



## Truman Bodden & Company

Attorneys-at-Law

(a Company recognised under the Legal Practitioners Law)

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### TRUSTS

#### **Introduction**

Truman Bodden & Company regularly assists clients, world-wide, in establishing trusts, and these vary from simple nominee type arrangements to very complex family trusts. Before finalising any trust, detailed written instructions setting out client requirements should be provided.

At Truman Bodden & Company, we have no knowledge of, and cannot give any advice in connection with, laws of jurisdictions other than the Cayman Islands so persons intending to establish trusts under the laws of the Cayman Islands, should seek independent fiscal and legal advice from professional advisors in jurisdictions where they are resident and domiciled and/or where the assets comprising the trust are located.

There is no recording requirement for trusts in the Cayman Islands and the only fee payable, other than legal fees, is stamp duty of CI\$40.00 (US\$50.00) on the trust deed.

Legal fees for forming trusts depend very much on the complexity of the trust involved.

There are many local trust companies that provide trust services and Truman Bodden & Company would be happy to introduce interested persons to trust companies as may be recommended by us and/or selected by the client. It is not necessary to employ a Cayman Islands trustee. The trust deed can set out limitations on the powers of the trustees but a letter of wishes with a recognised Cayman Islands trustee would be adequate.

Interested persons who are desirous of obtaining specific advice with respect to a establishing a trust in the Cayman Islands are encouraged to contact us directly and we will respond in writing, as this is a very complicated area of law. As well, it is important to obtain written advice on the impact of certain statutes on trusts established in the Cayman Islands.



### **THE BANKRUPTCY LAW (1997 Revision)**

The Bankruptcy Law (1997 Revision) provides that any disposition to a trust made within two years immediately prior to the bankruptcy will be void against the trustee in bankruptcy regardless of whether or not the bankrupt was solvent at the time the disposition was made. Further, any disposition made between two and ten years prior to the act of bankruptcy will be void if the bankrupt was not solvent at the time the disposition was made.

An act of bankruptcy can be one of many things and The Bankruptcy Law (1997 Revision) sets out these acts in detail.

A person will be subject to The Bankruptcy Law (1997 Revision) if at the time when an act of bankruptcy was committed, the person was: -

- a. personally present in the Cayman Islands; or
- b. ordinarily resided or had a place of residence in the Cayman Islands; or
- c. carrying on business in the Cayman Islands personally or by means of an agent or manager; or
- d. a member of a firm or partnership which carried on business in the Cayman Islands.

If a person is not subject to The Bankruptcy Law (1997 Revision) and he/she makes a disposition of property to a trust from his/her net assets (i.e. assets free from all existing and contingent liabilities) without an intent to defraud then there will have been established, an effective "asset protection trust" because the Fraudulent Dispositions Law (1996 Revision) will protect those assets from future creditors to the settlor of the trust. It is the responsibility of the settlor of the trust, at the time of the disposition to document the fact that the trust is established from his/her net assets and without an intent to defraud.

In addition, the settlor of the trust must ensure that under applicable state and federal laws, the disposition of property to the trust is not considered a fraudulent conveyance or other contravention of such laws.

### **THE FRAUDULENT DISPOSITIONS LAW (1996 Revision)**

The Fraudulent Dispositions Law (1996 Revision) provides that every disposition of property made with an intent to defraud, and at an undervalue, shall be voidable at the instance of the creditor prejudiced.

The following words and phrases are defined:-

- "creditor" - means a person to whom an obligation is owed.
- "disposition" means every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction by which any legal or equitable interest in property is created, transferred or extinguished.
- "intent to defraud" means an intention of a transferor wilfully to defeat an obligation owed to a creditor.
- "obligation" means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had notice.

The following paraphrase of the relevant section of the law may be helpful to readers: -

"Every disposition of property made with an intention of the settlor, wilfully to defeat an obligation or a liability owed to a creditor (which shall include a contingent liability), which existed on or prior to the date of the transfer to the trust and of which the settlor had notice, and at an undervalue, shall be voidable at the instance of the creditor prejudiced thereby."

### **CONFIDENTIAL RELATIONSHIPS (PRESERVATION) LAW (1995 REVISION)**

If a U.S. settlor of a Cayman Islands trust is declared bankrupt in the U.S., his trustee in bankruptcy may seek an order for discovery of documents against the Cayman Islands trustee(s) in the hope of using information gained thereby, to seek to have the trust set aside and attach the assets for creditors of the bankrupt. However, the Confidential Relationships (Preservation) Law (1995



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Revision) will make it difficult for the trustee in bankruptcy to obtain an order for discovery unless the trustee in bankruptcy can present an arguable case for being able to set aside the trust. The trustee in bankruptcy may not be able to prepare and present such an arguable case without first having had the benefit of discovery. The trustee in bankruptcy may be in a "catch 22" situation!

### **General**

As a general point, in estimating what an intending settlor may achieve from establishing an "asset protection trust", regard should be had to the locality and nature of the assets to be held by the trustees of the trust. If the assets are held in the U.S., for example, in certain circumstances a U.S. court may be able to freeze such assets so it may be prudent to consider holding the assets in the Cayman Islands.

*This publication is intended to provide only general information for clients and contacts of Truman Bodden & Company and does not purport to be comprehensive or to constitute legal advice. It has not been prepared in contemplation of any particular facts and readers are cautioned not to rely on its contents without first taking specialist legal advice.*

