

# GUIDE TO STAR TRUSTS IN THE CAYMAN ISLANDS

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## PREFACE

This Guide explores the unique nature of STAR trusts, their characteristics, and their most common uses. The Guide demonstrates the flexibility offered in the Cayman Islands for the creation of non-charitable purpose trusts and other special trusts and powers.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the Private Client & Trusts Department, using the [contact information](#) provided at the end of this Guide.

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## 1. INTRODUCTION

As a leading offshore centre, the Cayman Islands is an ideal and attractive location in which to establish trust and corporate structures. With a long history of no direct taxation and conveniently situated on the US Eastern Time Zone, and with excellent connections to London and major cities in the United States, the business advantages of forming such structures in the Cayman Islands speak for themselves. As a British Overseas Territory, the Cayman Islands benefit from a legal system based on the English common law with its own local statutes and case decisions of the Grand Court, of which there is a dedicated Financial Services Division. There is also a long record of political and economic stability in the jurisdiction. All of these factors have led to a steady growth in the number of clients wishing to establish trusts in the Cayman Islands.

Trusts law in the Cayman Islands was based on, and remains strongly influenced by, English common law. However, local legislation has been crafted to modernise Cayman trust law, in response to market opportunities and industry demand.

Historically, Cayman trusts could be established for the charitable purposes or for beneficiaries. However, in 1997 the concept of private purpose trusts was introduced into the Cayman Islands via the Special Trusts (Alternative Regime) Law, 1997, now embedded in Part VIII of the Trusts Law (the Law).

Since inception, STAR trusts (as they have become known) have been recognised as unique and flexible estate planning tools. STAR trusts are frequently used in structured finance and commercial transactions where other special purpose vehicles are too inflexible or otherwise inappropriate.

## 2. WHY WERE STAR TRUSTS CREATED?

Before the STAR trusts legislation was enacted, four primary limitations in Cayman Islands trusts law were identified:

- It was not possible to create trusts for a purpose other than a “charitable purpose” (as defined under the law of England and Wales).
- All Cayman Islands trusts were subject to the rule against perpetuities and thus were limited to a maximum duration of 150 years.
- The beneficiaries acting as a whole, could vary or terminate a trust if they all agreed to do so (so long as they were not impaired by any incapacity (the *Saunders v Vautier* principle)
- Lastly, there was no mechanism whereby a trust could permit both persons and purposes to benefit.

The legislation was drafted to address these limitations, and to create a flexible, unique and adaptable form of trust that could be used in many commercial and estate planning applications, the full scope of which is only now being explored.

## 3. KEY FEATURES OF STAR TRUSTS

The main features of STAR trusts are:

- 3.1 The beneficiaries and/or objects may be persons, purposes or both. There may be any number of beneficiaries and any number of objects, whether charitable or not, provided that such purposes/objects are lawful and not contrary to public policy.
- 3.2 STAR trusts must have an “Enforcer.” The Enforcer is the only person (natural person or corporate entity) with standing to enforce the terms of the STAR trust (such enforcement powers having been removed from

the beneficiaries by virtue of the Law, unless, of course, an Enforcer is also a beneficiary of the trust. Even in that situation, the beneficiary would be wearing his “Enforcer” hat and not his “Beneficiary” hat). The Law thus makes a clear distinction between the capacity to benefit from a STAR trust and the actual capacity to enforce such a trust. The effect is to remove rights of beneficiaries not only to enforce the trust, but also their right to seek disclosure of information regarding the trust and its on-going administration.

- 3.3 Any uncertainty as to objects or mode of execution or administration of a STAR trust can be resolved by the trustee (or any other person the trust document so specifies) or by the court, if necessary. A STAR trust is therefore very unlikely to be declared *void ab initio* on grounds of uncertainty, as could be the case with a poorly drafted non-STAR trusts.
- 3.4 A STAR trust which cannot be executed or administered in whole or in part because it is impossible, impracticable, unlawful, or contrary to public policy or is obsolete in that, by reason of changed circumstances, it fails to achieve its general intent, can be reformed by the court by virtue of a *cy-près* application made by the trustee. The purpose of such an application would be to vary the trust slightly, such that the purposes are in accordance with the general intent of the settlor in the event of unforeseen circumstances. If the court considers that the trust cannot be reformed in accordance with the settlor's general intent, the trustees will be in a position to dispose of the trust property as though the trust or the relevant part of it had failed. In practice, *cy-près* applications are only made in very limited circumstances.
- 3.5 Unlike in Bermuda and Jersey (where non-charitable purpose trusts are also expressly authorised), the trustee of a STAR trust must be or must include a trust company licensed to conduct trust business in the Cayman Islands or a private trust company registered in the Cayman Islands. This adds a level of oversight and regulation above and beyond other jurisdictions. There are criminal sanctions attached if these requirements are overlooked or bypassed.
- 3.6 The rule against perpetuities does not apply to STAR trusts. In other words, STAR trusts may be created for an unlimited duration (or not, depending on the terms of the trust deed), which eliminates the risk of a resulting trust in favour of the settlor at the end of the perpetuity period and the adverse tax consequences which may flow from such an event.
- 3.7 A STAR trust cannot hold land in the Cayman Islands but may hold an interest in a company, partnership or other entity which does.

#### 4. USES OF STAR TRUSTS

The myriad uses of STAR trusts are still being explored. A few of the more common uses are:

- 4.1 To create dynasty-style trusts for multiple generations primarily for holding treasured family assets, investments, and preserving shares in family businesses. In such circumstances, the preservation of trust assets can be made to be a purpose of the trust, thus avoiding the requirement of the trustees to diversify the trust fund.
- 4.2 To create trusts for philanthropic purposes which are outside of the scope of what would be considered charitable as a matter of Cayman Islands law.
- 4.3 To create trusts which restrict the rights of troublesome beneficiaries who may be tempted to challenge the trust, to seek to obtain information in relation to the trust, or even to invoke the *Saunders v Vautier* principle (as previously discussed) to bring the trust to an end.
- 4.4 To create trusts which are unrestricted by a perpetuity period.

- 4.5 To create trusts which benefit persons while at the same time achieving alternative objectives such as the continuation of family businesses.
- 4.6 To form "Special Purpose Vehicles" for a wide range of commercial transactions in a safe, flexible, and bankruptcy remote manner. In such transactions, particular assets are typically settled into a STAR trust so that the assets will not be owned by the settlor and will be deemed to be "off-balance sheet". These structures are particularly useful for the repackaging of securities and other self-financing transactions.
- 4.7 To act as a vehicle to hold shares in a private trust company, thus allowing a family member (or members) to retain a degree of control over the administration of the underlying trusts and influence decisions which may affect the underlying trusts and the assets they hold (most typically, shares in a family business).
- 4.8 For clubs and associations, so that their members can enforce terms of contracts without actually being a party to the contract. Also, upon the dissolution of the club or association, the contributed assets may be returned to members in portions specified in the trust deed, rather than in an ad-hoc manner.

## 5. REGULATIONS AND REGISTRATION

### 5.1 Regulation

The trustee of a STAR trust must be (or must include, (in the case of a co-trustee) a trust company licensed in the Cayman Islands under the Bank and Trusts Companies Law or a private trust company registered in the Cayman Islands. This provides a significant amount of oversight and regulation. Criminal sanctions may be imposed should this requirement be transgressed.

The trustee of a STAR trust is also required to keep, in its Cayman Islands office, a documentary record of (i) the terms of the trust, (ii) the identity of the trustee and the enforcer(s), (iii) all settlements of the property upon trust and the identity of the settlor(s), (iv) the property subject to the trust at the end of each of its accounting years, and (v) all distributions or applications of the trust property. These additional obligations clarify any uncertainty in the common law regarding the retention of trust records and other vital information. These requirements therefore standardise and clarify important administrative expectations specifically imposed on STAR trust trustees.

### 5.2 Registration

There is no requirement to register a STAR trust with the regulatory authorities in the Cayman Islands, hence confidentiality is preserved. In fact, all trust deeds (except "exempted trusts") are exempt from registration. Therefore, the details of a STAR trust will remain confidential, subject only to disclosure as may be required by an order of the Cayman Islands courts, or under a Tax Information Exchange Agreement, properly invoked in accordance with its terms.

## 6. CONCLUSION

STAR trusts are a most useful tool, and they continue to grow in popularity with private families and businesses worldwide. Doubts about the viability of the STAR trust have been all but put to rest, and the future uses of STAR trusts are limited only by the imagination of the settlors who employ them.

For more specific advice on relating to the STAR Trusts in the Cayman Islands, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).