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Welcome to the third STEP Cayman Islands trust supplement. It is a busy period for the wealth structuring industry here. Our world-class trust professionals continue to partner with government to ensure that the Cayman Islands remains the jurisdiction of choice for private client structuring by passing new legislation and embracing innovative wealth planning tools. We have recently updated our trust legislation with the Trusts Law (2017 Revision) and introduced a new wealth structuring vehicle with the enactment of the Foundation Companies Law, 2017.

This supplement serves to remind readers why the Cayman Islands is attractive to high-net-worth (HNW) individuals for their global investment and wealth planning needs. Although innovation can bring uncertainty, as is highlighted in the article on cryptocurrencies (page 17), Cayman remains ideally placed as a stable, reliable centre which offers a tax-neutral platform from which to do business and the infrastructure to embrace new opportunities. The talented and highly qualified trust professionals residing here are bolstered by a very well-respected and pioneering judiciary (see page 20). Cayman law is derived from an amalgamation of common law and equity, English statutes, and local statutes. The Cayman judiciary has gained a reputation for being modern and acutely in tune with the increasingly complex issues faced by trustees and beneficiaries alike. This bodes well for the next generation of wealth structuring.

On page 12, we cover the importance of a solid and well-thought-out family constitution in ensuring the vision and principles for maintaining a family business are upheld. We also understand the significance of a structured family office to manage a family’s business and financial affairs. These issues highlight why we are currently working on new legislation which will ensure family offices can establish a substantive presence here in an efficient manner. Cayman offers world-class living and short-stay accommodation, restaurants, schools, political stability and a legal framework that is a natural fit for HNW families considering establishing a presence in the jurisdiction.

We are proud to celebrate the 20th anniversary of STEP Cayman Islands – and what better way to showcase our offering than by hosting an international wealth structuring conference? The STEP Cayman Conference will take place on 28-30 January 2018, which, coincidentally, is the nicest time of year to visit us. As a jurisdiction, we are consistently evolving and updating our legislation to ensure we are best placed to serve HNW families. We hope you enjoy reading about some of the reasons the Cayman Islands continues to be the favoured jurisdiction for sophisticated wealth structures.

Alan Milgate is Chair of STEP Cayman Islands and a Partner at Rawlinson & Hunter.
Spirit of cooperation

The financial services industry is the largest contributor to government revenue in the Cayman Islands, and recent innovations mean it continues to thrive, explains Finance Minister Tara Rivers.

For persons who are curious about the reasons for the Cayman Islands’ success in financial services, the answer is simple. We attract sound business by meeting and maintaining global regulatory standards, and by developing commercial legislation that meets client needs.

While the answer is simple, the ability to make this work is a skill founded in knowledge, commitment and vision – and this is where Cayman shines. Thanks to decades of commercial experience and active global engagement, Cayman remains well positioned to excel as an international financial services centre.

To maintain our footing, we work hard to keep pace with change. As you – the persons in industry who know best what clients need – are well aware, fluctuations in external demand affect all international financial centres. In this dynamic environment, Cayman’s trust regime has been enhanced in order to maintain its competitiveness.

Firm foundations

Our most recent significant achievement was the commencement of the Foundation Companies Law, 2017 (Foundation Law) on 19 October 2017. The law creates a new business vehicle that complements existing legal structures in Cayman.

Similar to how a limited liability company (LLC) – a variant of a company – is infused with features of a partnership, a foundation company is also a variant of a company that blends certain key advantages of trusts in one vehicle. It offers clients a modern structure, allowing for the ability to have no shareholders and entrenched objectives. Foundation companies can therefore be used in a wide variety of situations, including commercial and philanthropic. Foundation companies are, of course, subject to the same transparency, and anti-money laundering and combating the financing of terrorism (AML/CFT), provisions as a company.

The introduction of foundation companies to the Cayman market speaks to the spirit of cooperation evident in our jurisdiction. The concept for the new law came largely from our valued practitioners within the industry. Their feedback helped steer the collaboration between STEP Cayman, the Financial Services Legislative Committee and my Ministry that resulted in the introduction of this innovative product for the trust and estate planning sector.

With the commencement of the Foundation Law, together with the introduction of the Limited Liability Companies Law, 2016, Cayman continues to enhance its reputation as a cutting-edge international financial services centre. Indeed, as of 30 September 2017, 652 structures were registered, which translates to almost two LLCs being formed per business day since commencement.

In addition, the trusts sector was pleased with the commencement in November 2016 of the Trusts (Amendment) Law, 2016, which resolved technical issues in the current legislation and extended certain statutory powers of trustees that would normally be granted under the terms of a trust deed. In addition, in May 2017, government approved the Trusts Law (2017 Revision), which serves as the first full revision of the law since 2011, and incorporates, among other changes, provisions addressing certain powers and the appointment and discharge of trustees.

Another legislative development worth noting is that Cayman’s full suite of modernised intellectual property laws is now in effect. After the Copyright (Cayman Islands) Order 2015 came into force on 30 June 2016, government went on to commence the Trade Marks Law, 2016, the Design Rights Registration Law, 2016 and an amendment to the current patents law on 1 August 2017. Additional regulations for each law were approved this year.

Together, Cayman’s intellectual property laws offer better protection for
persons involved in creative endeavours, be they musicians, scriptwriters, product designers, inventors or persons involved in other pursuits.

Sound fiscal responsibility

Turning to regulatory legislation, Cayman has steadily prepared for its December 2017 evaluation by the Caribbean Financial Action Task Force (CFATF), a regional body of which Cayman is a member and which is modelled after the Financial Action Task Force (FATF). The FATF Recommendations are a principal global standard for AML/CFT.

A central piece in our AML/CFT framework, the Anti-Money Laundering Regulations, 2017 commenced on 2 October 2017. These regulations more closely align Cayman’s regime to the 40 FATF Recommendations and best practice.

While they introduce a number of new requirements and changes to obligations, the most significant enhancements in the regulations are procedures to be followed when adopting a risk-based approach, and offences for breaches of the provisions.

The enactment in August 2017 of Cayman’s Non-Profit Organisations Law, 2016 also positions us well for the CFATF evaluation, in that it requires non-profits to be registered for AML/CFT purposes. Moreover, the law provides benefits to non-profits for doing so. It streamlines the previous registration process that existed in the Companies Law, thereby reducing the registration time frame to a maximum of 30 days. The law also offers non-profits a reduction in fees, which encourages registrations.

Such a strong legal framework, coupled with a solid regulatory regime, points to Cayman’s financial services industry having the ability to attract and retain clients. Indeed, industry maintained its longstanding position as the largest contributor to government revenue in 2016, bringing in USD246.4 million (34.9 per cent).

Evidence of Cayman’s overall strength is also found in our socio-economic statistics. Central government debt fell from about USD559.9 million in 2013 to USD483.9 million at the end of 2016. By 31 December 2020, under current plans, debt will be further reduced to USD221 million. In addition, we will continue to enjoy economic growth – since 2014, Cayman’s GDP has grown on average by 2 per cent annually, and that trend is expected to continue over the next three years.

Credit for these achievements rests largely with a government that practices sound fiscal responsibility and ensures that policies foster economic growth. I also recognize that our valued local industry plays a vital role in our success.

Moreover, I acknowledge that, today, financial services are more complex than ever. This requires an adherence to global regulation that helps to protect industry’s integrity by safeguarding clients and the general public, as well as jurisdictions, from misuse.

Cayman’s commitment is that, as a highly regarded international financial services centre, we will continue to develop marketable commercial legislation, and to comply with global regulatory standards.

We stand ready to remain a top choice for sound business, including trusts. As Minister for Financial Services, I thank you for recommending Cayman to your clients.

The Honourable Tara Rivers, JP, MLA is Minister for Financial Services and Home Affairs

‘Cayman’s GDP has grown on average by 2% annually, and that trend is expected to continue’
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World of possibilities

Cayman is a global leader in administering structures that blend trusts and private funds, as Peter Cockhill and Dominic Lawton-Smith explain.

Legal, fiduciary and administrative service providers in the Cayman Islands are constantly reviewing and improving the solutions available to international investors, whether institutional or private. Flexible and tax-neutral financial products enable clients to structure international investments in an effective, compliant and legally sound manner.

Such constant focus over decades, combined with changing external factors, has led to the identification of solutions that may not have been envisaged at the time their structural components were first created.

Standard bearer

As well as being a leading trust jurisdiction, Cayman is the world’s leading domicile for offshore funds, having the dominant market share. This hard-won and cherished status has led to a substantial increase in business from compliant clients wishing to combine Cayman’s strength in both fund and private-wealth sectors. Legal framework innovation began many years ago, but the opportunity to combine these strengths exists now.

Private funds are not offered to the general public; they are typically established for the benefit of a closed group of investors for a specific and shared purpose, including joint ventures for foreign direct investment, or related high-net-worth individuals (HNWIs) and/or their family office.

Cayman is a key jurisdiction for structuring country-to-country investment via private funds because of its international compliance, legal and operational standards; its relationship to the UK; and the fact that it doesn’t add an additional layer of taxation. These factors are key considerations for international private capital in all of its forms.

For country-to-country investment, the private fund is usually operated by a management company with representatives of both countries. While a STAR trust (see page 9) may be part of the overall structure to add a level of independent governance (often holding the fund and/or the management shares of one of the parties), it is in the context of private funds for a family office or international HNWI that the advantages of combining private funds with trusts are most apparent.

A number of factors drive the use of private funds as part of an investment and asset management structure. A wealthy family often has several members who are citizens or residents of more than one country. A well-designed trust enables the founder or controller of the family’s wealth to control the terms on which the family’s assets (in the trust) are grown tax-free and can be distributed as income or transferred to gifts for people (or for purposes), wherever they are, in the most risk, cost and tax-efficient manner. The formation of a private investment company (PIC) owned by the trust has been the principal structure in recent times.

Game changers

However, newly established and unprecedented transparency, reporting and cooperation among the tax authorities of different countries have caused a re-evaluation of established thinking. The OECD’s Common Reporting Standard and the US Foreign Account Tax Compliance Act reporting requirements have led to the legitimization of enormous wealth that was previously in the dark and often not very productive for anyone.

Various nations have granted amnesty to their citizens: they can either report and pay tax on undeclared assets held offshore or face draconian fines and criminal liability. This has enabled the owners of such post-amnesty wealth to employ it productively as reinvestment into their home country, and internationally to diversify their portfolios. This is where private funds come into the picture. Funds are much more flexible in their structure than PICs and include meaningful substance, governance and often regulation, making them the best vehicle through which to manage diverse investments.

International families are inherently complex; family members have unique requirements, interests, needs and (often) nationalities. These differences combine with the characteristics of the family trust assets by situs and form, and require carefully structured solutions. Creating a fund with professional, third-party service providers can add new possibilities related to both the form of ownership interests issued by the private fund and to whom they are issued; these choices can be made to suit the beneficiaries according to their particular circumstances.

We regularly see sophisticated fund structures, such as segregated portfolio companies (SPCs), used as private funds for HNW families. Using SPCs allows for defined participation in the underlying assets, which can be legally segregated from one another where appropriate based on strategy or the character of the assets themselves. For example, there might be different beneficiary participations established by the trust in the holdings of one segregated portfolio (each a sub-fund of the SPC) rather than another. With existing and planned controlled foreign corporation rules in many countries, using a fund as the trust’s investing structure is increasingly the right choice.

Peter Cockhill is CEO and Group Legal Director, and Dominic Lawton-Smith is Group Director – Head of Private Client and Trusts, at JP Integra Group.
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Contact:
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STAR quality

Wendy Stenning introduces two innovations that underline Cayman’s reputation as an expert in flexible structuring

The Special Trusts (Alternative Regime) Law, 1997 (STAR) and the Foundation Companies Law, 2017 (Foundation Law) are two examples of legislation that establishes the Cayman Islands as a leader in the development of innovative vehicles.

STAR

STAR established an alternative trust regime in the Cayman Islands, and is now incorporated into the Trusts Law. STAR applies to a trust if the trust instrument so provides. It treats the trust as a matter of obligation rather than equitable proprietorship – an obligation which is annexed to the trust property in the sense that: (i) it is an obligation to deal with the trust property; and (ii) it is enforceable against the trustee and third parties by proprietary, as well as personal, remedies.

STAR provides that the law relating to special trusts is the same in every respect as the law relating to ordinary trusts, except as provided in STAR. This means that by using STAR, one has the advantage of being able to rely on the majority of ordinary trust principles while getting around some of the problems associated with ordinary trusts, as discussed below.

The main differences between the STAR regime and the ordinary trust regime are:

- The objects of a special trust may be persons or purposes, or both. The purposes may be of any kind, charitable or non-charitable, provided that they are lawful and not contrary to public policy.
- The beneficiaries, if any, of a special trust do not, as such, have standing to enforce the trust, nor do they have an enforceable right to the trust property. The only persons who have standing to enforce a special trust are those beneficiaries or non-beneficiaries who are given the right or duty of enforcement by the trust instrument. STAR refers to these persons as ‘enforcers’.

- A special trust is not rendered void by uncertainty as to its objects or mode of execution. The trust instrument may empower the trustee or others to resolve any such uncertainty, and the court has jurisdiction to resolve uncertainty.
- The court, on the application of a trustee, has a cy-près jurisdiction to deal with supervening impossibility, illegality or obsolescence should a trust not be reformed pursuant to its own terms in those circumstances.
- The rule against perpetuities does not apply to special trusts.
- Special trusts may be created inter vivos or by will. The rule against testamentary delegation does not apply.

Applications of STAR include non-charitable purpose trusts or charitable trusts with the settlor’s own enforcement regime (rather than reliance on the Attorney General). STAR also allows the settlor added flexibility and comfort that their plans will be effectively carried out where they wish to have a trust to distribute money or property to persons. This includes
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cases where the settlor has an ancillary purpose, such as the retention of the family business – under STAR the continuance of the business can also be an object of the trust.

The above features highlight the innovative solutions that STAR provides to common problems associated with the ordinary trust regime.

The Foundation Law
In March 2017, the Cayman Islands legislature passed the Foundation Law, which is expected to come into force before the end of 2017. It will enable the creation of a new form of company that will allow the founder maximum flexibility in providing for its objects, administration and supervision.

While the Foundation Law prohibits the payment of dividends or other distributions of profits or assets to its members, it expressly provides that a member who is a beneficiary of the foundation company and receives benefits as such is not regarded as receiving a dividend or distribution as a member. A foundation company will be attractive to those wishing to manage investments or other property, provide benefit to family members, or fund a charitable or philanthropic project or any lawful object that is not intended solely to make money for its members.

A key feature of the Foundation Law is that it modifies provisions of the Companies Law (in relation to foundation companies) that allow members to control the company. For example:

- The constitution of a foundation company may entrench its objects, or impose conditions for amending them – unless the memorandum of association of the foundation company authorizes change, there will be no right to amend.
- The founder may also prohibit amendment to other provisions of the constitution and provide for powers of amendment or consent to be given to non-members.
- After incorporation, a foundation company can cease to have members at any time provided that it continues to have one or more ‘supervisors’. A supervisor is defined in the Foundation Law as a person other than a member who has the unconditional right to attend and vote at general meetings under the foundation company’s constitution.
- The founder may grant rights, powers and duties of any description to the founder, the directors, the officers, the supervisers, the members or whomever else they want.
- If the objects of a foundation company include the giving of benefits to family or others, it is up to the founder to say in the constitution of the foundation company whether the beneficiaries are to have rights. The default rule is that they have none.

Other notable features of a foundation company include:

- If its objects become wholly or partly impossible, impracticable, unlawful or obsolete, and the difficulty is not resolved under a power in its constitution, then the company, its secretary (subject to any contrary provision in its constitution), an interested person, a person authorized under the constitution, or the company’s liquidator may apply to the court to resolve the difficulty.
- Its constitution may provide for the resolution of disputes or difficulties with or among its directors, officers, interested persons or beneficiaries (if they have rights) concerning the foundation company, its affairs, or the duties, powers or rights of persons under the constitution, by arbitration or by any other lawful method.
- If a foundation company ceases to have enough directors, members or supervisors, or they are not performing their roles and the difficulty is not resolved through a power in its constitution, then a member, supervisor, director, officer, interested person, the company’s secretary (subject to any contrary provision in its constitution), or anyone else authorized under the constitution may apply to the court to resolve the difficulty.
- A foundation company has an enforceable duty to carry out the objects set out in its memorandum of association only if the memorandum expressly declares and designates or provides for the designation of persons with standing to enforce such duty. Subject to any contrary provision in its constitution, where a foundation company has such enforceable duties, it has a right to apply to the court for an opinion or advice, or for directions. Section 48 of the Trusts Law applies for any such application as if a reference in the section to a trustee were a reference to the foundation company.
- The Foundation Law requires that a foundation company must have a secretary who is a ‘qualified person’, being someone who is licensed or permitted to conduct company management services in the Cayman Islands.

The features discussed above in relation to STAR and the Foundation Law allow one to create modern and flexible vehicles that can be tailored to suit the needs of a wide variety of clients.

Wendy Stenning is an Associate at Collas Crill
Family values

‘The first generation creates, the second inherits and the third destroys’ – or so the saying goes. But it doesn’t have to be that way, writes Lucy Comacchio

A family business, by definition, is one where there is an intention of keeping control in the family – but the challenges of successfully perpetuating such businesses are well known. Feuds, sibling rivalries and petty jealousies are common problems.

Even the most sophisticated business leaders may give less than adequate thought to how a business should be managed and owned in the future to achieve long-term success. There is a natural hesitation among owners, and their families, to discuss succession of the business, as it can be associated with negative connotations, such as retirement or death.

The typical first-generation patriarch/matriarch often came from a humble background, and built their wealth through years of hard work and determination. Understandably, the thought of letting go of a successful business that has been built over a lifetime will be difficult and emotional.

Successive generations can, however, be a completely different breed – often well educated, sheltered by wealth, and having a sense of entitlement and a discerning mind to challenge accepted business norms and the founder’s wisdom. Understanding and acquiring the skills to bridge the generational gap and differing expectations is essential.

As reluctant as many families may be to acknowledge and tackle the inevitable, the health and longevity of a family business depend on careful transition planning and communicating the results of the planning to the right stakeholders at the right time.

The family constitution
It is said that the palest ink is better than the best memory. Indeed, in the same way that corporate entities have detailed governance rules they adhere to, the most enduring family businesses also require a clear written framework detailing principles, governance protocols and interlocking roles in relation to the business, the family office or family trusts.

A family constitution (or protocol/charter) is a written statement that articulates the vision and values of the family, and important principles and boundaries for working together and governing the family business. It is a decision-making tool intended to help the family stay together and avoid the damage that disputes and unforeseen events can cause. Knowing that the long-term strategic objectives of the business are being proactively considered also creates confidence among stakeholders that the business will continue to be managed in a professional manner.

But a family constitution is about more than just preserving financial capital (or the business). A proper family constitution helps to keep harmony, preserve relationships, protect traditions and re-instate a sense of commitment. It brings to light sources of contention or ambiguity that can be managed in the early stages of succession planning. At the very least, discussions about the formation of a family constitution could provide a safe environment for the second and third generations to express their views and address difficult conversations. A documented conflict-resolution process will also ensure that when conflicts do arise, they are raised and dealt with, rather than avoided.

Preparation and transition
A well-laid plan can take months to develop and years to successfully implement. It involves much more than just picking a family member to be the next CEO. It should be broad in scope and involve all family stakeholders, including those who are not actively involved in the business. Often when individuals are excluded, they won’t support the outcome and can cause an otherwise good plan to fail. This means that when the time comes to implement the succession plan, there are no surprises.
For successors to build confidence and ease transition, it is usually helpful for them to gain experience through outside employment prior to joining the family business. They should also receive mentoring to ensure the transition of knowledge and key business relationships. Family internships or job shadowing will provide valuable insight for career development and exposure to the day-to-day demands of the business, while allowing individuals to acclimate to the family ownership structure.

Intergenerational competition or sibling rivalry could also be mitigated by getting the junior generation involved in the business from an early age so that they grow up with the family values and ethics, and so their strengths and weaknesses inevitably rise to the surface. It is also important for the successor generation to understand the challenges faced by the older generations.

The best transition for the business is not always a family transition. It is important for families to understand that, while ownership of the company can remain in the family, the active leadership role in the business must be filled by the most suitable candidate. Management participation should not be viewed as an entitlement by the rising generation. Conversely, the founder must avoid undervaluing the talents of family members by turning the business over to a management team that does not share the goals and values identified by the family.

Detailed thought must also be given to the creation of a clear cash-flow plan and potential financing options to support the transition. Often, the current generation puts too much reliance on the performance of the business to support their lifestyle, which can inhibit the next generation.

In planning for retirement, founders should delegate responsibilities to the next generation and avoid intervening unnecessarily. Continual interference undermines and demotivates the incoming management, creating tension and disruption.

Trusts
To minimise the risk of family disputes damaging the reputation and smooth running of the business, family enterprises can be put into a trust where, on the death of the founder, the shares are not distributed among the family members. This allows for the orderly transfer of wealth between generations in a flexible manner. As the trust fund is not owned by the settlor, it does not form a part of their estate at death, and consequently may avoid a probate process that is expensive and time-consuming, and forced-heirship rules in certain jurisdictions. The division of legal and beneficial ownership provides a way to ensure professional management and oversight, while providing protection for family members, including those who may be minors or incapacitated.

Reasons a business owner may opt to use a Cayman trust vehicle for a family business include the following.

Asset protection
It is possible to achieve asset protection planning through the effective ring-fencing of the family business from potential creditors. Absent a trust that articulates the rights of family members and in-laws, a divorce or litigation can often force the sale of a business.

The Fraudulent Dispositions Law (1996 Revision) seeks to provide a fair balance between protecting the rights of legitimate creditors while providing some comfort to settors of trusts established in the Cayman Islands.

Beneficiary protection and preservation of wealth
Studies show that children in wealthy families too often meet tragic ends when they come into financial windfalls for which they are not prepared. The issues include addiction, bad habits and unsustainable lifestyles. Trusts allow the distribution of wealth to children in a more measured and controlled fashion.

Under the terms of a Cayman discretionary trust, the beneficiaries only have a right to be considered to benefit when the trustees exercise their discretion, as opposed to any direct legal rights.

Management of assets
A trust can help owners control how the business is run, by whom and for what purposes after they retire or die. In some cases, certain children may be interested in running the business, while others may want to sell it. Trusts can stipulate terms by which some beneficiaries retain ownership of the business, while others receive other assets or payments from the business owner.

A Cayman Islands STAR trust (see page 9) obliges the trustee to act in accordance with the purposes and objectives of the trust, as opposed to the benefit of specific named individuals. This may mitigate the scope for beneficiaries to impair the business as a result of a dispute, and preserves the ethos of the business after the settlor’s death.

In addition, STAR trusts are not subject to the general trust principle whereby a trustee who holds shares in a company needs to take a positive role in the affairs of that company. Therefore, it is possible for the STAR trust to be settled in such a manner that the trustee is under little or no obligation to interfere in the management of the business.

A STAR trust can also be part of a private trust company structure, which will then allow family members to retain a certain amount of control over the administration of the underlying assets or business.

Tax efficiency
For family business owners, the business often represents the bulk of the family’s wealth. The transfer of ownership of that asset from one generation to the next in an organised and tax-efficient manner can very often be the difference between keeping the business in the family or being forced to sell it.

The Cayman Islands presently imposes no direct taxes. A trust can be registered as an ‘exempted trust’, and an undertaking obtained that, for a period of up to 50 years, no law enacted imposing any taxes will apply to any property or income arising under the trust.

The Cayman Islands has a well-developed and reliable legal system with world-class professionals, a strong financial services industry, and a stable and business-oriented government. It is well placed to assist with family business structuring.

‘A proper family constitution helps to keep harmony and preserve relationships’

Lucy Comacchio is a Senior Manager at Rawlinson & Hunter (Cayman Islands)

STEP.ORG/CAYMAN-ISLANDS 13
Why STAR is rising in the East

The trust is no longer unfamiliar to Chinese business founders

Great 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 Islands Special Trusts (Alternative Regimes) 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 trust 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 a 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.

Sofia Shen is Vice President at Mapletree, Hong Kong
东方升起的一颗“星星”
信托对企业家不再陌生

在过去数十年，中国经济经历了一段高速发展的时期。对于那些多年来专注于建立商业帝国，积累财富的中国企业家来说，家族企业的传承规划正成为他们目前面临的主要难题。在中国，财富传承的主要方式是继承。然而，继承作为一种传承工具具有它的局限性，相比之下，信托成为一种更为有效的财富传承工具。

亚洲客户以前并不熟悉信托的概念，也不愿意把财产的控制权交给信托人。但近几年来，信托被越来越多的中国客户所接受。中国客户逐渐意识到，通过一个设计合理的信托架构，信托设立人可以在信托人极少数干预的管理下继续管理信托财产。这一点对开曼群岛《特别信托（另类机制）法》（Special Trusts (Alternative Regime) Law）来说尤为突出。

两全其美

STAR信托可以是为某个目的而设立或者是为人而设立，又或者是同时为了两者（目的和人）而设立。STAR信托的目的和人相结合这一点为财富传承提供了更为灵活的解决方案。很多中国企业家通过离岸公司以及海外投资公司间接控制位于中国境内的家族企业。通过设立设立STAR信托，企业家可以把离岸公司的股权转给信托人。在信托契约中，企业家作为信托设立人确认信托的目的是持有信托财产并且规定信托财产由他/她所指定的人士来管理。如此一来，家族企业的股权牢牢锁定在信托架构中，不会因为设立人的去世或是其状况的变化而发生股权分割，保证了股权的完整性。其次，设立人通过把信托财产的管理权和投票权交给信托人来管理。家族企业成员作为信托受益人也可以通过信托分配享有经济权益。

与传统信托受益人不同的是，STAR受益人没有自动获取信托财产的权利，也没有权利对受托人提出法律诉讼。这些权利只能由STAR信托的“执行人”代表受益人来行使。每一个STAR信托都必须有一位执行人。STAR信托的受益人可以被任命为STAR信托的执行人，从而获取信托财产的信息及享有对受托人提出诉讼的权利。中国客户很乐意用设立信托来向其配偶或子女作为信托受益人，哪怕在过世后获得信托分配条款的信息并且修改相关条款。《STAR法》通过限制受益人获取信托信息的权利，有效地解决了这个难题。只要受益人没有被任命为STAR信托的执行人，就无法获取有关信托的信息。即使受益人不满在其信托中的权利或权力，也无法对受托人提起诉讼。《STAR法》的这一特点减少了不必要的纠纷，有效降低了法律诉讼的风险。

稳健的管理机制

STAR信托的其他优点包括拥有开曼群岛牌照或者已登记的开曼群岛私人信托公司能够担任STAR信托受托人。如果企业家希望获得离岸信托来持有家族企业，在保留对家族企业控制权的同时又想保护家族隐私。私人信托公司和STAR信托相结合的模式可以为企业家提供更为灵活的管理模式。常见的私人信托公司作为STAR信托受托人的架构如下。

首先，企业家通过专业信托公司设立「STAR信托」，「STAR信托」的目的在于拥有（在开曼群岛注册成立的）私人信托公司所有股份。私人信托公司持有私人信托公司所有股份，并且该持有者在过世后，私人信托公司仍然由私人信托公司持分，私人信托公司的运作很可能会因此受到影响。但若私人信托公司股份由私人信托公司持有，则可以规避法律纠纷，从而确保私人信托公司持续顺利的运作。

第二步，企业家设立「STAR信托」，「STAR信托」的目的是拥有家族企业。上述的私人信托公司会担任「STAR信托」的受托人。私人信托公司的董事由企业家任命或罢免。家族成员（包括企业家自己）或专业人士都可以担任私人信托公司董事。STAR信托的日常行政管理会由专业信托公司来提供。

在上述架构中，家族企业虽然被离岸信托所持有，但通过任命私人信托公司的董事，企业家仍能控制和管理信托财产。此外，私人信托公司的董事由家族成员出任可以有效保护家族隐私。总而言之，量身定制的STAR信托架构结合私人信托公司的模式可以满足企业家尤其是中国企业家对信托财产保留控制权的需求并同时实现家族财富传承的目的。
Welcome to Crypto Island

Why Cayman is poised to be a premier jurisdiction for the burgeoning cryptocurrency asset class, by Micho Schumann and Petri Basson

Following a flood of articles and newspaper headlines about Bitcoin, blockchain and initial coin offerings (ICOs), investors can no longer ignore the rise of cryptocurrencies. So, what are these new currencies and how do they fit into the Cayman investment landscape?

How do cryptocurrencies work?
Before we get into the detail of how these currencies will affect the market, we have to understand how they work. Cryptocurrencies are a new asset class which is built on a technology known as blockchain. The original and best-known cryptocurrency is Bitcoin, which was conceived on 31 October 2008 by a mysterious figure called Satoshi Nakamoto.

Think of a blockchain as a digital list of transactions that is spread across multiple locations, with many individuals holding a copy and working together, maintaining its integrity. Whenever a transaction between two parties occurs, an independent third party will verify the transaction. On the blockchain, these individuals are called miners. Miners will verify the transaction and ensure that the parties are not trying to spend a unit multiple times. A 51 per cent consensus from the miners is required before any transaction is added to the block. A number of approved transactions are then combined to form a block.

Once each block has been completed, a digital signature is added using all the transactions in the block. This is called a hash. Each hash is unique and will change if any of the transactions in the block are modified in any way once approved. Hashes are attached to the beginning and end of each block, and link to all previous and following blocks. This is what creates the chain, and therefore the name blockchain.

What are the benefits of blockchain?
First, the distributed peer-to-peer nature of the technology makes it very resilient. Because it is spread among many nodes, there is no single point of failure. For example, the Chinese government has made numerous attempts to stop the use of Bitcoin, without much success. From a business perspective, resilience is a valuable feature, since it will ensure uninterrupted service for any company operating on the blockchain. Currently, if your central database is down, business stops. In the case of a blockchain, when one node is not operational, there is a whole network available to fill the void.

Second, the technology is faster and cheaper than current banking and clearing systems, and doesn’t require the trust of any central authority. These advantages set it apart from any of the current market players and are the primary reason why companies such as UBS, BNY Mellon, Deutsche Bank, Santander, Barclays, CIBC, Credit Suisse, HSBC, MUFG and State Street are investing in technologies such as the ‘utility settlement coin’, which can be used by global banks to conduct a wide variety of transactions with each other.¹

Finally, this technology also has the potential to disrupt some of the largest industries in the world. Through the use of smart contracts, transactions can be programmed on the blockchain to be completed automatically and almost instantly when specific criteria are met. The easiest way to explain a smart contract is to think of a vending machine. The basic
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‘The funds industry in Cayman is well developed; the addition of these assets into portfolios will not cause many issues’

contract for a vending machine is: ‘I add $1, I get a candy bar. I don’t add $1, I don’t get a candy bar.

These types of transactions can be programmed into the blockchain and completed by the smart contracts, thus eliminating custodians, lawyers and other third parties. Let’s use a property transfer as another example. The seller states the asking price of the property. Then the purchaser pays all fees and obtains the required documents. Once all the requirements are met, the deed is automatically transferred – thus eliminating weeks of correspondence with various parties.

Alternatively, consider the music industry. Smart contracts can be programmed to charge the user a nominal fee, on the blockchain, every time they purchase a new song. This same contract can then pay a fraction of this fee to the record label, or even directly to the artist.

The use cases are infinite, and it seems that every day a start-up appears with a new way to disrupt a current industry.

How can these currencies be used in Cayman?
The first and most obvious way that cryptocurrencies will be used in the Cayman Islands is through Cayman-based funds, which are investing in various cryptocurrencies. Currently, the most popular cryptocurrencies are Bitcoin, Ethereum and Litecoin. Cryptocurrencies are very volatile, providing investment managers with new opportunities for significant investment returns in exchange for accepting the risk. The funds industry in Cayman is mature and well developed; the addition of these assets into portfolios will generally not cause many regulatory or other issues. They may, however, increase the complexity of the work required by fund accountants and auditors to sign off on the existence and valuation of these assets.

The second way that digital currencies will be seen in the Cayman Islands, is through ICOs using Cayman-based companies. ICOs are a funding mechanism whereby new projects sell their underlying crypto-token to obtain funds to develop the project. The current problem with ICOs is that they are unregulated. Regulators are unclear whether the tokens issued are securities or not. A potential solution would be to issue a ‘simple agreement for future tokens’ (SAFT). However, each case will have to be assessed individually against the current laws to see whether it qualifies as a security or not. The one thing that counts in Cayman’s favour is that the tax implications will not change should the conclusion on the nature of the instrument change in the future.

Any Cayman ICO will have a variety of laws to consider when performing its coin sale, including the Securities Investment Business Law, the Proceeds of Crime Law, the Anti-Money Laundering Regulations and the Electronic Transactions Law. Regulators are currently working to review these laws and determine whether regulations need to be updated to accommodate these new types of assets.

Investors should exercise caution when considering an investment in any ICO. Investors will need to fully understand the use case for the token being sold and do thorough research on the individuals running the ICO. The US Securities and Exchange Commission recently charged two ICOs with fraud, and a number of other governments, such as those of China and South Korea, have banned ICOs to ensure proper regulations are in place before they continue.

The bottom line
Cryptocurrencies hold large potential for future uses, but a tremendous amount of uncertainty remains on the regulations surrounding these assets. Regardless of the impact, jurisdictions such as the Cayman Islands remain attractive to investors given the tax-neutral environment, strong regulatory landscape, high-speed connections and white-sand beaches.

‘Crypto Island’ might be a more appealing option to ICOs and investors who don’t want to brave the snow-covered mountains of other jurisdictions, such as Switzerland’s Crypto Valley.

Alive to the future

Bernadette Carey and Robert Lindley on the recent decisions that highlight the Cayman Grand Court’s expertise in complex matters affecting modern-day trusts

The respected judiciary, robust judgments and innovative legislation debated within the courtrooms of the Grand Court of the Cayman Islands (the Court) confirm that the jurisdiction is at the forefront of the development of modern common law. It is a wholly different story to the typical layman’s view of the traditional courthouse – one that warns of sterile rooms, ancient terminology and lengthy diatribes mouthed from beneath a horsehair wig.

Decisions of the Court concerning the local Trusts Law (2017 Revision) (Trusts Law), released over the past 12 months and analysed below, are clear evidence of this.

Firewall legislation

The Trusts Law provides that, if foreign matrimonial proceedings seek to encroach on the administration of a Cayman Islands trust, the trustee of that trust is protected in many respects by what are known as its ‘firewall provisions’. In In the Matter of the A Trust, one Cayman STAR trust (the Trust) was the subject of proceedings in the Court commenced by the trustee of the Trust concerning the operation of these provisions.

The settlor had executed various letters of wishes, which set out who should and should not benefit from the Trust and how the assets of the Trust should be applied. The settlor and his wife, N, both of whom were excluded from the Trust, subsequently became involved in divorce proceedings before the English High Court (the English Proceedings). The main asset of the Trust was shares in a Cayman company, which itself owned shares in other companies holding legal title to very substantial property assets in the UK. In the English proceedings, N sought to vary the Trust and set aside her exclusion as a beneficiary of the Trust. Flowing from that, requests were made of the Cayman trustee to release information about the Trust for the purposes of the English Proceedings.

The trustee determined that it was not in the best interests of the beneficiaries of the Trust to submit to the jurisdiction of the English High Court or to disclose confidential information to the parties to the English proceedings. However, recognising that it was an important step for a professional trustee to refuse to submit to the jurisdiction of a foreign court, the trustee applied to the Court for directions pursuant to s48 of the Trusts Law. This provides that a trustee who acts on the opinion, advice or direction given by the Court will be deemed to have discharged its duty as trustee in respect of the subject matter of the application.

The Court confirmed that it was the trustee’s duty to protect and preserve the Trust from the claims in the English Proceedings, and pursuant to Cayman’s firewall legislation, which confirms that a Cayman trust can only be varied in accordance with Cayman law and only by the Court, any order made by the English
High Court against the trustee would not be enforceable against the trustee, the beneficiaries of the trust or the trust fund. In doing so, the Court has laid down a clear set of rules as to how trustees should approach a foreign challenge to a trust governed by Cayman law.

Paralysed trustees
In a February 2017 judgment, the Court also confirmed its willingness to act to prevent ‘paralysis’ in trust arrangements. In *In the Matter of Various Trusts,* the Honourable Justice Mangat considered an application (the Application) made jointly by the beneficiaries of various trusts governed by Cayman law (collectively, the Plaintiffs) for orders substituting a new trustee in the place of the original, and apparently hamstringing, trustee of those trusts.

In short, the Plaintiffs were all members of the same family, and beneficiaries of a number of trusts which were governed by Cayman law and contained clauses providing for the Court to have exclusive jurisdiction over any proceedings concerning the trusts. The original trustee of each of the trusts (the Existing Trustee) was a company incorporated outside Cayman. The trust’s assets (Assets) were located in a number of countries including the US. The Existing Trustee was facing allegations by the US government that some of the Assets were in fact traceable to a conspiracy to launder misappropriated money. The Existing Trustee had informed the Plaintiffs that it considered itself to be effectively paralysed from performing its functions as trustee, or from resigning as trustee, due to the risk that if it were to take any such steps it would be accused by the US government of being involved in money laundering or otherwise exposed to civil or criminal liability for any action it decided to take.

Pursuant to the Application, the Plaintiffs sought orders that an alternative Cayman trustee (the Substitute Trustee) be installed as the replacement for the Existing Trustee. The Substitute Trustee gave evidence confirming that it had the requisite experience and qualifications to act in the capacity proposed, and that it intended to intervene in litigation in the US with a view to defeating the claims and protecting and preserving the Assets.

The Court found that its assistance was required to protect the welfare of the beneficiaries and to prevent or circumvent omissions that would endanger the trust property, and that there was no practicable manner in which new trustees could be appointed without the Court. Orders for substitution were therefore duly made, and the Existing Trustee was replaced by the Substitute Trustee in respect of all trusts of which the Plaintiffs were ultimate beneficiaries.

Beddoe relief
Finally, in *X (as Trustee of the A Trust) v Y (as Beneficiary of the A Trust),* the Court reiterated the importance of trustees of Cayman trusts seeking Beddoe relief before commencing or defending an action.

In this case, the Trustee was involved in English proceedings relating to a sale and purchase agreement which involved a claim against a consortium of sellers (which included the trustee) in respect of a breach of warranty and tort of deceit. The claim for deceit arose on the basis that the defendants in the English proceedings allegedly made material misrepresentations to the claimant in the English proceedings (C) that no funds had been invested in the ill-fated Madoff Funds. The Trustee had provided C with informal notice of the Beddoe application. However, C contested that it should have been provided with formal notice so that it could have made appropriate formal representations to the Court. The Court held that in circumstances where C was not a beneficiary of the trust, it was merely a third party asserting a disputed personal claim in contract or tort against the Trustee, and there was no need for C to be provided with formal notice of the Beddoe application by the Trustee. However, the Court also found that C would be adversely affected if its claim was successful and the Trustee had defended the claim at the expense of the Trust because the costs of the defence would reduce the value of the assets against which C would have been able to enforce its judgment. The Court confirmed that the Trustee had therefore been correct to provide C with informal notice of the Beddoe application.

A modern judiciary
Through all of these judgments, the Court has shown itself to be innovative, alive to the increasingly complex issues faced by the modern-day trustee and the new generation of beneficiaries, and eager to act to assist in the evolution of the Cayman trust. It is a status that is a far cry from the fictional courtrooms of old, and one which will be maintained and developed into the future.

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1. (unreported, 1 December 2016) 2. For an explanation of STAR trusts, see page 9. 3. Trusts Law, ss190-93
No signs of slowing

Cayman’s insurance offering continues to go from strength to strength. Here, the Insurance Managers Association of Cayman explains why the industry is well positioned for the next 25 years.

Back in 1992, the EU was founded with the signing of the Maastricht Treaty. Bill Clinton was elected President of the United States and Hurricane Andrew decimated Florida. A lot has happened in the 25 years since. However, one thing that has remained constant is the strength and resilience of the captive insurance industry in the Cayman Islands. Indeed, the Cayman Captive Forum is now regarded as the premier conference held annually within the captive insurance industry. The Forum’s growth and increasing reputation over the past 25 years have mirrored that of the insurance industry it helps represent.

Globally, Cayman is renowned as a leading international financial centre. It is an innovator in the insurance-linked securities (ILS) space, the world’s leading domicile for international hedge funds and a major jurisdiction for structured finance. Cayman is also the second largest captive and (re)insurance company management domicile, complete with a quickly developing commercial reinsurance market.

The jurisdiction’s sophisticated and comprehensive legal system, based on common-law principles, allows for not only a politically and economically stable environment, but also a regulatory environment internationally recognised for its adherence to global regulatory standards and its leadership role within regulatory bodies such as the International Association of Insurance Supervisors.

The Cayman Islands has proactively and successfully engaged in the commercial insurance industry for the past 40 years, enabling the jurisdiction to compete effectively in the captive insurance, ILS and reinsurance space. Cayman is one of the three most prominent domiciles for captive insurance companies, and the Cayman Captive Forum helps cement our place among the top tier of insurance domiciles.

The forum has a well-deserved reputation for offering unparalleled educational content, delivered by world-class experts and matched with real-world experiences from those who operate captives.

As an industry association, the Insurance Managers Association of Cayman (IMAC) has, since 1881, sought to promote Cayman’s captive and commercial insurance industries to the world. It has used collective resources to ‘promote Cayman first’ and to position Cayman as an international insurance and reinsurance jurisdiction while raising overall awareness among the target audience about its value proposition. Additionally, the role of IMAC has also expanded as international regulatory efforts have increased in complexity and frequency. IMAC has also been able to assist in the education of its members and to act as the liaison between our member firms and the Cayman Islands government.

While the Cayman Islands is the leading jurisdiction for healthcare and group captives, Cayman captives and international insurance and reinsurance companies are increasingly being put to use for innovative lines of business and risk. This includes the insuring of such disparate risks as leading-edge technology, performance guarantee, hedging of agricultural and life risks, employee medical stop loss, equipment maintenance, medical groups, and cyber/privacy breaches, to name but a few. Total premiums written for the captive sector stand at USD54.6 billion per annum, with total assets of USD60 billion held by our licensees.

In addition to highly qualified and experienced insurance experts, Cayman is also home to top professionals in the areas of audit, banking, investment management, law and tax advice, among many others. All of these professionals are specialists in their own right when it comes to providing insurance, auditing, financial, regulatory, legal and corporate administration services to captives. This strong infrastructure provides high-quality services, and technical knowledge and expertise, in a location close to the US and the Eastern time zone.

As an industry and within IMAC we are committed to continuing to innovate with our products and services, ensuring our clients are experiencing excellence in all dealings – at every level, within both the private and public sectors – and in order to anticipate and meet their ever-changing needs.

It is clear that 25 years can bring profound changes to any industry. Thanks to the industry professionals within IMAC, that growth has been on an upward trend, with no signs of slowing over the next 25 years.

The Insurance Managers Association of Cayman is a non-profit organisation run for and by Cayman’s captive insurance industry. Visit www.imac.ky
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Speak to our experts in the Cayman office:

ROBERT LINDLEY
COUNSEL, HEAD OF CAYMAN & BVI PRIVATE CLIENT & TRUST
robert.lindley@conyersdill.com
+1 345 814 7360

BERNADETTE CAREY
COUNSEL
bernadette.carey@conyersdill.com
+1 345 814 7371
For STEP Cayman, our primary purpose is to support our members in their careers, providing qualifications and professional development, sharing knowledge and technical expertise, and protecting their reputation by maintaining high professional standards.

Founded in 2006, STEP Cayman now boasts a membership of over 300 local professionals, and organizes numerous events each year with presentations by internationally and nationally known experts on timely subjects.

For more information on STEP Cayman, visit stepcayman.org.