



The Cayman Islands purpose trust legislation was published in November 1997 as The Special Trusts (Alternative Regime) Act 1997 (or STAR Act). The STAR legislation has now been consolidated with and is contained in Part VIII of the Trust Act (as amended).

The following is an outline of the distinguishing features of a special trust created under the STAR Act (a "STAR Trust"), the uses and advantages for such trusts and how R&H Trust & Corporate can assist you with the services we provide.

Distinguishing Features of STAR Trusts

The intent of the STAR legislation was to create an alternative regime under which a new trust, whether for purposes or persons or both, could be created. It does not affect the act relating to ordinary trusts and powers; it simply creates an alternative within that act. It should be noted that the act relating to ordinary trusts and powers is also applicable to special trusts except for the specific STAR provisions. There are a number of features that distinguish the STAR provisions from the purpose trust legislation of other jurisdictions. These include:

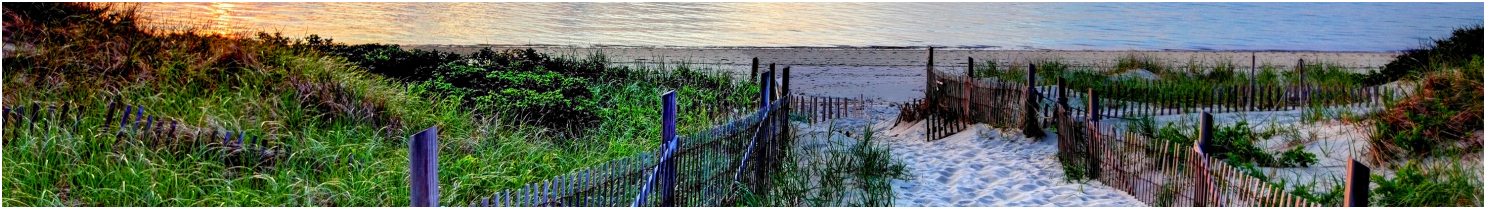
- the objects of a STAR Trust may be persons or purposes or both. The persons may be of any number and the purposes may be of any number or kind, charitable or non-charitable, provided they are lawful and not contrary to public policy. This overcomes the problem in other jurisdictions where it must be decided whether a trust is a purpose trust or a person trust before deciding whether the purpose trust act applies.
- the STAR provisions stipulate that a STAR Trust is not rendered void by uncertainty as to its objects or mode of execution. It allows the trust deed to give the trustee or any other person power to resolve an uncertainty as to its objects or mode of execution.
- a STAR Trust must have an enforcer and the STAR provisions deal comprehensively with the issue of enforcers. They provide that the only persons who have standing to enforce a STAR Trust are such persons, whether or not beneficiaries, as are appointed to be enforcers by the terms of the trust deed, or in certain circumstances by order of the court.

- the STAR provisions deal with the rights and remedies of enforcers. They provide that an enforcer has the same rights as a beneficiary of an ordinary trust. Those rights include the right to bring administrative and other actions, to make applications to the court concerning the trust and the rights to be informed of the terms of the trust, to receive information concerning the trust and its administration from the trustee and to inspect and take copies of the trust documents.
- the STAR provisions deal with powers as well as trusts. An enforcer has standing not only to enforce the trustee's duties but also to enforce any fiduciary powers given to a protector, a management committee or similar.
- the rule against perpetuities, which limits other types of trusts in the Cayman Islands to the statutory perpetuity period of 150 years, does not apply to a STAR Trust and therefore a STAR Trust can have perpetual existence.
- at least one of the trustees of a STAR Trust must be a trust company licensed in the Cayman Islands.
- the Trust Deed must include a declaration that the STAR Act provisions in Part VIII of the Trust Act (as amended) apply.

Uses and Advantages of STAR Trusts

STAR Trusts can provide greater planning opportunities than some purpose trusts in other jurisdictions due to their possible uses as person and/or purpose trusts. Some of the uses are:

- non-charitable purpose trusts. Such a purpose could include the investing in and promotion of a particular company including private trust companies and special purpose vehicles.



- charitable purpose trusts. The settlor can specify who will have the duty to enforce such a trust. Under the act for ordinary charitable trusts it is the Attorney General who has the right to enforce the trust for charity or the public interest. A STAR Trust may be the sensible choice when it is unclear whether the purposes are exclusively charitable.
- as the STAR Trust has no perpetuity period, it is useful as a dynastic trust for many future generations.
- as person trusts. Where the settlor does not wish the beneficiaries to have the power to enforce the trust or have the right to information. Examples include situations where the settlor does not want the beneficiaries to know of the trust until after the settlor's death, and where the settlor wants to prevent the creditors of a "spendthrift" beneficiary from seizing and enforcing that beneficiary's rights.
- as a combination purpose and person trust. This will provide some unique planning opportunities, for example where a settlor is concerned as to who will succeed him in the ownership and control of a family business he can settle the business into a STAR Trust. The purpose of the trust can be the promotion, growth and development of the business while there can be person beneficiaries who are entitled to the income and the capital of the business as appropriate.
- As discussed above, unlike an ordinary trust the STAR Act provides that no beneficiary under a STAR Trust has any right to take court proceeding to enforce the accountability of the trustee or any right to be involved in, or informed about, the conduct of the trust and that all rights of that description are to be the exclusive concern of an "enforcer", a person or persons or bespoke entity chosen for the purpose by the settlor. While the settlor may nominate a beneficiary or beneficiaries as enforcer there may be situations where it would be appropriate to have an independent enforcer. This is a service that RHTC can provide through a company specially established for that purpose.
- Special care should be taken in drafting a trust deed for a STAR Trust to ensure that the provisions of the legislation are properly taken into account and that appropriate attention is paid when drafting the clauses relating to the trust's objects and the appointment of the enforcers of the trust. RHTC can liaise with local legal counsel to ensure that the appropriate advice is received in this regard.

It should be noted that the STAR provisions indicate that no interest in land in the Cayman Islands can be subject, directly or indirectly, to a STAR Trust, but such a trust may hold an interest in a company, partnership or other entity which holds land in the Islands, or an interest in such land for the purposes of its business.

The advantages of STAR Trusts are not limited to private trusts; they are also a popular planning tool for a variety of commercial transactions including holding the shares of a special purpose vehicle and the voting, non-participating shares of a corporate fund.

Our Services

- R&H Trust & Corporate (operating as The R & H Trust Co. Ltd. "RHTC") a licensed Cayman Islands Trust Company, owned and operated by the local partnership of Rawlinson & Hunter LLP, can provide Trustee services to a STAR Trust.

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