

Reserved power trusts – an offshore innovation

When a settlor creates a trust, he relinquishes legal ownership, and thus control, of the assets he places into trust, which then fall under the control of trustees appointed by the settlor.

Most settlors find this idea to be largely unpalatable, even when the benefits that come with establishing a trust of their assets.

These include the mitigation (or deferral) of taxes, the protection of assets from creditors or from political risk, the avoidance of forced heirship rules in the settlor's home country, the orderly succession of assets after death or the continuity of a family business following the settlor's death.

Fortunately, Bermuda has responded to this quandary through the introduction of reserved power trusts.

Reserved power trusts make it possible for the settlor (or another party of his choosing) to retain fairly extensive rights and powers, thereby enabling him (or the other party) to exercise significant control over the way that the trust is administered and, thus, its ultimate destiny.

Such rights and powers may typically include the power to add and exclude beneficiaries, the power to remove trustees and to appoint new ones, the power to change the law that governs the trust, the power to vary

Legally Speaking

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or amend provisions of the trust deed and the retention of investment powers over the trust assets.

Reserved power trusts have paved the way for a greater level of settlor participation and the benefits are tangible, but there may be some risks.

Depending upon the level of control that the settlor exercises over the trust, invalidity issues may arise as there may be allegations that the trust is a sham or a mere nominee arrangement.

An attempt to attack the trust structure could come from a whole array of litigants such as a disgruntled beneficiary, a divorcing spouse or a creditor, all of whom would come to the court in the hope of setting the trust aside in order to access the trust fund.

However, a trend has emerged in recent years where a growing number of offshore jurisdictions have sought to enact legislation specifically permitting settlors to retain wide powers over the trust without fear of the validity of the trust being jeopardised. As a result, there is less of a risk of the trust being struck down because of invalidity

concerns. These legislative enactments largely confirm the position under the common law, but add certainty.

Furthermore, the retention of control over the trust may cause difficulties for the settlor from an onshore tax perspective. In such cases, it would be important to ensure that the settlor's desire for control was balanced with the potential for an onshore tax authority to see through the trust and to tax it accordingly.

The laws of Bermuda provide for the creation of reserved power trusts and a settlor is free to retain extremely wide powers over the trust without having to be concerned with any of the validity issues discussed above. This was confirmed in a recent ruling of the Supreme Court of Bermuda.

Reserved power trusts have certainly found appeal with some previously reluctant settlors and the enactment of reserved power legislation continues to fuel their growing popularity.

They provide yet another example of the evolution of offshore trust structures created by an offshore trust industry continually having to innovate and create bespoke structures in order to meet the demand for increasingly novel trust solutions.

As with all complex matters of law, it is sensible to consult an expert in the area.

Naresh Chand is a Senior Associate in the Private Client and Trusts Practice at Appleby. A copy of this column can be obtained on the Appleby website at www.applebyglobal.com.

This column should not be used as a substitute for professional legal advice. Before proceeding with any matters discussed here, persons are advised to consult with a lawyer.

A showcase of an element of our culture

Barmuvinjam's sixth annual Soca vs Reggae party was – literally and figuratively – hot!

The energy was intense throughout the night as the crowd jumped and waved, 'wined' their waists and sang along to many of the tunes. Bands of sweat, produced an exhilarated bodies reacted to the smooth reggae rhythms and soca spice, were occasionally met with a delicious cool breeze.

Russell Griffith aka 'DJ Rusty G' kicked off the night full speed with a selection of R & B and hip hop beats that had the crowd jamming. His stage presence demonstrated the confidence that he has acquired throughout his years as both a local and international DJ.

Two Bermudian reggae artists hit the stage before the Soca vs Reggae battle began on Friday night at Dockyard. Live Wire shared his tender conscious lyrics and many went wild when Swaggy entered with his fluent grooves and melodies – most of which the audience sang along to.

"Are you ready to get sweaty?" asked an MC as the two 'battle' rounds were about to begin. From the start there appeared to be a greater presence of soca fans as they twirled their rags in the air in response to his prompting. Red and green glow sticks were thrown into the crowd and wound up accessorising many necks and heads.

Team Reggae – which included Poison Dart and YQS led by Wayne Marshall – stirred a sea of voices when they hit the stage with old school hits like Tony Rebel's 'If Jah is Standing by My Side' and recent rhythms including Beanie Man's popular 'I'm Drinking Rum & Red Bull'. You could feel the music infiltrating throughout the place.

"My name is Wayne Marshall and I represent the winning team," said the Jamaican artist as he zipped open his jacket to screams and showcased his Somerset T-shirt.

When members of the Somerset cricket team took to the stage as well as their Captain Jekot Edness they were greeted like celebrities by the audience and congratulated by the MC.

However, continuing the friendly Cup Match rivalry, the MC added: "I want to let him (Mr Edness) know that he needs to select very carefully next year because we're coming for you!"

That statement was followed by sounds of support from the St George's fans.

Team Soca set the crowd on fire with songs like 'Jam Bermu-

da' by Arrow and 'Togetherness' by Alyson Hinds. Shal Marshall and his crew (DJ Spice and D'General) definitely kept the crowd hyped!

Whistles were blowing, air-horns were sounding and sprinkles of water flew from the stage to shower the crowd from time to time.

"The reason soca men have all the girls is because we can wine," said Trinidadian Shal as he demonstrated. There was regular banter between the two competing teams. At one point the soca team told the audience to "part the sea" as a couple dancers from the stage zipped back and forth down the centre of the crowd.

Every so often four male dancers would also appear on stage wearing shades as they danced in sync with dancehall swag.

Team Reggae played more hits towards the end of the night including Red Rat's 'Tight Up Skirt' and Bob Marley classics that appealed to everyone. As Poison Dart said, "It doesn't matter if you're 15 or 55, there's something in reggae classics that everybody and they mama know."

However, when Team Soca made their final appearance with songs like 'Wotless' by Kes The Band and 'Palance' the winners were obvious. The piercing crescendo during the judging period secured their title as champions. Dancing along to 'Palance' by JW and Blaze was particularly fun as the crowd hopped and bounced left to right over and over, holding onto each other's arms if necessary to avoid getting trampled. Although some of our sandals were slippery due to recently spilled drinks we bounced and had a blast – crushing any plastic cups on the ground in our path. The crowd was full of good sports.

As the show came to a close all the participants were dancing on stage, including judges Ninja Cutty, Live Wires and Bermuda Sun reporter Mikaela Ian Pearson. The vibe was great as one of them held a Bermuda flag and the DJ played the uplifting song 'So High' by Michael Montano.

A pre-recorded message by Premier Paula Cox wishing everyone a wonderful Cup Match weekend, was played during the show. There was also a touch of

creativity when a recording of ZBM news reporter Leanna Lambert was tailored to suit the reggae vs soca banter

REVIEW BY
STACEE SMITH

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