



Firewalls, Families and Fiduciaries: New Cayman Case Law

防火墙、家庭及受托人：新开曼群岛判例法



To say the very least, matrimonial disputes can be a trying and traumatic state of affairs for all involved. Discord over custody, property and innumerable other matters can seem to endlessly plague family members, and related litigation often creeps across a variety of jurisdictions. Where a family trust is involved, the more contentious of marital disputes can quickly draw trustees into the ring for a bout over rights to information regarding, or even to assets held in, the trust.

If foreign matrimonial proceedings seek to encroach on the administration of a Cayman Islands (“Cayman”) trust, the trustee of that trust is protected in many respects by what are known as the “firewall provisions” of the *Trusts Law (2011 Revision)* (“Trusts Law”). In a helpful development for the jurisdiction, a judgment delivered by the Grand Court of the Cayman Islands (“Grand Court”) in December 2016 has confirmed the operation of those provisions and reinforced the need for a trustee of a Cayman trust under attack in foreign matrimonial proceedings to ensure its response is at all times in the best interests of the trust.

婚姻纠纷对所涉各方而言至少可以说是个难捱和痛苦的过程。有关监护权、财产及无数其他事宜的争议对家庭成员可以是无尽的折磨，而相关诉讼经常涉及多个司法管辖区。家庭信托的存在，可指引受托人在争议愈演愈烈的婚姻纠纷中更快捷地朝着权利、信托信息或甚至信托资产方面进行解决。

如外国婚姻诉讼试图侵犯开曼群岛（下称“开曼”）信托的管理，该信托的受托人将在多个方面受到信托法（2011年修订本）（下称“信托法”）的所谓“防火墙规定”的保护。开曼群岛大法院（下称“大法院”）于2016年12月作出的判决已确认该等条文的施行，并突出表明需要外国婚姻诉讼中遭受攻击的开曼信托的受托人确保其回应始终符合信托的最佳利益，此乃该司法管辖区的一次有益发展。





Re The A Trust

In *In the Matter of the A Trust* (unreported, 1 December 2016), a Cayman STAR Trust (the "Trust") was the subject of proceedings in the Grand Court commenced by the trustee of the Trust. In establishing the Trust, its settlor had executed various Letters of Wishes, which set out his very detailed views about who should and should not benefit from the Trust and how the assets of the trust should be applied. These Letters of Wishes also made it clear that the settlor wished to ensure that beneficiaries did not live lavish lifestyles funded by the Trust while still ensuring that they received appropriate benefit from the Trust in the future. Consistent with this, the settlor had expressed a desire to see the trust grow from generation to generation and to be a charitable trust providing support for its specified charitable objects.

The settlor and his wife, N, both of whom were excluded from the Trust, subsequently became involved in divorce proceedings before the English High Court ("English Proceedings"). By 2016, the focus of the English Proceedings had turned to the Trust. The main asset of the Trust was shares in a Cayman company, which itself owned shares in other companies holding legal title to very substantial property assets in the UK. In the course of the English proceedings, N was seeking orders to vary the Trust and set aside N's exclusion as a beneficiary of the Trust so that she might have an interest in it. Flowing from that, requests were made of the trustee, located in Cayman, to release information about the Trust for the purposes of the English Proceedings.

The trustee determined that it was not in the best interests of the beneficiaries of the Trust to submit to the jurisdiction of the English High Court or to disclose confidential information to the parties to the English proceedings. Its concern was that, in doing so, it would confer, on the English High Court, an enforceable power to act to the detriment of the beneficiaries of the trust and to the benefit, instead, of either the settlor or N. However, recognising that it was an important step for a professional trustee to refuse to submit to the jurisdiction of a foreign court, the trustee applied to the Grand Court for directions pursuant to Section 48 of the Trusts Law.

关于The A Trust案

在*In the Matter of the A Trust*（未报告，2016年12月1日）中，一项开曼STAR信托（下称“有关信托”）是有关信托之受托人在大法院提起的诉讼的主体。设立有关信托时，其委托人已签署多份意愿书，其中列明有关谁应该及不该从有关信托受益以及应如何使用信托资产的意向详情。该等意向书亦清楚表明，委托人希望确保受益人不会滥用有关信托提供的资金，同时仍确保彼等日后自有关信托取得适当的利益。与此一致，委托人已表明希望看到有关信托代代相传、不断发展，成为向其指定慈善对象提供支持的慈善信托。

委托人及其妻子N均被排除在有关信托之外，但随后陷入英国高等法院的离婚诉讼（下称“英国诉讼”）。在2016年前，英国诉讼的焦点已转至有关信托。有关信托的主要资产是一间开曼公司的股份，该公司本身拥有其他持有英国大量不动产之法定所有权的公司的股份。在英国诉讼程序中，N寻求命令以更改有关信托并撤销将N排除在有关信托受益人名单以外，以使其于有关信托中拥有权益。据此，位于开曼的受托人被要求就英国诉讼之目的提供有关信托的资料。

受托人认为，接受英国高等法院的管辖或向英国诉讼各方披露机密信息，并不符合有关信托之受益人的最佳利益。其担心的是，这样做会赋予英国高等法院可强制执行的权力，从而损害有关信托的受益人的利益，反而有利于委托人或N。然而，认识到拒绝接受外国法院的管辖对于专业受托人来说至关重要的一步，受托人已根据信托法第48条向大法院申请指令。





Application of the Trusts Law

Section 48 enables a trustee of a Cayman trust to apply to the Court at any time for "an opinion, advice or direction on any question respecting the management or administration of the trust money or the assets of any testator or intestate...". Provided that the trustee acts on the opinion, advice or direction given by the Court, he or she will be deemed to have discharged his or her duty as trustee in respect of the subject matter of the application.

In this case, the directions sought were whether the trustee should submit to the jurisdiction of the English Court and participate by disclosing further confidential information to the parties to the English matrimonial proceedings. The former trustee of the Trust had previously provided a "position statement" and copies of the trust deed and related instruments to the parties to the English Proceedings, on the basis of legal advice it had obtained to the effect that providing such documentation would not amount to a submission to the jurisdiction of the English High Court. However, very little information had been provided in relation to the Trust itself. The position of the Trustee was that any variation of the terms of the settlement or any challenge to N's exclusion from the settlement should only be made in accordance with the laws of the Cayman Islands by the Grand Court and as such further disclosure was not necessary.

In considering the matter, the Grand Court confirmed:

- The claims by N, to vary the trust and to set aside her exclusion using provisions in a foreign statute, were, in essence, third party claims, and it was the trustee's duty to protect and preserve the Trust from such claims.
- Pursuant to Cayman's firewall legislation in Sections 90-93 of the Trust Law, which confirms that a trust in Cayman can only be varied in accordance with the law of the Cayman Islands and only by a court of the Cayman Islands, any order made by the English High Court against the trustee would not be enforceable against the trustee, the beneficiaries of the trust or the trust fund.

信托法的应用

第48条使开曼信托的受托人能随时向法院申请“有关涉及信托款项或任何立遗嘱人或无遗嘱人的资产的管理或管治的任何问题的意见、建议或指令...”。倘若受托人按法院作出的意见、建议或指令行事，其将被视为已就申请的主要事宜履行其作为受托人的责任。

在此情况下，所寻求的指令是受托人应否接受英国法院的管辖，并通过向英国婚姻诉讼各方披露更多机密信息的方式进行参与。有关信托的前受托人曾基于其取得的法律意见（即提供相关文件不构成对英国高等法院管辖的接受），而向英国诉讼各方提供了一份“立场声明”及信托契据和相关文书的副本。然而，所提供的有关信托本身的信息甚少。受托人的立场是，任何和解条款的更改或任何将N排除于和解之外的挑战应仅能由大法院根据开曼群岛法律作出，因此，不需要作出进一步的披露。

在考虑该事宜时，大法院确认：

- N通过引用外国法律条文要求更改信托及撤销将其排除在信托受益人名单以外，实质上是第三方之诉，受托人有责任保护及保全有关信托，以防受到该等诉求的影响。
- 根据信托法第90-93条的开曼防火墙法规（该法规确认开曼信托仅可由开曼群岛法院根据开曼群岛法律进行更改），英国高等法院针对受托人作出的任何命令不可对受托人、信托受益人或信托基金强制执行。





- N had already been given the trust deed and all supplemental instruments, and full financial information for the underlying companies in the structure. The Court found it was reasonable to conclude that N had sufficient information to understand the terms of the trust and its finances, and that for the trustee to submit to the jurisdiction of the English High Court or to provide further information was not in the best interests of the beneficiaries, in all the circumstances.

The Cayman Islands Approach

The case is a helpful affirmation of the approach previously taken by the Grand Court in *RBS Coutts (Cayman) Ltd -v- W and Others* [2010] 2 CILR 348 (known as “*Re B Trust*”), which confirms that an order of the English High Court is unenforceable in Cayman, whether or not the Trustee submits to the jurisdiction because of the terms of the firewall legislation. In that case, and in a similar factual context, the Grand Court held that a trustee must “jealously guard” its independence and noted that it would be unwise and inappropriate for a trustee to allow itself to be placed in a situation where its trust obligation comes into conflict with an obligation to obey an order of a foreign court.

Divorcing families and related cross-border disputes over asset-protection structures, including Cayman trusts, can place trustees in a challenging, and unenviable, position. However, through its judgments both in *Re B Trust* and now in *In the Matter of the A Trust*, the Grand Court has laid down a clear set of rules as to how trustees should approach a foreign challenge to a trust governed by Cayman Islands law. While these rules may not assist in tempering the trauma of matrimonial proceedings, they will, nonetheless, give the parties clarity to their rights and standing in relation to any such challenge, and be of great support to the trustee in its decision-making processes.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

- N已获提供信托契据及所有补充文书、以及架构内相关公司的完整财务资料。法院认为可合理地推断N已有充足资料以理解信托的条款及其财务状况，以及受托人接受英国高等法院的管辖或提供进一步信息在任何情况下均不符合受益人的最佳利益。

开曼群岛的做法

该案肯定了大法院先前在*RBS Coutts(Cayman) Ltd-v-W and Others*[2010]2 CILR 348（被称为“*Re B Trust*”）中采用的做法，该做法确认英国高等法院的指令在开曼不可强制执行，无论受托人是否因防火墙法规的条款而接受管辖。在此案中，按照类似的实际情况，大法院认为受托人必须“小心翼翼地捍卫”其独立性，并指出受托人置身于其信托义务与服从外国法院指令的义务相冲突的状况之中，是不明智及不适当的。

离婚家庭及有关资产保障架构（包括开曼信托）的相关跨境纠纷可将受托人置于充满挑战的窘境。然而，通过其在*Re B Trust*及*In the Matter of the A Trust*中的判决，大法院已就受托人应如何应对受开曼群岛法律管辖的信托所遭受的外国挑战制定出一套明确的规则。尽管该等规则也许无法减轻婚姻诉讼所带来的创伤，但会令当事方明晰其权利及就任何该种挑战而言的立场，并在决策过程中给予受托人大力支持。

本文并非法律意见，其内容亦非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅！





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