



Guide to  
STAR Trusts  
in the Cayman Islands

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## PREFACE

The Appleby Guide to STAR trusts in the Cayman Islands 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.

The information contained in this Guide is for informational purposes only and should not be considered as constituting legal advice. Readers are encouraged to consult Appleby before making decisions or taking actions on the numerous and complex issues involved in the establishment of trusts.

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George Town, Cayman Islands  
April 2011

## INTRODUCTION

On the 23rd of October 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 (2009 Revision) (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.

The STAR regime only applies if the Law is specifically stated to apply in the provisions of the trust deed. It therefore does not impact on existing or future Cayman Islands governed non-STAR trusts.

## WHY WERE STAR TRUSTS CREATED

Before the Law was enacted, it was not possible to create trusts for a purpose other than a charitable purpose. Charitable purposes in the Cayman Islands widely mirror those purposes recognised in England and Wales as being charitable<sup>1</sup>.

The Law also permits perpetual trusts; that is, trusts without a perpetuity or expiry period. Cayman Islands trusts which are not subject to the STAR regime are currently limited to a maximum duration of 150 years.

The Law permits the rule in *Saunders v Vautier*<sup>2</sup> to be avoided (whereby the beneficiaries acting as a whole, so long as they were not impaired by any incapacity, could vary or terminate a trust if they all agreed to do so<sup>3</sup>).

Lastly, STAR trusts permit both persons and purposes, or a mixture of the two to benefit under a STAR trust. This is a very unique feature of STAR trusts, the applications of which are only now being explored.

## KEY FEATURES OF STAR TRUSTS

The main features of STAR trusts are:

- (a) 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.

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<sup>1</sup> As set out in the leading English case of *Income Tax Special Purposes Commissioners v Pemsel* [1891] A.C. at 583. The Pemsel case defined the four broad categories of charitable purposes as the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community not falling under any of the preceding heads of charitable purposes. In addition to the Pemsel case, the ancient Statute of Charitable Uses Act (1601) continues to apply in the Cayman Islands. The Statute of Charitable Uses Act (1601) sets out a wide range of specific charitable purposes including the relief of aged, impotent and poor people, the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars of universities; the repair of bridges, ports, havens, causeways, churches, seabanks, and highways, and various other charitable purposes. A draft Charities Bill is currently under consultation and should be enacted in 2009/2010 which will set out in detail for the first time specific charitable purposes as a matter of Cayman Islands Law.

<sup>2</sup>(1842) 4 Beav 115, 49 ER 284

<sup>3</sup> This is a slight simplification of the rule, but it remains the case that the power has been removed from the hands of the beneficiaries acting in concert to terminate or vary a trust which may contradict with the wishes or intentions of the settlor.

- (b) STAR trusts must have an “Enforcer” who is the only person 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 ongoing administration.
- (c) 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.
- (d) 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.
- (e) 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. 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<sup>4</sup>.
- (f) 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.
- (g) A STAR trust cannot hold land in the Cayman Islands but may hold an interest in a company, partnership or other entity which does.

## USES OF STAR TRUSTS

STAR trusts have been in existence for just over 10 years, and the limits of their uses are still being explored. A few of the more common uses are:

- (a) To create dynasty-style trusts for multiple generations primarily for holding treasured family assets, investments, and preserving shares in family businesses.

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<sup>4</sup> On summary conviction there is a CI\$10,000 fine and one year imprisonment. On indictment, the fine is CI\$100,000 and five years imprisonment as set out in Section 105(4) & 105(5) of the Law. There are other criminal sanctions imposed by Sections 100(5) of the Law against a trustee who fails to apply to the Court for directions in circumstances where there is no Enforcer, and Section 107 of the Law for failing to inform a settlor (prior to the establishment of a STAR trust) of the nature of the Enforcer’s role.

- (b) 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.
- (c) 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.
- (d) To create trusts which are unrestricted by a perpetuity period.
- (e) To create trusts which benefit persons while at the same time achieving alternative objectives such as the continuation of family businesses.
- (f) To form “Special Purpose Vehicles” for a wide range of commercial transactions in a safe, flexible, and bankruptcy remote manner.
- (g) 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).
- (h) For clubs and associations whereby 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.

## REGULATION AND REGISTRATION

### 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 & Trusts Companies Law (2009 Revision). This provides a significant amount of oversight and regulation with criminal sanctions 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.

### 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.

## 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 STAR Trusts in the Cayman Islands, we invite you to contact one of the following:

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