

Private Client Law in the Cayman Islands

Taxation

Tax Year and Payment Dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The Cayman Islands currently has no form of income, corporate or capital gains tax, and no estate duty, inheritance tax, wealth tax or gift tax. The Cayman Islands has no official tax year.

Domicile and Residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Domicile

Not applicable (see *Question 1*).

Residence

Not applicable (see *Question 1*).

Other

Not applicable (see *Question 1*).

Taxation on exit

3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

No tax is imposed when a person leaves, nor are there any fiscal consequences of leaving the Cayman Islands.

Temporary Residents

4. Does your jurisdiction have any particular tax rules affecting temporary residents?

Not applicable (see *Question 1*).

Taxes on the Gains and Income of Foreign Nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Not applicable (see *Question 1*).

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

Not applicable (see *Question 1*).

Inheritance Tax and Lifetime Gifts

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Not applicable (see *Question 1*).

8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

Tax rates

Not applicable (see *Question 1*).

Tax free allowance

Not applicable (see *Question 1*).

Exemptions

Not applicable (see *Question 1*).

Techniques to reduce liability

Not applicable (see *Question 1*).

Other

Not applicable (see *Question 1*).

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

Not applicable (see *Question 1*).

10. Are there any other taxes on death or on lifetime gifts?

Not applicable (see *Question 1*).

Taxes on Buying Real Estate and Other Assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Purchase and gift taxes

Persons are liable to pay stamp duty on the purchase of immovable property in the Cayman Islands.

The rate is 7.5% of the consideration or, if higher, 7.5% of the market value. There are no gift taxes.

Wealth taxes

Not applicable (see *Question 1*).

Other

Not applicable (see *Question 1*).

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

Not applicable (see *Question 1*).

Taxes on Overseas Real Estate and Other Assets

13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

Not applicable (see *Question 1*).

International Tax Treaties

14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

There is one double tax treaty, with the United Kingdom.

Wills and Estate Administration

Governing Law and Formalities

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

The law applicable to the succession of a deceased person's:

- Immovable property is the law of the jurisdiction where that property is situated.
 - Movable property is the law of the deceased's domicile.
 - The validity of the will depends on whether it is compliant with the applicable laws:
 - If the assets are immovable property, the will must comply with the formalities specified by Cayman Islands law. It is advisable to have a will governed by Cayman Islands law.
 - For movable assets (including shares in a Cayman Islands company whose register is maintained in the Cayman Islands) formal validity is determined by the law of the deceased's last domicile. It may be helpful to have a will, disposing exclusively of such assets 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. A Cayman Islands trust may be a better solution in many cases as it avoids these and other problems (see *Question 25* and *Question 30*).
16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

The domestic requirements for the validity of a will (that is, those applicable to testators whose last domicile is the Cayman Islands) are set out in the Wills Law (2004 Revision):

- The will must be in writing.
- It must be signed at the end by the testator or by a person elected by the testator, in his presence and at his direction.
- The testator's signature (or the signature of the elected person, which must be signed in the presence of the testator) must be witnessed by two or more witnesses who are present when the will is signed.
- The witnesses must attest and subscribe the will in the presence of the testator.
- The testator must be at least 18 years old and have testamentary capacity.
- These requirements do not vary depending on the nationality, or residence of the testator, but Cayman Islands private international law rules provide for the determination of the formal validity of a will according to the testator's last domicile (see *Question 15*).

Redirecting Entitlements

17. What rules apply if beneficiaries redirect their entitlements?

Beneficiaries of full capacity are free to redirect their entitlements under Cayman Islands law. Gifts of the beneficiaries' entitlements under a will are governed by the same rules as the gifts of any other property.

Validity of Foreign Wills and Foreign Grants of Probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of foreign wills

See *Question 15*.

Validity of foreign grants of probate

Under section 23 of the Succession Law (2006 Revision) and Rule 42 of the Probate and Administration Rules (2008 Revision), where a foreign court (by whatever name) having jurisdiction in matters of probate, has granted probate or letters of administration in respect of a deceased person's estate, the probate or letters can be resealed in the Cayman Islands and take effect as if granted by the Cayman Islands court. The following documents must be submitted:

- Authorisation in writing to make an application on behalf of the executor or administrator.
- A certified copy of the will.
- The original or a certified copy of the death certificate (the certification must be done by the official body responsible for producing death certificates and not by a Notary Public).
- Two certified copies of the grant of probate or letters of administration sealed with the seal of the issuing court.
- Application to the Grand Court.
- Affidavit in support.

Death of Foreign Nationals

19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

The law governing succession is the law of the deceased's domicile as at the date of their death, except in relation to immovable property (see *Question 15*). If a foreign national dies in the Cayman Islands, it will be necessary to establish his domicile.

In summary, an individual's domicile is inherited at birth (from the father if the parents were married at the time and from the mother if not) and remains such unless and until validly changed by, typically, the assumption of residence in a different country or, in the case of a federal country state in which the individual intends to reside permanently or indefinitely, having made a clean break with the domicile held by the individual immediately prior to the change.

Administering the Estate

20. Who is responsible for administering the estate and in whom does it initially vest?

Responsibility for administering

The right of, and responsibility for, administering a deceased person's Cayman Islands estate falls on the personal representative(s) appointed under a Cayman Islands grant of representation or under a foreign grant re-sealed by the Grand Court, and in no other person. Personal representatives are either executors (if appointed by will) or administrators (if not appointed by will). The order of priority of entitlement to a grant of representation, in relation to the estates of the persons dying domiciled in the Cayman Islands, is set out in Rules 32 and 33 of the Probate and Administration Rules (2008 Revision). The order of priority of entitlement in relation to the estates of persons dying domiciled outside the Cayman Islands, is set out in Rule 37.

The powers and duties of Cayman Islands personal representatives (whether under a domestic or re-sealed foreign grant) are determined exclusively by the law of the Cayman Islands and include:

- Ascertaining the Cayman Islands situated estate and worldwide liabilities.
- Getting in the deceased's Cayman Islands situated estate.
- Paying or making due provision for the estate's worldwide liabilities out of the Cayman Islands situated estate (it is possible to obtain protection by appropriate advertisement under section 44 of the Trusts Law (2018 Revision)).
- Distributing the remaining assets to those who are beneficially entitled to them under, and in accordance with, applicable succession law (which may be a system of law other than that of the Cayman Islands).

Vesting

Legal title to the deceased's assets vests in the personal representatives.

However, assets held as joint tenants with a right of survivorship do not form part of the deceased's estate for these purposes and do not vest in the personal representatives (see *Question 38*).

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
- Paying taxes?
- Distributing?

Establishing title and gathering in assets

A grant of representation is required to establish title.

An application for the grant is filed with the Clerk of the Grand Court, together with the relevant supporting documents. For an application to reseal a foreign grant, see *Question 18*.

The following documents must be filed with an application for a grant of probate:

- The original will.
- The application.
- An affidavit of the executor listing the particulars of the deceased and the estate sworn before a Notary Public or Justice of the Peace.
- The grant of probate form (which is the statutorily prescribed form that is signed by the Clerk of the Court, once the grant is approved).
- The original or a certified copy of the death certificate (the certification must be done by the official body responsible for producing death certificates and not by a Notary Public).
- In respect of persons who die domiciled outside the Cayman Islands, the application must also be accompanied by an affidavit of a suitably qualified foreign lawyer from the jurisdiction where the deceased was domiciled.

Procedure for paying taxes

There are no inheritance or estate taxes or duties (see *Question 1*).

Distributing the estate

Personal representatives are responsible for distributing the estate (see *Question 20*).

22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

In the absence of leave of the Grand Court:

- No grant of probate or letters of administration with the will annexed can be issued within 21 days of the death of the deceased.

- No grant of letters of administration can be granted within 28 days of the death of the deceased.

The grant must be obtained within six months of death or two months of the termination of any dispute touching the right to a grant unless special leave of the Grand Court is obtained. Special leave is ordinarily given where a reasonable explanation for the delay is given, subject to the objections of those entitled in a lesser degree of priority.

There is no time limit for an application for the resealing of a foreign grant.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

Any person with an interest can challenge the validity of a will. The principal grounds for such a challenge are:

- Lack of testamentary capacity.
- Lack of knowledge and approval of the will's contents.
- Duress.
- Undue influence.
- Forgery.
- Invalid execution.

Questions can be posed to the Grand Court for determination (Order 85, rule 2, Volume 1 of the Grand Court Rules 1995 (Revised Edition)). An action can be brought by the beneficiary to determine any of the following questions:

- Questions concerning the administration of the estate.
- Questions challenging the composition of any class of persons having a claim against the estate or beneficial interest in the estate.
- Questions concerning the rights or interests of creditors.

The court has wide powers to make orders, including requiring personal representatives to furnish accounts, pay money into court or approve specific transactions.

A beneficiary can also apply to the Grand Court under section 8 of the Succession Law (2006 Revision) to remove any personal representatives found guilty of neglect or misconduct in the administration of the estate. The Grand Court can appoint a replacement.

Succession Regimes

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

There is complete freedom of testamentary disposition for persons dying domiciled in the Cayman Islands.

As to the position regarding the use of Cayman Islands trusts to overcome foreign forced heirship issues, see *Question 25*.

Forced Heirship Regimes

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

Avoiding foreign regimes

There is no forced heirship regime in the Cayman Islands (see *Question 24*).

With regard to trusts established under Cayman Islands law, there are comprehensive conflict of laws rules (set out in Part VII of the Trusts Law (2018 Revision)). These are designed to provide certainty and to prevent a challenge to the validity of the trust on forced heirship grounds.

Section 91 of the Trusts Law (2018 Revision) provides that trusts governed by the laws of the Cayman Islands or dispositions of property held on these trusts cannot be held void, voidable, liable to be set aside or defective, nor can the capacity of any settlor be questioned because:

- The laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust.
- The trust or disposition avoids or defeats rights, claims or interests conferred by foreign law on any person because of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law, any foreign judicial or administrative order or action that recognises, protects or enforces such rights, claims or interests.

An heirship right does not affect the ownership of property nor constitute a liability for the purposes of the Fraudulent Dispositions Law (see section 92, Trusts Law (2018 Revision)) (see *Question 35*). A foreign judgment will not be recognised, enforced or give rise to an estoppel if it is inconsistent with sections 91 or 92 (see section 93, Trusts Law (2018 Revision)).

Assets received by beneficiaries in other jurisdictions

Not applicable (see *Question 24*).

Mandatory or variable

Not applicable (see *Question 24*).

Real estate or other assets owned by foreign nationals

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

See Question 15.

27. Do your courts apply the doctrine of renvoi in relation to succession to immovable property?

Succession to immovable property is determined by the law of the jurisdiction in which the property is situated (see *Question 15*).

There are no reported cases in the Cayman Islands on the application of the doctrine of renvoi in relation to succession to foreign immovable property. However, it is thought that, in certain circumstances, the Cayman Islands courts will accept a renvoi from the foreign court.

Intestacy

28. What different succession rules, if any, apply to the intestate?

The general principles determining the law governing succession are the same for intestate and testate succession (see *Question 15*).

As to the entitlement to the grant of letters of administration, see *Question 20*.

The intestacy rules governing succession to the estate of persons dying domiciled in the Cayman Islands are as follows, depending on who survives the deceased.

Intestate leaves a spouse and issue

The surviving spouse takes the personal chattels absolutely.

In addition, from the residuary estate, the surviving spouse takes the greater sum of either:

- KYD\$20,000.
- 50% of the net value of the residuary estate, with interest from the date of death at a rate of 5% per annum until it is paid or appropriated.

The remainder of the residuary estate is held on the statutory trusts for the intestate's issue (that is, for the children in equal shares at the age of 18 or on marriage under 18, with gifts on a per stirpes basis to the children's issue if they predecease).

If those trusts fail or determine in the lifetime of the surviving spouse, the residuary of the estate is held on trust for the surviving spouse for the residue of his or her life.

Intestate leaves a spouse with no issue

The surviving spouse takes the personal chattels absolutely. 25% of the residuary estate passes to the intestate's surviving parent or parents equally. The remaining 75% passes to the surviving spouse absolutely. If there are no surviving parents, the residuary estate passes to the surviving spouse absolutely.

Intestate leaves no spouse but has issue

The residuary estate is held on the statutory trusts for the intestate's issue.

Intestate leaves no spouse and no issue but leaves a parent or parents

The residuary estate is held on trust for the parents in equal shares absolutely or if only one survives wholly to that parent absolutely.

Intestate leaves no spouse, no issue and no parent

The residuary estate is held on statutory trust absolutely for the following persons surviving the intestate, in the following order and manner:

- For the brothers and sisters of the whole blood.
- For the brothers and sisters of the half blood.
- For the grandparents (where more than one grandparent survives the intestate, in equal shares).
- For the uncles and aunts (being the brothers or sisters of the whole blood of a parent of the intestate).
- For the uncles and aunts of the intestate (being the brothers or sisters of the half blood of a parent of the intestate).

If the deceased leaves no spouse, no issue, no parents and no relatives within the categories described above, the residuary estate belongs to the Crown as bona vacantia. The Crown then has a discretion to provide for the intestate's dependants, whether family members or not, and other persons for whom the intestate might reasonably have been expected to make provision.

29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

Beneficiaries cannot challenge the adequacy of their provision.

Trusts

30. Are trusts (or an alternative structure) recognised in your jurisdiction?

Type of trust and taxation

Trusts are known to Cayman Islands law and, although the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention) has not been extended to the Cayman Islands, the courts of the Cayman Islands recognise most trusts established under foreign law. All the types of trusts possible under English law can be established under Cayman Islands law, including:

- Discretionary trusts.
- Interest in possession trusts.
- Reserved powers trusts.
- Charitable trusts.

In particular, reserved powers trusts (in which powers are reserved to the settlor or conferred on the protector or other person) are common in the Cayman Islands, in part as a result of the enactment of the Trusts (Amendment) (Immediate Effect and Reserved Powers) Law 1998, which is now contained in Part III of the Trusts Law (2018 Revision).

STAR trusts

The Cayman Islands also benefit from the Special Trusts Alternative Regime Law (now to be found in part VIII of the Trusts Law (2018 Revision)), commonly known as STAR, which is unique to the Cayman Islands.

STAR forms an entirely separate regime from ordinary trusts, so only applies where the trust instrument contains a declaration to that effect. The objects of a STAR trust can be persons or purposes, or both. The purposes of a STAR trust can be of any number or kind, charitable or non-charitable, provided they are legal and not contrary to public policy.

Unlike ordinary trusts, STAR addresses the questions of benefit and enforcement separately. Provided there is an effective enforcement mechanism, a beneficiary of a STAR trust need not have any enforcement or information rights, which allows for a number of unique planning opportunities, including:

- Robust forced heirship planning.

- Effective alternative dispute resolution provisions.
- More effective forfeiture clause.
- Preventing beneficiaries becoming aware of the trust (or its value), if it is appropriate.

Exempted trusts

Trusts can be registered as exempted trusts, if there are no Cayman Islands beneficiaries. After registration, the trustees can apply to the Registrar for an undertaking that no future taxes on income, capital assets gains or appreciations, or in the nature of estate duty or inheritance tax, will apply to any property in or income arising under the trusts or the beneficiaries of it. The undertaking usually applies for 50 years.

Where the exempted trust is discretionary, it is also possible to apply for its registration under section 83 of the Trusts Law (2018 Revision). Under this, all rights or remedies which would otherwise have been vested in the beneficiaries are instead vested in the Registrar of Trusts.

There are no direct taxes payable in respect of trusts. If the original trust instrument is executed in or brought into the Cayman Islands, stamp duty of KYD\$40 is payable on it.

Residence of trusts

As trusts are not subject to tax in the Cayman Islands, this issue has not arisen.

31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

Under Cayman Islands conflict of laws rules, trusts governed by the laws of a foreign jurisdiction are usually recognised under Cayman Islands law, unless there are overriding public policy reasons not to do so in a particular case.

When determining the governing law of a trust, regard is given to the terms of the trust and any evidence as to the intention of the parties. Other circumstances of the trust are taken into account only if the terms of the trust fail to provide such evidence (see section 89, Trusts Law (2018 Revision)).

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

Not applicable (see *Question 1*).

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?

- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries' rights to information about the trust?

Purpose trusts

Non-charitable purpose trusts can be created under the STAR law (see *Question 30*).

Perpetuities and accumulations

Under ordinary trusts, the perpetuity period is 150 years, but is subject to a "wait and see" rule, similar to the equivalent rule under English law.

For STAR Trusts, there is no perpetuity period.

Income may be accumulated for the entirety of the perpetuity period, if applicable.

Beneficiaries' rights to information

It is thought that an ordinary Cayman Islands trust would follow the principles set out in *Schmidt v Rosewood* [2003] AC 709. Decisions of the Privy Council on appeal from jurisdictions other than the Cayman Islands are persuasive, although not binding, on the Cayman Islands courts.

As such, trustees must balance the reasons in favour of disclosure and those against (including the interests of the beneficiary seeking disclosure and the interests of the other beneficiaries and the trust as a whole) and the matter is subject to review by the Court at the instance of either the trustee or any object, pursuant to the supervisory jurisdiction of the Court. The factors to be taken into account may include the purpose of the request and the nature of the beneficiary's interest.

Under a STAR trust, a beneficiary has no automatic right to information or rights of enforcement, but can be given these rights in whole or in part (see *Question 30*).

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

Cayman Islands law has had comprehensive conflict of laws rules in relation to trusts since 1987 (set out now in Part VII of the Trusts Law (2018 Revision)). These are designed to provide certainty and to prevent a challenge to the validity of the trust on the ground that it defeats the rights of a spouse or anyone claiming by virtue of a personal relationship with the settlor (see *Question 25*).

Section 87 defines "personal relationship" as every form of relationship by blood or marriage, including a spouse, former spouse or co-habitee, and is, in principle, wide enough to cover civil partners and same-sex spouses under foreign law, although the matter is not free from doubt.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

Every disposition made at an undervalue with the intention to defraud can be rendered voidable at the request of a creditor prejudiced by that disposition (see Fraudulent Dispositions Law (1996 Revision)). For a creditor to set aside a disposition (such as transfer of property to a trust) he or she must show:

- An intent to defraud (that is, to wilfully defeat an obligation owed to a creditor).
- That the obligation owed to the creditor existed on or before the date of the disposition.

There is a limitation period of six years from the date of the disposition and the disposition is set aside only as far as is necessary to satisfy the obligation to the creditor who has brought the application. There are express savings provisions for beneficiaries who have received capital or income from the trust in good faith.

Charities

36. Are charities recognised in your jurisdiction?

Four categories of charitable purpose are permissible:

- The relief of need or distress caused by poverty, ill-health, youth or old age.
- The advancement of religion.
- The advancement of education.
- Other purposes of benefit to the community as a whole.

The scope of the public benefit test varies according to which of the four categories the trust purpose falls under. A trust does not fail to qualify as a trust for charitable purposes only because those purposes may benefit the public or a section of the public outside the Cayman Islands (see section 71, Trusts Law (2018 Revision)).

37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

Charities can be established as:

- Companies, usually limited by guarantee, so that members have no entitlement to profits or surplus on dissolution.
- Unincorporated associations, assuming that the rules provide for a cy-près (that is, as near as possible) distribution on dissolution rather than a distribution to members beneficially.

- Trusts.
- It is also possible to establish charitable and philanthropic trusts as STAR trusts, which provides for greater flexibility in terms of both:
- Validity of the purposes (they need only be legal and not contrary to public policy).
- The enforcement mechanism (they are not enforceable by the attorney general but by the enforcers appointed by the settlor under the trust instrument).

See Question 30 in relation to STAR trusts generally.

There is no central public register of charities and no charity regulator.

The Non-Profit Organisations Law, 2017 (as amended by the Non-Profit Organisations (Amendment) Law, 2018) provides the framework for regulating charities and other non-profit organisations which operate predominantly in the Cayman Islands. However, the Non-Profit Organisations Law does not apply to:

- Entities licensed under the Banks and Trust Companies Law (2018 Revision).
- A Government Entity.
- A non-profit organisation that is a designated non-financial business or profession registered under the Anti-Money Laundering Regulations (2018 Revision).
- A non-profit organisation registered or holding a licence under any of the regulatory laws, other than an entity registered as an excluded person under section 5(4) of the Securities Investment Business Law (2015 Revision).

The Non-Profit Organisations Law applies to organisations engaged in the promotion of charitable, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the public benefit or a section of the public within the Cayman Islands or elsewhere and which solicits contributions or raises funds from the public or a section of the public within the Cayman Islands or elsewhere. Relevant organisations must register with the Registrar of Non-Profit Organisations.

38. What are the benefits for individuals when setting up charitable organisations?

Are charitable donations deductible for tax purposes?

There are no tax benefits as there are no direct taxes (see *Question 1*).

Ownership and Familial Relationships

Co-ownership

39. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

Assets can be owned as joint tenants with the right of survivorship (that is, the surviving joint tenant becomes the absolute owner of the property on the death of his joint tenant). The property is not part of the deceased co-owner's estate for succession purposes and does not therefore need to be administered as part of his or her estate.

Property can also be owned jointly as tenants in common. On death, the share of a tenant in common in the property does form part of their estate for succession purposes and must be dealt with as part of the administration of their estate.

There are no direct taxes (see *Question 1*).

Familial Relationships

40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other assets protected by law?

The Cayman Islands does not have community of property or any matrimonial property regime. However, the family courts do have wide powers under the Matrimonial Causes Law (2005 Revision) to make orders for the division of property between the parties on divorce.

Civil partners are not recognised. Cohabitees can acquire rights as beneficial owners but they have no rights to the other's assets on separation.

41. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Same-sex relationships are not recognised.

42. How are the following terms defined in law:

- Married?
- Divorced?
- Adopted?
- Legitimate?
- Civil partnership?

Married

A marriage is a union between a man and a woman as husband and wife (see section 2, Marriage Law (2010 Revision)).

Divorced

Divorce is dealt with under the Matrimonial Causes Law (2005 Revision). The court can issue a decree of dissolution of marriage if the grounds set out in section 10 of the Matrimonial Causes Law (2005 Revision) are met:

- The court is satisfied that the grounds for the petition have been established.
- The marriage has broken down irretrievably.
- No material impediment exists to the pronouncement of the decree.

Adopted

The Adoption of Children Law (2003 Revision) governs adoption under Cayman Islands law. On an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the child in relation to its future custody, maintenance and education (including all rights to appoint a guardian and to consent or give notice to dissent to marriage) are extinguished: section 15, Adoption of Children Law (2003 Revision). All such rights, duties, obligations and liabilities then vest in, and are exercisable by and enforceable against, the adopter of the child as if the child were born to the adopter in lawful wedlock.

Under the Status of Children Law 2003, an adopted child is deemed to be the child of his or her adopting parents as if they were his or her natural parents. For trusts established after 1 June 2004, subject to any contrary intention contained in the trust instrument, references to any person or class of persons described in terms of relationships by blood or marriage to another person are construed in the same way.

Legitimate

Children are legitimate if their parents are married to each other at the time of their birth. However, unless the child has been adopted, a person is the child of his or her natural parents and his or her legal status as their child is independent of whether he or she is born inside or outside of marriage (Status of Children Law 2003). All other relationships are determined accordingly.

Civil partnership

There is no concept of a civil partnership

Minority

43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

The age of majority is 18.

There is no general bar on a minor owning assets (other than Cayman Islands land) but because it may be difficult to acquire good title from a minor, it is not sensible generally for commercially valuable assets to be put into the name of minors since it may impede their transferability. Assets can be held by trustees on a minor's behalf, either on express lifetime or testamentary trusts or on the statutory trusts which arise on intestacy (see *Question 28*).

Capacity and Power of Attorney

44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

The Cayman Islands Grand Court can appoint a guardian for a person and the estate of a person of unsound mind or suffering from mental illness (see section 14, Grand Court Law (2015 Revision)). The application is made by the patient, the patient's spouse, any close relative or the Solicitor General, by originating summons supported by a medical practitioner's report and supporting affidavit.

The Grand Court has wide powers to deal with the property and affairs of patients (see sections 18 and 19, Mental Health Law (2013 Revision)):

- A person in respect of whom the Grand Court has appointed a guardian under section 14 of the Grand Court Law (2015 Revision) and is then found upon examination to be incapable of managing his own affairs.
- A patient under the Mental Health Law (that is, a person who is suffering from or is suspected to be suffering from a serious mental illness or mental impairment).

In particular, the Grand Court can do anything in relation to such a person's property and affairs as it considers desirable for the benefit of:

- The person.
- The person's family.
- Those individuals whom the person may otherwise have been expected to provide but for his or her mental impairment or serious mental illness.

In exercising its powers, the Grand Court must have regard to the interests of creditors and make provision for them accordingly.

Powers of attorney made under Cayman Islands law do not last once the donor becomes mentally incapable. In principle, lasting powers of attorney that are valid under a foreign law are recognised under Cayman Islands law. In one Cayman Islands case, the Grand Court appointed the donees under a Bahamian enduring power of attorney as guardians of the mentally incapacitated individual under section 14 of the Grand Court Law, without any requirement for a separate application by the donees on behalf of the mentally incapacitated individual.

Proposals for Reform

45. Are there any proposals to reform private client law in your jurisdiction?

The Cayman Islands recently enacted The Formal Validity of Wills (Persons Dying Abroad) Law, 2018 to give effect to the Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961.

Various amendments are proposed to the Trusts Law (2018 Revision), among other things, to: (i) expand the powers of the court to set aside mistakes by trustees without having to find a breach of fiduciary duty; and (ii) amend the variation of trusts regime to give more flexibility to the court to sanction a variation of the dispositive provisions of a trust. Currently, the court cannot approve a variation on behalf of those beneficiaries who cannot consent for themselves, unless it is established that such variation is for their "benefit". Pursuant to the proposed amendment, the requirement of "benefit" will be replaced with the less onerous requirement of establishing there is "no detriment" in the variation.

A new Healthcare Decisions Law has also been published to provide a framework for advance directives related to end of life care.

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