

Cayman Trusts: STAR Trusts

With the development of legislation in a number of offshore jurisdictions to allow for non-charitable purpose trusts, the Cayman Islands introduced the Special Trusts (Alternative Regime) Law 1997 (the **STAR law**) – now contained in the Trusts Act – to allow for the establishment of STAR Trusts.

Key features of STAR trusts

- They may exist indefinitely (NB the trust period for most other Cayman trusts is limited to 150 years)
- A STAR trust can hold assets to a) benefit persons or b) for the furtherance of specific purposes or c) for both. The ability to have the objects of a trust as both human beneficiaries and specific purposes is unique to STAR trusts
- A beneficiary of a STAR trust has no right to information about the trust, nor to bring proceedings against the trustee concerning the administration of the trust, instead an enforcer must be appointed

Application of the STAR law

A trust will only be a STAR trust if this is expressly stated in the trust deed.

Enforcers

Under classic trust principles a beneficiary has the right to bring the trustee to account in relation to the administration of the trust. This right to enforce the trust will usually also enable the beneficiary to obtain certain information about the trust. However, under the STAR law, the concepts of beneficial entitlement and enforcement of a trust are split. Accordingly, the only person who has standing to enforce a STAR trust is the enforcer. The enforcer is most commonly appointed by the trust deed (although this can also be done by an order of the Court).

There is no restriction on a beneficiary taking on the office of enforcer, but if at any period during the life of a trust, there is no enforcer appointed of full capacity or if he is unable, unwilling or unfit to enforce the trust, the trustees must apply to the Court within 30 days for the appointment of an enforcer.

Certainty

Unlike other trusts, STAR trusts are not rendered void by uncertainty as to their objects or mode of execution. The power to resolve any uncertainty can be vested in an individual via the trust deed or is otherwise conferred on the Court.

Additionally, if the execution of a STAR trust in accordance with its terms becomes:

- Impossible or impracticable
- Unlawful or contrary to public policy; or
- Obsolete because of changing circumstances it fails to achieve the trust's general intent the trustee should reform the trust via its own powers if possible, but if not it must apply to the Court to reform the trust "Cy-pres" – ie to amend the trust as necessary while remaining "as near as possible" to its original intent

The trustee

The trustee of a STAR trust must include a trust corporation licenced to conduct trust business in Cayman or a Cayman Private Trust Company.

The trustee must keep the following information in the Cayman Islands at its office:

- The terms of the STAR trust
- The identity of the trustee and enforcer
- Details of the property held in the STAR trust (including all trust distributions) and the identity of the settlor (ie the creator of the trust)

Uses of STAR trusts

- STAR trusts, as a form of non-charitable purpose trust, allow individuals to establish trusts for philanthropic purposes which might not qualify as “charitable” within the legal definition (eg no element of public benefit is required)
- STAR trusts are attractive as dynastic or multi-generational trusts because they can exist indefinitely
- Clients may use STAR trusts if they wish to benefit specific individuals, but also use the trust to further a purpose, such as the continuance of a business
- By restricting the rights of beneficiaries, the settlor has a greater degree of certainty as to the information about the trust which a beneficiary can obtain and this can be helpful in various contexts, such as forced heirship claims

As part of a commercial transaction, a STAR trust might be employed to structure the ownership of the shares in a company (eg the voting shares) so that they are not vested in any of the parties to the transaction.



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