS	CAYMAN	BVI
<p>In Barbados, it is possible to provide for exculpation and indemnification of a director and officer but such indemnity would usually 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>

PUBLIC RECORDS		
BARBADOS	CAYMAN	BVI
<p>The following documents are public record for Barbados exempted companies:</p> <ul style="list-style-type: none"> • Notice of the Registered Office; • By-laws; • 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 the BVI, the Memorandum and Articles of Association (including the name of the company's Registered Agent and Registered Office) and the Certificate of Incorporation are public records. In addition, a BC may elect to submit the Register of Members to the Registrar and thus make it available for public inspection.</p> <p>A company or the charge may elect to register a charge with the Registrar; if so, such register kept by the Registrar is a public record.</p>

SHARE CAPITAL		
BARBADOS	CAYMAN	BVI
<p>There is no statutory minimum authorised or issued share capital for a PTC.</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.</p>	<p>There is no minimum authorised or issued share capital for a PTC in the BVI. 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.</p> <p>In order to minimise such fees the authorised number of shares should not exceed 50,000.</p>

ANNUAL FEES AND FILINGS		
BARBADOS	CAYMAN	BVI
<p>The annual government fee for a Barbados PTC is US\$3,000</p>	<p>Annual registration fee is US\$4,268.29</p>	<p>The annual government fee for a BVI PTC is US\$1,350 for companies authorised to issue up to 50,000 shares. The annual fee is US\$2,650 for companies authorised to issue more than 50,000 shares.</p> <p>There are no annual filing requirements or registration fees for PTC's in BVI.</p>