

Investing through Cayman Islands structures: options for sovereign wealth funds



By Daniel Wood and Tom Cochrane

Offering a stable political environment, tax neutrality, a well-respected court system (derived predominantly from the English system) and sophisticated regulators and service providers, the Cayman Islands has long been a popular offshore jurisdiction through which to structure outbound investment transactions. For sovereign wealth funds and other state-owned investment funds in the Middle East (SWFs), the Cayman Islands offers a range of investment structures and vehicles that are particularly attractive for SWFs looking to make outbound investments.

Exempted companies

Incorporating a Cayman Islands exempted company (SPV) as a wholly-owned subsidiary of the relevant SWF is a simple, quick and cost-efficient process. It can be done in as little as 24 hours and for a cost of less than US\$3,000. Incorporating an SPV allows the SWF to make the relevant investment through the SPV and ensures that any liability in relation to the investment is 'ring-fenced' at the SPV level and does not flow back to the SWF.

Using an SPV also allows for less burdensome administrative requirements than those typically required in the SWF's home jurisdiction. The SPV, for example, need only have one director, allowing decisions to be authorised and implemented quickly and efficiently. Furthermore, should the SWF want to sell the investments that are housed in an SPV, the shares of the SPV can be sold instead of the investment itself. This is often a quicker and easier way of exiting an investment and may enable certain taxes in the jurisdiction where the investment was made to be avoided.

Exempted limited partnerships

Cayman Islands exempted limited partnerships (ELPs) are also commonly used in outbound investment transactions, particularly where the nature of the investment dictates that periodic capital contributions are to be made.

The business of the ELP is conducted by its general partner for the benefit of the limited partners of the ELP (the LPs). The LPs enjoy a limited liability status provided that they do not take part in the conduct of the business of the ELP. The arrangements as to the respective capital contributions of the LPs and their subsequent returns are extremely flexible and are invariably set out in the relevant exempted limited partnership agreement governing the establishing and operation of the ELP.

STAR trusts

Pursuant to the Cayman Islands Special Trusts (Alternative Regime) Law, a Cayman Islands 'STAR' trust can be created. A STAR trust represents an extremely flexible trust arrangement with the objects of a STAR trust permitted to be persons or purposes or both. The purposes may be of any number or kind and can be charitable or non-charitable, as long as they are lawful and not contrary to public policy.

A STAR trust can be a pure non-charitable purpose trust where there are no individual beneficiaries. This arrangement may be suitable for SWFs looking to invest in and promote the development of a particular company or business group.

Conclusion

While the key benefits of structuring outbound investments through the Cayman Islands are well-known, it is less well-known that a variety of Cayman vehicles can be used in such structures, each of which has its own particular advantages. The Dubai office of Walkers has acted for SWFs that have used each of the vehicles described in

this article in the past 12 months and, with SWFs becoming increasingly important participants in cross-border investment transactions, we expect to see these vehicles become even more popular in the near future.

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