

Article

A Practical Guide to Cayman Islands Star Trusts

Author: Robert Lindley, Partner, Head of Cayman & BVI Private Client & Trust | Wesley O'Brien, Associate

STAR Trusts are a form of trust that is exclusive to the Cayman Islands (Cayman),¹ and which have a wide variety of practical applications. The unique features of a STAR Trust provide clients with structuring options that are often not possible with an ordinary trust, and which can be particularly useful in a commercial and transactional context. This article summarises the main features of a STAR trust and some of its keys practical applications.

Key Features:

Beneficial Objects

The beneficiaries and/or objects of a STAR trust may be persons, purposes or a combination of the two. There may be any number of beneficiaries, and the purposes may be of any kind – charitable or non-charitable – provided that they are lawful and not contrary to public policy in Cayman.

Enforcement

One of the key features of STAR is that it facilitates separation of the right to benefit under a trust from the right to enforce the terms of the trust.

This means that a beneficiary of a STAR trust will not be able to sue the trustee or obtain information concerning the trust. Instead, the only person or persons who have such standing are the person or persons appointed as the “enforcer” under the trust deed or by order of the court. There are no prescribed criteria or qualifications for an enforcer who may be resident anywhere and may be an individual, a committee or corporate entity.

Every STAR trust must have an enforcer. If the position falls vacant, the trustee is under a statutory duty to ensure that a replacement is appointed. Generally, the powers and duties of an enforcer are held in a fiduciary capacity.

The ability to restrict beneficiaries’ rights of enforcement can be useful in preventing frivolous and costly challenges being mounted by disaffected beneficiaries. Any enforcement action may only be brought by the enforcer who, generally, will be under a duty to ensure that only proceedings which have actual merit are commenced.

Confidentiality

The ability to restrict beneficiaries’ rights to information about the trust can prove useful in circumstances where the information is commercially sensitive or where there may be a risk to personal security if it were to become widely disseminated.

Trustees

The trustees of a STAR trust must be (or include) a trust corporation (or its controlled subsidiary) licensed under the Banks and Trust Companies Act (2021 Revision) or a private trust company registered under the Private Trust Companies Regulations (2020 Revision). This statutory requirement aims at ensuring the proper administration of STAR trusts by suitably qualified and experienced trustees.

The trustees of a STAR trust are required to keep, in its Cayman Islands offices, a documentary record of:

- i. the terms of the trust;

¹ STAR trusts were introduced in Cayman by the enactment of the Special Trusts (Alternative Regime) Law, 1997, which is now contained in Part VIII of Cayman’s Trusts Act (2021 Revision)

- 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.

Unlimited Duration

The rule against perpetuities—ordinarily 150 years for Cayman discretionary trusts—does not apply in relation to STAR trusts. As such, they may be of unlimited duration. The disapplication of the perpetuity rules in the case of a STAR trust can be particularly attractive to settlors who wish to establish a “dynasty” structure which is not limited to a specific lifespan. This is also a useful feature in the ongoing cycle of a SPAC’s mergers and acquisitions.

Certainty

Unlike an ordinary trust, a STAR trust will not automatically be rendered void if the identity of the beneficiaries or the manner of execution of the purposes becomes uncertain. The STAR trust deed may confer on any party—usually the trustee and/or the enforcer—the power to resolve any such uncertainty or, in default of this, the trustee may apply to the court for assistance.

Planning Uses

The flexibility of STAR gives it a wide range of applications for institutional and private clients.

Commercial Use

As a pure purpose trust, a STAR trust is suitable for use in financing transactions where previously a form of charitable trust might have been used to hold shares in a special purpose vehicle. This is advantageous for when assets need to be held off-balance sheet or to create “orphaned” or bankruptcy remote structures.

Similarly, it is common to see a STAR trust holding the management shares of a mutual fund in order to ensure that the management and control of the fund is located in a tax-neutral jurisdiction and out of the hands of the investors.

SPACs: Special purpose acquisition companies (SPACs) are typically incorporated in Cayman as an exempted company with a small group of initial investors, and a management team. Cayman companies are a popular listing vehicle with for instance, more than 40% of all companies listed on the Hong Kong Stock Exchange being Cayman companies.

Given the SPAC, at the time of its IPO, has no track record or operating history, investors will understandably want to see their funds protected and managed in a responsible fashion. It is therefore customary that once the IPO has been completed, between 80-90% of the net proceeds of the listing, particularly for Nasdaq-listed SPACs (not for LSE listings), are placed into a third party custodian trust account.

STAR Trusts can form part of a SPAC structure with the terms of the STAR trust (as mirrored in the constitutional and listing documents of the SPAC) providing essential investor and asset protection provisions, including restrictions on when the management team can utilize the trust funds for investment purposes, the amount of such funds and for what purposes those funds may be used. STAR trusts may also be set up for pre-IPO planning purposes, i.e. a “pre-SPAC trust”.

IPOs: In connection with an IPO, founders and substantial shareholders (as settlors of the trust) have also been prompted to establish pre-IPO family discretionary STAR trusts as an enduring platform to hold their shares and interests for estate planning purposes and also to give a measure of stability and concentration of their holding to ride through the IPO listing process.

A STAR IPO-Trust provides important wealth succession planning, avoids probate, and provides asset protection by way of limiting the risk of adverse events which may affect the business owners, such as divorce or death which in turn may adversely impact the IPO process or cause fluctuations in the price of shares.

Family Business Succession

As a mixed trust for beneficiaries and non-charitable purposes, a STAR trust can be an effective family business succession vehicle where the settlor wishes to benefit future generations of his family whilst at the same time ensuring that the ownership and management of the family business remains secure and not the subject of infighting after he or she has died.

Philanthropic Trusts

A STAR trust may also be used as a substitute for a charitable trust in circumstances where the settlor wishes to include a non-charitable element to the trust, or where the purposes, whilst being “philanthropic”, may not qualify as being wholly charitable under Cayman law, or where the settlor wishes to have a say in who enforces the trust.

Why Cayman?

Cayman's firewall legislation contained in the Trusts Act protects Cayman trusts from attack from forced heirs and those claiming against the trust assets by reason of a personal relationship with a beneficiary, and also protection from foreign orders made without reference to the operation of Cayman's Trusts Act. Other reasons to choose Cayman include:

- company laws that are flexible and adaptable to the rules of most relevant stock exchanges;
- a sophisticated and reliable judicial system;
- global recognition and familiarity;
- tax neutrality;
- international compliance standards; and
- cost efficiency and ease of incorporation of companies and trust establishment.

How Can Conyers Provide Support?

Conyers can provide a full complement of legal, corporate and trust administrative services.

Our Corporate team can advise on company incorporations and listings, whilst our Private Client & Trust team can provide advice on the establishment and ongoing administration of STAR trusts and any investor protection matters.

Authors:

Robert Lindley

Partner, Head of Cayman & BVI Private Client & Trust

robert.lindley@conyers.com

+1 345 814 7360

Wesley O'Brien

Associate

wesley.obrien@conyers.com

+1 345 814 7350

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

For further information please contact: media@conyers.com