

Bedell Cristin's Joanne Verbiesen Purports the Purpose of Purpose Trusts

On 31 May 2021, the Singapore Academy of Law's Law Reform Committee (the "Committee") released a report (the "Report") recommending the creation of statutory Non-Charitable Purpose Trusts ("Purpose Trusts") in Singapore.



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Purpose Trusts have historically been the domain of offshore jurisdictions, with the most well-known (and arguably the best) example being the Cayman Islands "STAR" Trust. The purpose of a Purpose Trust is to increase the flexibility of the traditional trust by sidestepping the "beneficiary principle", that is, the requirement under English common law that a trust have an identifiable beneficiary who can enforce the terms of the trust and hold the trustee to account.

As the name suggests, a Purpose Trust is not required to have any identifiable beneficiaries (although it usually can), and instead the trustee holds the trust fund on trust for the fulfilment of certain defined purposes. Instead of a beneficiary who can enforce the trust, the settlor will generally appoint an "enforcer" whose role it is to hold the trustee to account.

Of course, purpose trusts are not a new concept – charitable purpose trusts have existed for hundreds of years. However, charitable purpose trusts are very restrictive – the purposes must be exclusively charitable and charitable trusts are subject to oversight by a government official in the jurisdiction of the trust; historically this was the Attorney General although there are now often specific government entities responsible for overseeing charities.

So a Purpose Trust is a melding together of a traditional beneficiary trust with a traditional charitable trust. Some may say it is the combination of the best of both concepts and some may say it is Frankenstein's baby. Putting to one side the interesting academic considerations arising in relation to Purpose Trusts, the obvious practical question is why would the Committee recommend the creation of a Singapore Purpose Trust? What would it be used for? And what does the experience of the offshore jurisdictions tell us about the popularity and practicalities of Purpose Trusts?

The Report indicates that the motivation for the recommendation is demand from the Singapore wealth management industry: *"Recent surveys of trust and estate practitioners have demonstrated a clear demand for additional means for families and businesses to manage and bequeath their assets. This, combined with evidence of growing demand from social enterprises for*



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new capital, and Singapore's broader aspirations as a wealth management centre, prompted the Law Reform Committee ... to consider the merits of making provision for non-charitable purpose trusts ('NCPTs') in Singapore."

The Report suggests that Purpose Trusts would be beneficial, in particular, to (i) address succession concerns around fragmentation of wealth (especially family businesses); (ii) enable the use of trusts for the holding of riskier or more speculative asset classes; and (iii) to enable mixed purpose trusts for the purpose of fulfilling both philanthropic and personal objectives.

Whilst it is certainly true that Purpose Trusts would assist in achieving these objectives, the experience of the offshore jurisdictions indicates that Purpose Trusts are far more commonly used for fairly niche purposes, such as (a) as orphan SPVs in structured finance transactions; (b) for employee share incentive schemes; and (c) as a holding entity for private trust companies. This makes sense because these purposes are truly 'purposes' – in other words, the objective of the trust is to achieve a particular purpose rather than to benefit a particular person. The same cannot be said for trusts used to hold family businesses – the continued operation of a family business is not a goal in and of itself, rather it is a means to an end and the end is a beneficiary – usually the settlor's family.

As a result, the use of Purpose Trusts as a dynamic planning tool can be problematic, particularly after the settlor has passed away and there is no one with an actual interest in the trust in the traditional sense (i.e. no actual beneficiary). An example of these difficulties can be seen in a Bermuda case which has given rise to a number of difficult decisions about who can challenge the validity of a Purpose Trust and also hold the trustees to account. In that case the plaintiff was the son of the settlor and he claimed that his father had been defrauded into settling his assets onto a number of Bermudian law governed Purpose Trusts. In disputes of this nature the trustee should ordinarily take a neutral position and let the beneficiaries who stand to benefit under the trust defend it. However, a Purpose Trust has no beneficiaries and so no one with an interest to defend it. This can be ameliorated to some degree by requiring there to be an enforcer appointed at all times (which is not a requirement in Bermuda); however, this vests a considerable amount of power and responsibility in one person who may or may not have the means, motivation or neutrality to ensure that the settlor's objectives are met.

An alternative solution to the Purpose Trust would be for Singapore to strengthen its reserved powers legislation to bring it into line with the offshore jurisdictions such as Jersey, Bermuda and the Cayman Islands. This would enable settlors to reap the succession planning benefits of a trust whilst retaining control, through the reservation of powers, over the family business both during the settlor's lifetime and, with the implementation of proper governance procedures, throughout successive generations.

Or Singapore could develop a trust similar to the BVI VISTA trust, which is a statutory trust with the specific stated purpose of enabling "a trust of company shares to be established under which (a) the shares may be retained indefinitely; and (b) the management of the company may be carried out by its directors without any power of intervention being exercised by the trustee". The development of a trust of this type in Singapore could well secure Singapore's dominant position in the burgeoning wealth management industry and offer a well-trodden path for the wealth management industry, learning from experiences in the offshore jurisdictions. ■

¹Trustee 1 & Ors v The Attorney General and Others, Bermuda Court of Appeal (3 of 2014, 15 August 2014) and Trustee L v AG (2015)

