

STAR Trusts

Insights - 01/10/2018

Reviewed and updated 1 October 2018.

Background

The Special Trusts (Alternative Regime) Law 1997 (the initial letters of which give us the name, "STAR Trust"), now incorporated into Part VIII of the Trusts Law (Revised), introduced STAR Trusts into the law of the Cayman Islands. STAR Trusts are unique to the Cayman Islands.

A STAR Trust is a form of statutory trust which can be established for persons, purposes (charitable and non-charitable) or both. The STAR Laws only apply where the trust instrument expressly states that they are to apply.

STAR Trusts were introduced into Cayman Islands law to overcome some of the difficulties arising with the use of more conventional offshore trusts.

How are STAR trusts different from conventional trusts?

STAR Trusts are established for the benefit of persons, purposes or both. The purposes can be of any or kind or number (provided that they are not contrary to public policy, or illegal).

STAR Trusts can be established without a perpetuity period (and so escape the general perpetuity period of 150 years that applies to other non-charitable Cayman Islands trusts).

The most significant innovation of the STAR trust is the introduction of the role of an "Enforcer". The Enforcer is tasked with enforcing the STAR Trust, bringing about a separation between enjoying the benefit of the Trust assets, and being responsible for the Trust's enforcement. It is only the Enforcer (or the Court) who has the power or the duty to enforce the STAR Trust.

As far as trustees are concerned, it is a requirement that a STAR Trust has as or amongst its

trustees a Trust Corporation. This is a company which is licensed to conduct trust business in the Cayman Islands.

The ordinary trust law applies to STAR Trusts, except where there is a provision of the STAR Law to the contrary.

How are STAR trusts used?

STAR Trusts have a number of different uses and the list of ways in which these trusts can be used is growing all of the time. The most common uses are summarised below:

Dynastic Trusts:

As STAR Trusts are not limited to the 150 year perpetuity period that applies to other trusts, they can be an effective way of establishing perpetual private/family trusts.

Acting as the Trustee of a Private Trust Company:

One of the most common uses of a STAR Trust is as the head entity of a series of trusts (which can be established in different jurisdictions around the world). It works as follows: The STAR Trust is established with a view to holding the shares in a Cayman Islands Private Trust Company (or "PTC"). The purpose of the STAR Trust is to establish (or acquire the shares in) a PTC, and to ensure that the PTC carries out its role as trustee of a trust or series of related trusts. By arranging for the PTC to be "owned" by a STAR Trust, the problems of succession in relation to the ownership of the PTC are avoided.

This structure can be used even where the trusts are not all within the same jurisdiction. For example, a single STAR Trust could own shares in a PTC, and the PTC could be the trustee of trusts in the Cayman Islands, BVI, Jersey and so on.

Running the Family Business:

It is also common for an entrepreneur to use a STAR Trust to ensure that the business continues to run after his death. The STAR Trust can be the holder of those shares (in life, or after death; STAR Trusts can be established by Will, if appropriate) with the Purpose of allowing the directors to continue to run the business for a designated period of time.

Limiting the Information that the Beneficiaries can access:

In some cases, the reason for using as STAR Trust is the ability to restrict or limit the information

to which a beneficiary of the trust would otherwise be able to access. Case law has made it clear that beneficiaries of ordinary trusts have the right to access lots of information in relation to the trust. With a properly drafted STAR Trust those rights can be restricted, or even eliminated. The enforcement of the trust (and the associated rights to information) then being held by the Enforcer.

Special Purposes Vehicles:

STAR Trusts are often used as SPVs in structured finance and other transactions. They allow the structuring of "off balance sheet"/bankruptcy remote transactions, as the STAR Trust entity can be unconnected with the original parties to the transaction.

Philanthropic Purposes:

In other cases, a STAR Trust provides an appropriate (and flexible) mechanism for philanthropic giving, where the settlor's requirements fall outside of the limited Cayman definition of what is and is not charitable.

Drafting the purposes of a STAR trust

One of the most difficult aspects of establishing a STAR Trust is in the drafting of the Purposes for which it is established. Whilst the STAR Law contains a number of rules to prevent a STAR Trust from failing (for example, as a result of uncertainty as to objects) there are a number of traps for the unwary.

It is important that the tasks or purposes for which the STAR Trust is established meet certain minimal standards. A failure to do this can cause significant problems in the operation of the STAR Trust, and its relation to its validity generally.

Care and attention is needed in the drafting of the Purposes and this is the most difficult aspect of establishing a valid STAR Trust.

Are STAR trusts recognised elsewhere in the world?

A concern that was voiced when the STAR Law was first introduced was that the rest of the world simply would not recognise the validity of STAR Trusts. Thankfully that concern has not materialised. In fact, there do not appear to be any reported cases challenging the validity of STAR Trusts elsewhere in the world.

In countries which have adopted the Hague Convention on the Recognition of Trusts (which includes the UK, who enacted the Recognition of Trusts Act 1987) there appears to be little doubt

that a STAR Trust would fall to be classified as a trust under the convention, and a trust governed by Cayman Islands Law.

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