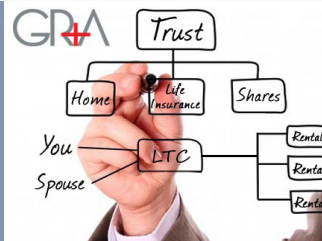




# DIAMOND LAW ATTORNEYS

## Trusts and Divorce in the Cayman Islands



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### Trustees: the protection of beneficiaries is primary

When a spouse issues divorce proceedings in a foreign court, the trustee of a Cayman Islands trust has to make the decision as to whether they will submit to the jurisdiction of the foreign court. In reality, what is being asked by the foreign court is for the trustee to disclose trust information and potentially vary the terms of the trust under foreign court order.

This is likely to present immediate difficulties:

1. The trustee owes a fiduciary duty to beneficiaries not to divulge confidential information even if so ordered by a foreign court. This principle is enshrined by statutory footing by Section 3 of the Confidential Relationships (Preservation) Law ("CPRL");
2. Departure from section 3 CPRL can be exercised only if there is a corresponding Order from the Grand Court of the Cayman Islands or, the principle of the confidential information consents to its disclosure.
3. Section 4 of the CPRL provides that whenever a person intends or is required to give evidence relating to any confidential information, Directions from the court must be obtained.

So what, will the Grand Court consider in making such a decision? Public policy pays its part as the confidential nature and aspect of the jurisdiction as a whole is a major factor as to why individuals settle trusts in the Cayman Islands. Furthermore, the Court will give regard to the interests of beneficiaries, particularly, innocent third party beneficiaries.

The implications of a trustee in the Cayman Islands submitting to a foreign jurisdiction in matrimonial proceedings potentially conflicts the trustee in acting in the best interest of all beneficiaries as against placing the trustee under an obligation to obey a foreign court order. Furthermore, once submission to a foreign court jurisdiction has taken place, under the rules of private international law, any Orders by the foreign court would potentially be enforceable in the Islands without reconsideration by the Cayman court: *In the Matter of the B Trust RBS Coutts (Cayman) Limited v. W and others [2010] (2) CILR 348.*



# Should trustees submit to the jurisdiction of a foreign court?

## **Refusal to submit provides the Grand Court to decide the enforceability of the foreign order**

In the event the trustee does not submit to the foreign jurisdiction, any foreign order made would not be enforceable against the trustee; the trustee would not be bound to follow the guidance of the foreign court, since that court would not have the jurisdiction to direct the exercise of the trustee's power.

Therefore, the party seeking to enforce the foreign judgment would have to make an Application to the Cayman Islands' Grand Court which has the discretion to consider the matter and to act in the beneficiaries' best interest.

This includes a foreign order to vary the terms of the trust. A trustee has a duty to carry out the trust according to its terms, and can only be varied by the Cayman Court in accordance with the Trusts Law (2011 Revision).

## **Conclusion**

Since the decision in *White*, there has been a significant increase in Orders relating to trust assets in foreign divorce proceedings. Trustees in the Cayman Islands must be aware of their obligations and duties under the trust but equally, have regard to their statutory obligations of confidentiality under local Cayman law.

Trustees must be mindful that in acceding to the jurisdiction of a foreign court - without seeking guidance from the Grand Court of the Cayman Islands - may constitute a breach of trust and/or the laws of the Cayman Islands.

