



STAR Trusts in the Cayman Islands

HIGGS & JOHNSON
Counsel & Attorneys-at-Law



Contents

Preface	2
1. STAR Trust Legislation	3
2. Concept	3
3. Purpose	3
4. Beneficiaries	3
5. Certainty of Objects or Mode of Execution	3
6. Enforcer	3
7. Trustee	3



Preface

Set out below is some useful information on STAR Trusts under the Trusts Law (2009 Revision) (the "Law") This summary is by no means exhaustive and does not purport to contain all applicable qualifications and exceptions or to be a complete review of issues pertaining to such trusts.

The information contained in this guide is provided for the general interest of our readers, but is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This guide can in no way serve as a substitute in such cases.

STAR TRUST LEGISLATION

STAR trusts have been part of Cayman Islands law and commercial life since October 1997 when the Special Trusts (Alternative Regime) Law 1997 (thus "STAR") came into effect now incorporated into the Trusts Law (2009 Revision) (the "Law"). Owing to the length of time since the legislation was enacted, many such STAR trusts have been established and administered with great effect and trust practitioners in the Cayman Islands have therefore become very familiar with all aspects of running such trusts.

CONCEPT

Most jurisdictions including the UK require there to be, unless it is a charitable trust, specific beneficiaries or a class of beneficiaries. In contrast STAR trusts allow there to be any number of beneficiaries or none at all instead providing for specific purposes.

PURPOSES AND BENEFICIARIES

The only restrictions on the types of purpose (or objectives) are that they are lawful and not contrary to public policy. Purpose trusts are a particularly flexible tool in complex loan transactions, asset securitization transactions or business joint ventures, for example. In certain offshore planned structures, it is not possible or desirable for the parties to become beneficiaries of a trust and the financial planners may be uncomfortable with establishing a charitable trust.

A STAR trust could be used in a transaction whereby a party wishes to move off its balance sheet certain assets or where it prefers not to take legal or beneficial control of assets for a particular period of time or until or after a specified event. The purpose could also be for the continuance of a Settlor's business. It would therefore be possible, for example, for there to be a specific purpose to leave management responsibility of a business to the directors. This could thus relieve the otherwise normal duty of the trustees to invest and manage investments within a trust and to monitor the performance of a business.

The trust can also be structured if desired to provide benefit for the family of a business owner without those beneficiaries having the right to interfere in the management of that business.

CERTAINTY OF OBJECTS OR MODE OF EXECUTION

To ensure every possibility of a STAR trust not failing for lack of certainty as to its objects or mode of execution, the

Cayman Islands Courts have powers to determine the general intent of the trust from the admissible evidence as a matter of probability. If uncertainty as to the objects or mode of execution cannot be resolved pursuant to the terms of the trust instrument and the Cayman Islands Courts elect not to reform the trust or settle a plan for its administration or resolve the uncertainty in any other way the Cayman Islands Courts deem to be appropriate, the Courts may declare the trust void.

ENFORCER

The Enforcer is a person, whether or not a beneficiary (if the trust has beneficiaries), appointed to be the Enforcer by the trust instrument or by order of the Cayman Islands Court and the role is especially important in trusts where the beneficiaries have no rights of enforcement or disclosure of trust information as against the trustees.

The Enforcer's duties may be stated in the trust instrument to be not of a fiduciary nature but, absent to a contrary intention, the Enforcer will be deemed to have a fiduciary duty to act responsibly with a view to the proper execution of the STAR trust. The problem of what to do if the Enforcer fails to enforce the terms of the trust (i.e. how can the trustee, for example, be obligated to enforce the Enforcer to enforce obligations on the trustee itself?) has been dealt with by provisions for a trustee, or another enforcer, or any other person stipulated in the trust instrument to have the legal right to enforce the duty (if any) of the Enforcer.

TRUSTEE

Unlike a non-STAR trust, the trustee of a STAR trust must be, or must include if there is more than one trustee, a trust corporation licenced under the Banks and Trust Companies Law of the Cayman Islands. The reason for this is that, if at least one of the trustees of a STAR trust is located in the jurisdiction and duly licenced to provide trust services, that trustee should be sufficiently sophisticated to handle the administration of a STAR trust which may (of course it need not necessarily) be more complicated than a routine non-STAR trust.

CONCLUSION

The STAR trust legislation complements the comprehensive range of offshore products offered by the Cayman Islands and should enable it to provide additional flexibility in the planning of structured asset and financing arrangements and other trust matters requiring non-charitable purpose trusts.