

# Why STAR is rising in the East

The trust is no longer unfamiliar to Chinese business founders



**G**reat wealth has been generated in China in recent decades – and now, many successful Chinese business founders are focusing on family business succession planning. Wills are the most commonly used method, but they have limitations. A trust is a more effective and flexible succession planning vehicle.

Historically, Asia has been unfamiliar with the trust, with founders reluctant to ‘hand over control’ to a trustee. But many in China have become more familiar with the concept, recognising that trusts allow them to continue to be involved in the management of their businesses (the trust assets) without over-interference from the trustee. This is especially so with the Cayman Islands STAR trust. Indeed, the *Cayman Special Trusts (Alternative Regime) Law, 1997 (STAR)* is well suited to separating ownership from control in a way that satisfies founders and investors.

## Best of both worlds

STAR trusts can be used to create perpetual trusts for charitable/non-charitable purposes, and also for persons, or a combination. The settlor/founder can designate overriding purposes that have priority over the traditional beneficial interest of individuals. In this way, the purposes can direct the trustee to allow a designated committee to manage the trust assets and be responsible for all investment matters; the management of the assets becomes a purpose, and not merely a consequence of the trust, and a distribution of property to beneficiaries becomes subordinate to these purposes, rather than the other way around. Accordingly, Chinese business founders can have the best of both worlds by providing for business succession planning while retaining control.

Uniquely, STAR has separated enforcement from enjoyment. No beneficiary of a STAR trust has any standing *per se* to enforce the trust, nor any enforceable rights against the trustee or to the trust property. The only persons with standing to enforce a STAR trust are the persons appointed to be enforcers. They can, but need not, be beneficiaries. However, there must at all times be an enforcer with a duty to enforce. Where beneficiaries are not appointed to be enforcers, they will have no standing to enforce the trust, and so they need not be entitled to receive any information or accounts concerning the trust,

nor indeed need they be notified that it exists or that they might have an interest under it. This is a clear advantage for the founder concerned about the effect of their wealth on their children. Potential litigation brought by dissatisfied beneficiaries may also be avoided.

## Smooth operation

A Cayman Islands licensed or registered private trust company (PTC) can act as trustee of a STAR trust. The PTC enables founders to keep significant practical control over their assets, as well as preserve the fundamental trust concept. This provides more flexibility and planning opportunities to Chinese business founders who wish to transfer their family businesses to a trust without relinquishing control. A bespoke structure involving the use of a PTC and STAR trust can be created.

Typically, a professional trust company will establish ‘STAR Trust I’ and act as trustee. STAR Trust I would hold the shares of the PTC, maintain the PTC in good standing and allow it to act as trustee of the family trusts. The professional trust company would provide day-to-day administration services to the PTC. Using STAR Trust I to hold the shares of the PTC avoids probate that would otherwise apply where the PTC shares are held by individuals, ensuring continuity and smooth operation.

The founder would then establish ‘STAR Trust II’ to hold the family business. The PTC would act as the trustee of STAR Trust II. Subject to appropriate advice, the founder could direct the trustee of STAR Trust I to appoint family members and/or professional advisors as directors of the PTC. Although the family business is transferred to the trustee of a Cayman Islands trust, control of the trust assets remains at the level of the Chinese business founder through the PTC.

The use of a PTC with STAR provides a flexible solution – a structure that can hold the entire wealth of a family while enabling business activities to continue to be run by the family, and permitting philanthropic and other objectives to be accomplished. ●



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