

Cayman Islands: STAR Trusts

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What are STAR trusts?

STAR trusts are a type of trust created by statute (the **STAR Law**) and unique to the Cayman Islands.¹ They can be established for the benefit of any number of persons or the furtherance of any number of purposes (charitable or non-charitable) or a combination of both. The common law rules relating to ordinary (i.e. non-STAR) trusts (**Ordinary Trusts**) continues to apply to STAR trusts, except as otherwise amended by the STAR Law.

Principal features of STAR Trusts

Separate regime

The STAR Trust regime does not affect Ordinary Trusts: it only applies if the trust instrument contains a declaration that it applies. There is therefore no need to consider which regime the trust falls into (i.e. whether it is a person trust or purpose trust) and which rules therefore apply to it.

Enforcers

Beneficiaries of an Ordinary Trust have rights to receive information and documents from the trustee and have standing to enforce it i.e. they can bring legal proceedings against the trustee for breach of trust. Beneficiaries of a STAR trust do not automatically have those rights. The only persons who have standing to enforce a STAR trust are the enforcers (although beneficiaries can be enforcers).

Enforcers can have a right or a duty to enforce the trust and there must be at least one enforcer who is either a beneficiary or who has a duty to enforce, but other than that, there can be any number of enforcers and they can be given different powers and duties under the trust.

If at any time there is no enforcer who is either (i) a beneficiary or (ii) has a duty to enforce and is fit and willing to do so, the trustee must apply to the court to appoint an enforcer, for administration under the direction of the court or such other order as the court thinks fit.

An enforcer has the same rights as a beneficiary of an Ordinary Trust:

- (a) to apply to the court; and
- (b) to receive information and documents concerning the trust and its administration from the trustee;

and the same rights against the trustee and third parties as a beneficiary of an Ordinary Trust.

An enforcer with a duty to enforce has the same rights as a trustee of an Ordinary Trust to protection and indemnity and to apply to the court for directions.

¹ STAR stands for Special Trusts - Alternative Regime. They were originally introduced by the Special Trusts (Alternative Regime) Law 1997 and are now contained in Part VIII of the Trusts Act (2021 Revision).

Protectors

A STAR trust can have a protector (or anyone else with powers under the trust). A protector (or anyone else) can (but need not) be given a right (or a duty) to enforce the trust, which is not possible with an Ordinary Trust.

Purposes

The only requirements for the validity of the purposes are that they are legal and not contrary to public policy. In particular, there is no requirement for the purposes to be sufficiently certain. Instead, the terms of the trust can (and in practice, typically do) give the trustee or another person the power to resolve any uncertainty in relation to the purposes or as to how they are to be carried out. If the uncertainty cannot be resolved under the terms of the trust itself, the court has power to do so.

Duration

A STAR trust may last indefinitely.

Formalities

A STAR trust can only be created by a written instrument, and can be created by will.

Trustees

The trustee of a STAR trust must be or include a 'trust corporation', meaning the holder of a Cayman Islands trust licence or a company registered as a private trust company in the Cayman Islands.

The trustee must keep at the office of the trust corporation in the Cayman Islands, a documentary record of:

- (a) the terms of the trust;
- (b) the identity of the trustee and the enforcers;
- (c) all settlements of property on the trust and the identity of the settlors;
- (d) the property subject to the trust at the end of each of its accounting years; and
- (e) all distributions or applications of the trust property.

The trustee must also take steps to ensure, when accepting property on the terms of a STAR trust, that the settlor or the person making the settlement on the settlor's behalf, understands who will have standing to enforce the trust. There are criminal penalties for failure to comply with this obligation.

Reforming the trust²

If the carrying out of the trust is or becomes:

- (a) impossible or impracticable;
- (b) unlawful or contrary to public policy; or
- (c) obsolete in that, by reason of changed circumstances, it fails to achieve the general intent of the trust,

the trust can be reformed, either pursuant to its own terms, or if that is not possible, then by the court on application by the trustee.

Uses of STAR trusts

There are numerous potential uses for STAR trusts, both for private wealth structuring and in the commercial arena. In short, the flexibility of the STAR Law means that any obligations that could be agreed by contract can be made a trust obligation under STAR.

We outline some of the more common uses of STAR below.

² This is also known as *cy-près*.

Philanthropy

STAR trusts have proved popular with settlors who have a philanthropic purpose in mind, particularly one which may not necessarily fall within the strict definition of what is 'charitable'. For example, they avoid the issues concerning validity of trusts for foreign charities, which do not necessarily come within the definition of charity under the governing law of the trust.

Even where the purposes are in principle thought to be charitable, there are potential advantages of using STAR, for example:

- (a) It reduces the risk of the trust failing: the legal meaning of charity is not straightforward and the consequence of getting it wrong is that the trust fails entirely.
- (b) It allows settlors to choose their own enforcers and enforcement mechanism, rather than rely on the Attorney-General of the Cayman Islands who will not normally know the trust exists.

Private trust companies

STAR trusts are frequently formed to incorporate and hold shares in a private trust company to act as trustee of one particular trust or a group of trusts, often for a specific family.³

Special purpose vehicles (SPVs)

In securitisation and finance transactions, a STAR trust can be (and often is) used instead of a charitable trust to hold the shares in an SPV in an 'orphan' or off balance sheet structure.

Management shares

Another use of STAR trusts in a commercial context is to hold the management shares in a mutual fund so that management control of the fund rests with the trustee in the Cayman Islands and not with the investors.

Restricting information rights

As beneficiaries do not have automatic enforcement and information rights, there is much greater flexibility, for example:

- (a) Settlor's may not want their children to know the extent of their wealth for fear they may not make their way in the world.
- (b) Forced heirship planning – the settlor's heirs will normally be entitled to information about a trust as beneficiaries so may be able to use that information to attack the trust in their home jurisdiction. Under STAR, their enforcement and information rights can be excluded or restricted: for example, they can be made conditional on an undertaking not to challenge the trust.
- (c) Difficult beneficiaries – the trust instrument can provide that they are entitled to limited information, so the trustees do not have to spend time dealing with unreasonable demands and unfounded complaints.

Alternative dispute resolution

As beneficiaries of a STAR trust do not automatically have standing to apply to court to enforce the trust, that can be made conditional on their agreeing to resolve disputes according to alternative procedures, including arbitration or mediation.

Family businesses and other high risk assets

The ability to combine trusts for both purposes and persons within the STAR trust regime has made them a popular vehicle for holding shares in a family business and other assets that carry a higher investment risk

³ Alternatively, it is possible to dispense with the need for a trust if a foundation company is used; See the separate Moutant guide to Cayman Islands Foundation Companies.

and which would not normally be appropriate for trust investments, such as yachts, aircraft, fine art and higher risk financial assets such as derivatives or borrowing for investment purposes, which increases risk by magnifying gains and losses.

A trustee's investment duties do not sit well with high risk assets or concentration of risk in one asset (such as a family business): a trustee must act prudently, avoid speculative or hazardous investments and consider the need to diversify.

These issues are not a problem for STAR trusts (if carefully drafted) as these duties can be excluded or restricted as the settlor wishes.

STAR also allows the trustee to be given clear guidance as to who should be put in charge of the business, while excluding any duty of the trustee to involve itself in its day to day operations or to consider selling it in order to diversify investment risk. It can also be helpful where the settlor does not want the trustee to be guided solely by financial considerations in making decisions in relation to the business, but to take into account other factors, such as the interests of employees and the local community in which it operates.

Pre-IPO trusts

For business continuity reasons, it is common for shares to be settled on trust as part of an entrepreneur's pre-IPO planning. It helps to ensure that the IPO can proceed, even where there are disruptive events that might otherwise derail the process, such as the departure of key shareholders, legal disputes or even divorce, incapacity or death. STAR trusts are one of the most popular structures used for this type of planning, primarily for the advantages they have in holding family businesses outlined above, but also for the flexibility they offer in other areas, such as restricting information rights.

We can advise on the suitability of a new or existing STAR trust, its drafting and on structuring issues relating to the use of STAR trusts.

Contacts

A full list of contacts in our International Trusts & Private Client team who specialise in this area can be found [here](#).