

The role of enforcer – Cayman Islands STAR Trusts

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A key feature of a Cayman Islands STAR trust is that it separates the beneficial rights from the enforcement rights. In a non-STAR trust context, a beneficiary has a right to enforce the terms of the trust against the Trustee. In a STAR trust context, a beneficiary does not have this right.

Section 100(1) of the Trust Act (2021 Revision) notes that: "A beneficiary of a [STAR] trust does not, as such, have standing to enforce the trust, or an enforceable right against a trustee or an enforcer, or an enforceable right to the trust property."

But what does this mean? Beneficiaries of a STAR trust are not able to sue a trustee or obtain information in relation to the trust from the trustee.

In this article, we answer some of the key questions on enforcers and enforcement rights.

Who has the enforcement rights?

The only person with enforcement rights in a STAR trust arrangement is the "enforcer". ^[1] It should be noted that beneficiaries can be appointed as the enforcer of a STAR trust and therefore a beneficiary may have rights to enforce but only in their capacity as enforcer.

Who can be an enforcer?

There are no strict requirements for who can be the enforcer of a STAR trust. The enforcer can be resident anywhere in the world and doesn't have to be located in the Cayman Islands. They can be an individual, multiple individuals acting jointly, or a corporate entity.

Does a STAR trust need an enforcer?

Every STAR trust must have an enforcer appointed. If there is no enforcer in office for whatever reason (for example, the current enforcer is unable, unwilling or unfit to enforce the trust), then the trustee is under an obligation to ensure a new enforcer is appointed.

Is the enforcer a fiduciary?

Typically, the powers and duties of an enforcer will be held in a fiduciary capacity. [2]

Are the enforcement obligations a right or a duty?

The standing of an enforcer may be reserved as either a right or a duty.

However, unless there is at least one beneficiary (who is not incapacitated) who is an enforcer with the right (not a duty) to enforce the trust, there must be one other enforcer appointed who has a duty to enforce the trust.

What are the rights and remedies of an enforcer?

Section 102 of the Trust Act (2021 Revision) states that: "An enforcer has the same rights as a beneficiary of an ordinary trust [a non-STAR trust]:

- to bring administrative and other actions, and make applications to the court, concerning the trust; and
- 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 trust documents"

What protections does an enforcer have?

Enforcers have the same rights of indemnity out of the trust fund as trustees of a non-STAR trust.

Who enforces against the enforcer?

The issue as to who can enforce the obligations of the enforcer has been solved by giving enforcement powers to the trustee, another enforcer or another person (who is empowered under the terms of the trust deed) who can in turn bring an action for the enforcement of the duty of an enforcer.

[1] Section 100(2) of the Trust Act (2021 Revision) – "The only persons who have standing to

enforce a special trust are such persons, whether or not beneficiaries, as are appointed to be enforcers: (a) by or pursuant to the terms of the trust; or (b) by order of the court."

[2] Section 101(2) of the Trust Act (2021 Revision) – "Subject to evidence of a contrary intention, an enforcer is deemed to have a fiduciary duty to act responsibly with a view to the proper execution of the trust."

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