



AN INTRODUCTION TO CAYMAN ISLANDS STAR TRUSTS

Introduction

The purpose of this note is to provide a brief introduction to STAR Trusts in a question and answer format. It is not intended to be exhaustive and specific advice should always be sought.

What is a STAR Trust?

It is a particular type of trust that may be established under Part VIII of the Trusts Law (2001 Revision). The name "STAR" is an acronym for "Special Trusts-Alternative Regime" which is the designation given to Part VIII of the Trusts Law. The principal purpose of the regime was to allow a trust to be set up whose object was to carry out a particular purpose or purposes, whether charitable or non-charitable, as opposed to being set up to benefit beneficiaries. However, the regime is sufficiently flexible to allow a STAR Trust to be set up for beneficiaries instead of for purposes or even for a combination of purposes and beneficiaries. Because a STAR Trust can have beneficiaries, it may be used as an alternative regime for ordinary trusts for persons.

What are STAR Trusts used for?

The STAR Trust is an extremely flexible tool and can be used for a variety of purposes. One of the original visions for a STAR Trust was to provide a means for the special purpose vehicle (SPV) in structured finance transactions to be owned by a party entirely disconnected from the originator of the transaction and hence avoid consolidation of the balance sheets of the SPV and the originator. The STAR Trust has been used to some extent in this type of situation as an alternative to the more traditional charitable trust. However, perhaps a more common use has been as an alternative to an ordinary trust in the more traditional family trust situation where there may be particular estate planning objectives by the family patriarch with regard, in particular, to the family business. Family members can be made beneficiaries without having to share the same level of information to which they would be typically entitled in the case of an ordinary trust. Other uses of the STAR Trust include ownership of private trust companies, ownership of the management shares in a hedge fund, as a Trust to benefit causes or objects which would not be charitable in strict legal terms and in connection with pension plans and deferred compensation plans.

How is a STAR Trust created?

It must be created by a written instrument, typically a deed of settlement or declaration of trust, which should contain a declaration that Part VIII of the Trusts Law is to apply to the Trust. A STAR Trust can also be created by will to operate on death.

Does general trust law apply to a STAR Trust?

Yes, general trust law applies except to the extent that it is modified by Part VIII of the Trusts Law.

Are there any restrictions on the purposes that a STAR Trust may be set up for?

No, provided that the purpose is lawful and not contrary to public policy. Under general trusts law, a Trust could not be set up for purposes if those purposes were not charitable in nature and 'charitable' was defined in case law relatively narrowly. The advantage of a STAR Trust is that the charitable limitation on its purposes does not apply.

If a STAR Trust does have beneficiaries, do those beneficiaries have standing to enforce the terms of the Trust in the way that the beneficiaries would have in the case of an ordinary trust?

No, the beneficiaries of a STAR Trust do not have any enforcement rights unless they also happen to be the Enforcer(s) of the STAR Trust. There is no objection to one or more of the beneficiaries acting as Enforcer.

Who is the Enforcer?

The Enforcer is the person or entity who has the standing to enforce the terms of a STAR Trust. Indeed, only the Enforcer has the power to do so. The Enforcer would usually be appointed under the instrument establishing the STAR Trust but can also be appointed by court order.

Is the Enforcer subject to fiduciary duties?

Generally, yes. Part VIII of the Trusts Law provides that, subject to evidence to the contrary, the Enforcer is deemed to have a fiduciary duty to act responsibly with a view to the proper execution of the STAR Trust.

What rights does the Enforcer have?

The Enforcer has the same rights as a beneficiary of an ordinary trust to bring administrative and other actions and to make applications to the court concerning the STAR Trust. In addition, also like a beneficiary of an ordinary trust, the Enforcer has the right to be informed of the terms of the Trust, to receive information about the Trust and its administration from the Trustee and to inspect and take copies of the Trust documents. In the performance of his duties, the Enforcer has the same rights as the Trustee of an ordinary trust to indemnification and to make applications to the court for an opinion, advice or direction or for relief from personal liability. If the Trustee of a STAR Trust commits a breach of trust, the Enforcer has the same remedies on behalf of the Trust as would the beneficiary of an ordinary trust.

Who can act as Trustee of a STAR Trust?

Unless authorised otherwise by a court order, at least one of the Trustees of a STAR Trust must be a Cayman Islands licensed trust corporation. Otherwise, a criminal offence is committed. The trust corporation must keep at its offices in the Cayman Islands a documentary record of the terms of the Trust, the names of the Trustee(s) and the Enforcer(s), all settlements of property into the Trust and the name(s) of the settlor(s), the property subject to the Trust at the end of each of its accounting years and all distributions or applications of trust property.

How is trust property typically held within a STAR Trust?

Invariably, the trust property is held by an underlying Cayman company established by the Trustee of the STAR Trust rather than held directly by the Trustee.

Are there any specific rules that a Trustee of a STAR Trust needs to be aware of when accepting property into the Trust?

When accepting trust property into a STAR Trust, the Trustee(s) must ensure that the settlor of the property, or the person making the settlement on his behalf, understands who will have standing to enforce the Trust and failure to do so constitutes a criminal offence by the Trustee(s).

Are there any restrictions on a STAR Trust being used to hold property in the Cayman Islands?

Cayman Islands real estate may not be held directly or indirectly under a STAR Trust. However, there is no objection to a STAR Trust holding, for example, shares in a company which itself holds Cayman Islands real estate.

For more information on STAR Trusts please contact Sophia Harris (SHarris@solomonharris.com) or Paul Scrivener (PScrivener@solomonharris.com)