



ICLG

The International Comparative Legal Guide to:

Private Client 2018

7th Edition

A practical cross-border insight into private client work

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EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Nine general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 28 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance and STEP for their continued and valued participation in the guide.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Cayman Islands

Maples and Calder

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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

There is no direct taxation in the Cayman Islands.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

See the answer to question 1.1.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

There is no direct taxation in the Cayman Islands.

1.4 If residence is relevant, how is it defined for taxation purposes?

See question 1.3 above.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

There is no direct taxation in the Cayman Islands.

1.6 If nationality is relevant, how is it defined for taxation purposes?

See question 1.5 above.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

None. There is no direct taxation in the Cayman Islands.

2 General Taxation Regime

2.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

There are no estate or gift taxes in the Cayman Islands.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

There is no direct taxation in the Cayman Islands.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

There are none.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

When taking up residence in the Cayman Islands, personal belongings moved within the first six months of residence are not subject to duty, as long as all items imported are used personal belongings that are over six months old, including computers, household goods and furniture (proof of purchase may be required if this is in question); and vehicles, alcohol and tobacco are not included in the duty exemption. Generally speaking, import duty is 22% of the sum of the market value of the possession, and the insurance and shipping costs of delivery to its destination in the Cayman Islands. Certain items, such as alcoholic beverages and luxury motor cars, suffer higher rates of import duty.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

There are no anti-avoidance taxation provisions in the Cayman Islands.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

There are no general anti-avoidance or anti-abuse rules in the Cayman Islands.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

No, there are not.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

There are no estate or gift taxes in the Cayman Islands.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

There are no income or capital gains taxes in the Cayman Islands.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

There is no direct taxation in the Cayman Islands.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

There is no direct taxation in the Cayman Islands.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Dutiable items accompanying the owner on his or her arrival in the Cayman Islands are exempt from duty as to the first CI\$350 (approximately US\$420). This tax-free exemption does not apply to goods imported that are not accompanied by the owner on his or her arrival or re-entry to the Cayman Islands. Unaccompanied imports suffer import duty, generally speaking, at 22% of the value plus shipping and insurance. Certain categories are zero or lower rated; most commonly items also for sale in the duty-free stores for the cruise ship passenger trade as well as, for example, some necessities. Equally, luxury items, such as alcoholic beverages and motor cars above a certain value, suffer higher rates of duty.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

There is no particular tax involved in the purchase of residential properties in the Cayman Islands other than a one-time stamp duty at the time of purchase, which is 7.5% of the purchase price.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

There is no direct taxation in the Cayman Islands.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

There is no direct taxation in the Cayman Islands.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

There is no direct taxation in the Cayman Islands.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

There is no direct taxation in the Cayman Islands. The Cayman Islands has entered into a number of tax information exchange agreements and, strictly speaking, only one double tax treaty, with the United Kingdom.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

There is no direct taxation in the Cayman Islands.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

There is no direct taxation in the Cayman Islands.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

There is no direct taxation in the Cayman Islands.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

The Cayman Islands' laws on succession largely follow the English law approach. Accordingly, under Cayman Islands law, the applicable law governing succession to movables (and for determining both the essential and formal validity of a will) of a deceased person is that of his last domicile; the applicable law governing succession to immovables (and the essential validity of a gift of such in a will) is the law of the jurisdiction in which the immovable property is situated. The Cayman Islands' test for establishing a person's domicile is the same as the English law test: the domicile of the individual's father at the date of birth (if the parents were married at the time and, if not, from the mother – domicile of origin) which continues to apply unless replaced by migrating to a different country (or, in the case of a federal country, state) with the positive intention of making that different country (or, in the case of a federal country, state) the permanent home (domicile of choice) and having made a clean break with the domicile held by the individual immediately prior to the change.

Having established domicile as a matter of Cayman Islands law, movable property (including shares in a Cayman Islands company whose register is maintained in the Cayman Islands) follows the succession laws of the testator's last domicile (see question 7.2 in relation to the laws of succession in relation to real estate).

It may be helpful to have a will disposing exclusively of such Cayman Islands *situs* movable property and, if so, it is advisable for that will to be governed by Cayman Islands law, but essential that it complies with the formal validity requirements for wills under the laws of the deceased's last domicile. As it is the domicile at death that is critical, it is also essential to keep the will under review: a change in domicile after the date of execution of the will may make it invalid. It is also vital to ensure that any such will is not inadvertently revoked by an over-inclusive revocation clause in a subsequent will disposing of non-Cayman Islands *situs* assets.

The domestic requirements for formal validity of a will (i.e. those applicable to persons dying domiciled in the Cayman Islands at death) are set out in the Wills Law; in summary, the will has to be in writing, signed by the testator in the presence of two witnesses present at the same time and in his presence, who also sign. The testator must intend by his signature to give effect to the will. Concerning essential validity, the testator has to have the necessary testamentary and mental capacity, he has to know and approve the contents of the will, he must not be subject to any undue influence, and there must be no component of fraud or forgery. Testamentary or mental capacity requires the testator to be of sound mind, memory and understanding. He must understand the extent of his estate and be capable of forming testamentary intention; his memory must be sound to recall the persons who ought to be considered as his likely beneficiaries, and he has to be able to understand the ties of those people to him by blood or friendship, and their claims on these or other grounds on his testamentary generosity. Undue influence follows the English test, that is, "influence" does not mean that the testator was persuaded to make his will in a certain way for reasons that other people might consider foolish or inappropriate. Undue influence in this context means coercion to the extent that the will does not reflect the actual intentions of the testator. To seek to declare a will invalid on grounds of fraud or forgery requires a very high degree of proof.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

Regardless of the domicile of the deceased, if the deceased owns real estate, whether in the Cayman Islands or elsewhere, Cayman Islands law will apply the laws of succession of the jurisdiction where the property is located to the question of the succession to that property (*lex situs*).

8 Trusts and Foundations

8.1 Are trusts recognised in your jurisdiction?

Yes, trusts are recognised in the Cayman Islands.

8.2 How are trusts taxed in your jurisdiction?

There is no direct taxation in the Cayman Islands. There is nominal stamp duty (rarely more than CI\$50) on certain deeds and other documents executed in connection with trusts.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

The Cayman Islands has specific statutory provisions that cover conflicts of laws concerning trusts. Those provisions address, and decline to give effect to, attempts to set aside a trust merely on the

grounds that the terms of the trust may defeat a forced heirship claim of a disappointed heir of the settlor. There are no forced heirship rules under Cayman Islands law.

8.4 Are foundations recognised in your jurisdiction?

The Cayman Islands passed its own Foundation Companies Law in early 2017. A foundation company is a body corporate with legal personality distinct from that of its members, directors, officers, supervisors and founder. It can own property and sue and be sued in its own name. It is a vehicle that can provide for the transfer of wealth across the generations and is thus ideally suited for wealth and succession planning. A foundation from a civil law country that largely resembles a company or corporation is likely to be recognised in the Cayman Islands as a legal person similar to a foreign company.

8.5 How are foundations taxed in your jurisdiction?

There is no direct taxation in the Cayman Islands.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

The Cayman Islands has specific statutory provisions that cover conflicts of laws concerning foundation companies as well as trusts (see question 8.3 above) that also addresses, and declines to give effect to, attempts to set aside a transfer of assets into a foundation company merely on the grounds that its terms may defeat a forced heirship claim of an heir to the settlor. There are no forced heirship rules under Cayman Islands law.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

There is no concept of civil partnership under Cayman Islands law. There is no concept of same-sex marriage under Cayman Islands law.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

There are no forced heirship or community property regimes in the Cayman Islands.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

There is no legislation in the Cayman Islands that authorises or upholds such agreements but the Cayman Islands courts are likely to follow recent English authority on pre-/postnuptial agreements (see question 9.4 below).

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

There is no community property regime in the Cayman Islands

and so the court retains broad discretion to decide the division of assets on divorce. The court will first consider the best interests of any children of the marriage and thereafter will consider the responsibilities, needs, financial and other resources, actual and potential earning power of the parties, while aiming for equality of division save in exceptional circumstances.

The Cayman Islands, like England, does not have legislation that authorises or upholds pre-/postnuptial agreements. Pre-nuptial agreements have been held to be a factor for consideration in the division of matrimonial assets, the court retaining discretion as to the weight to be afforded to the agreement in the circumstances of each particular case.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Besides the system of entry under a work permit, to gain entry to the Cayman Islands as a resident, a person must be a Caymanian national, have the right of permanent residence or hold a Certificate of Residency as a person of independent means or a person who has directly invested in the Islands. The requirements of each are outlined below in question 10.2. To gain the right of permanent residence, a person must have been legally and ordinarily resident in the Islands for at least eight years and have fulfilled certain other specified criteria as determined by the Caymanian Status & Permanent Residency Board.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

There are two special categories for entry: (i) a Residency Certificate for Persons of Independent Means (“IM Certificate”); and (ii) a Residency Certificate of Direct Investment (“DI Certificate”). A person may apply for an IM Certificate if they are at least 18 years old, have no serious criminal convictions, are in good health with adequate health insurance and must not be in need of engaging in employment in the Cayman Islands. In addition, if they wish to reside in Grand Cayman, they must have a continuous source of annual income in the amount of CI\$120,000 and have invested CI\$500,000 in Grand Cayman, of which at least CI\$250,000 must be in developed residential real estate; if in the other two islands, the applicant must have a continuous annual income of CI\$75,000 and have invested the sum of CI\$250,000 locally, of which at least CI\$125,000 must be in developed real estate. Alternatively, a person may apply for a DI Certificate if he has invested, or proposes to make an investment of, at least one million dollars in an employment-generating business in the Cayman Islands. The DI Certificate would allow the holder to reside in the Cayman Islands permanently with their families, and to work in the business or businesses in which they have invested for up to 25 years, and it is renewable or extendable at the end of this period.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

There are two main processes by which a person may obtain the right to be Caymanian. The first is through a connection to the Islands by

virtue of birth or marriage. The second way is by applying to the Caymanian Status & Permanent Residency Board for Caymanian Status. To qualify for this process, a person must be: (i) a permanent resident; (ii) naturalised as a British Overseas Territories Citizen (BOTC); and (iii) legally and ordinarily resident in the Islands for at least five years after the grant of BOTC. If a person is granted Caymanian Status, he will have the full rights and benefits of a Caymanian including the right to vote, the right to have a Cayman Islands passport and to reside permanently in the Cayman Islands.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

There is no direct taxation in the Cayman Islands.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

No, there is no direct taxation in the Cayman Islands.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

The Cayman Islands has entered into a number of tax information exchange agreements directly with each of Argentina, Aruba, Australia, Belgium, Brazil, Canada, China, Curaçao, the Czech Republic, Denmark, Faroes, Finland, France, Germany, Greenland, Guernsey, Iceland, India, Ireland, the Isle of Man, Italy, Japan, Malta, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Qatar, the Seychelles, Saint Maarten, South Africa, Sweden, the United Kingdom and the United States of America.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

The Cayman Islands has entered into intergovernmental agreements (“the IGAs”) with the United States of America and the United Kingdom in relation to FATCA and the UK equivalent of FATCA, respectively. The IGAs impose reporting obligations on certain Cayman Islands financial institutions, and the jurisdiction has enacted relevant local legislation. The Cayman Islands is also an “early adopter” of the OECD Common Reporting Standard.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

No, there are not.

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MAPLES

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