

Cayman STAR trusts takes centre stage in social enterprise

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Charitable trusts are well recognised in many jurisdictions but they do come with some drawbacks. The Cayman Islands, like Jersey, Guernsey and BVI amongst a limited number of jurisdictions around the world, has introduced a special form of trust which can be used to provide a flexible alternative to a philanthropic client.

While there are often onshore tax advantages to the person setting a charitable trust, to qualify as “charitable” both the purposes for which it is established and the activities which it undertakes will need to satisfy an often very specific and narrow definition. Beyond that, once it is established, the regulatory and reporting requirements which charitable trusts have to meet are often burdensome.

Trusts which are established for non-charitable purposes are not generally recognised and are typically invalid due to issues over how they would be enforced. Therefore, if the trust’s purposes are philanthropic but do not meet the strict definition of charitable under the relevant onshore law then problems can arise.

The Cayman Islands was the first jurisdiction to introduce non-charitable purpose trusts, known as STAR trusts, by specific legislation partly as a result of a client-driven demand for flexible philanthropic structures. Arguably the most significant innovation of the STAR trust is the creation of the role of an “enforcer” who has a statutory duty to enforce the terms of the trust. The introduction of the role of enforcer provides a neat solution to the question of who, in the absence of beneficiaries, will hold the trustee of a non-charitable purpose trust to account and therefore allowing it to be a valid trust.

Linked to the growth of philanthropic giving is operating a social enterprise; that is a business whose primary purpose is social impact, not profit generation. No matter what the social entrepreneur’s motivations are, a properly drafted STAR trust is the ideal vehicle to implement this idea and this is an increasingly popular use for the vehicle.

One of the reasons for this is that STAR trusts often include a business plan hardwired into the trust's "purposes". In the context of a social enterprise this business plan can include rules on where, geographically, the organisation operates, the nature of the materials it uses (e.g. organic or locally sourced) and it can even include a high level philanthropic strategy to help guide the distribution of profits. A key attraction of adopting this approach is that the STAR trust's reason for existing will be the furtherance of the purposes. If the purposes include the business plan, and the business plan captures the philanthropic aims of the social enterprise, then those philanthropic aims are integral to the existence of the trust itself. There are no profit-seeking shareholders and no beneficiary interests to detract from the philanthropic aims of the structure.

STAR trusts are now well established as a tool for dynastic and business succession planning as well as in a wide variety of commercial and funds contexts. The flexibility which makes them attractive in these contexts also makes them ideally suited to use by philanthropists who are constrained by more traditional, particularly charitable, solutions.

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