



MAPLES
GROUP

FUND GOVERNANCE IN HARMONY: PROFESSIONAL INDEPENDENT TRUSTEES AND INSTITUTIONAL MEETING SUPPORT

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Fund Governance in Harmony

Professional Independent Trustees and Institutional Meeting Support

The importance of a robust corporate governance framework for investment funds has become paramount to fund sponsors, investment managers and allocators, as investors continue to demand higher governance standards from funds and greater levels of transparency, alongside waves of new international regulation in recent years and ever-evolving compliance obligations.

Independent oversight and supervision of the actions and activities of funds and investment managers, as the cornerstone of good governance, ensures fund operations take place in the best interests of stakeholders and in accordance with the fund documents and relevant regulations. Every fund operator should have a solid governance framework. While investment funds can be structured with different types of corporate vehicles, typically served by a majority of independent directors on the board, the requirement to adhere to the highest governance standards applies to funds established as trusts. For the increasingly popular offshore unit trust fund structure, a robust and effective governance framework can be best achieved through the use of a professional independent trustee combined with professional meeting support and trustee secretarial services.

Unit trusts are traditionally the fund vehicle of choice for Japanese investors to gain exposure to global assets, due to their high degree of familiarity with the structure, strong similarities with their domestic investment trusts and the flexibility to adopt a variety of investment strategies. Unit trusts are also popular

in Japan where the control and responsibility of the fund is in the hands of an established fiduciary. As US domiciled asset managers implement the vehicle into structures aimed at attracting Japanese investors and new capital from Asia, not surprisingly a greater level of understanding is building in the market in regard to what is expected from the trustee. In terms of best practice for governance, a useful starting point is the recognition that just because a fund is structured as a trust, there is no reason to think that there should be anything other than a robust governance framework in place.

Establishing the Governance Framework

The first step in putting an effective governance framework in place for unit trusts starts with the appointment of an experienced and professional trustee. There is increased investor confidence as legal title to the fund's assets are in the hand of an independent fiduciary, whose focus is on making objective decisions, which is key for both governance and investor confidence.

Governance from the unit trust perspective can be best optimised through the selection of an independent trustee with institutionalised support. A suitable trustee can be determined by its depth of highly experienced personnel and familiarity with unit trusts and the Japanese marketplace. The strength and quality of the professional trustee's meeting support and trustee secretarial services teams will be crucial to instituting appropriate policies and procedures, such as record keeping and documenting decisions, representing the foundation of best practise for governance.

Finally, there are a number of jurisdictional considerations that should also inform the establishment of the governance framework. Under certain regulatory regimes, notably those of the Cayman Islands and Bermuda where unit trusts structures are common, trustees that are professional trust companies are required to be licensed and approved by the relevant regulator and subject to regular reviews. A robust infrastructure and institutionalised approach to good governance ensures that the complex needs of modern fund structures and the obligations of operators are met, providing an added layer of reassurance.

Institutionalised Meeting Support and Trustee Secretarial Services for Superior Governance

The duties and responsibilities of a trustee are broadly similar or, indeed, can be greater than those of a corporate board and the same types of governance practices generally apply to the trustee. A professional independent trustee can assist in the application of such a framework. Chief among these best practices is the scheduling of regular fund meetings, with the investment manager, administrator, auditor and the trustee all present, mirroring the actions adopted by corporate boards for investment funds. Accurate and timely meeting support services can greatly reduce the administrative burden of managing fund specific meetings on investment managers.

In addition to reviewing fund documents and service provider agreements, one of the primary duties of the trustee is ensuring that proper records are kept of all decisions taken by it in respect of the fund, particularly at meetings. This can be an onerous task that is effectively managed by institutionalised meeting support and trustee secretarial services. These services help trustees meet their obligations and include the provision of meeting venues with video-conferencing facilities, the coordination of and attendance at the meetings as well as the preparation and distribution of notices, agendas, minutes and board packs to permitted participants. Trustee duties of reviewing the reports from the administrator and other service providers, as well as coordinating and supervising functions delegated to service providers can all be fulfilled through an effective meeting support package.

The Maples Group's comprehensive fiduciary offering is structured to take advantage of the convenience and economies of scale of a single service provider, leveraging a robust infrastructure to assist with a broad range of services, from key obligations such as CRS and FATCA compliance to areas not required by law but all designed to keep clients at the forefront of both regulatory change and best practices from a governance standpoint. Furthermore, the Maples Group leverages best in class technology to offer the Brainloop platform for its clients as a highly effective solution for bespoke online meeting and entity management. Through an intuitive and user friendly interface, authorised representatives can get immediate access to meeting materials and the key documents they need, from a secure, centralised location.

As these best practices develop further and global regulation continues to evolve, investment managers establishing funds as trusts have no reason to be behind the curve and by working with a professional independent trustee, backed by an institutional infrastructure, can meet the demand for greater oversight and instill greater confidence among investors.

About the Authors

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Sabrina is a Senior Vice President within the Maples Group's fiduciary services business, where she serves as an independent director on a wide range of alternative investment funds, including fund of funds, hedge funds, private equity funds and segregated portfolio companies. Sabrina joined the Maples Group in 2015 and carries over 16 years' legal experience. Sabrina was formerly a Cayman Islands partner at the law firm Appleby, where her key areas of practice included hedge fund and private equity structuring and formation, structuring of commercial and private trusts, as well as advising with respect to ongoing corporate governance, financing and regulatory matters for both regulated and non-regulated investment funds operating in multiple jurisdictions. Sabrina has been recognised by Legal 500 for her corporate and commercial work and by PLC Which Lawyer? as a lawyer of choice for private clients. She has served as an independent director since 2013.

Orchid Lee

Orchid is a Vice President within the Maples Group's fiduciary services business. She has significant experience in the legal and financial services industry and knowledge of corporate governance and fiduciary principles, related Bermuda laws and regulatory requirements. She also brings expertise in private and corporate trusts, including unit trusts, estates, mutual funds and regulatory compliance. Orchid is a qualified Attorney-at-Law admitted to practice in Bermuda and the Cayman Islands as well as a Barrister and Solicitor-at-Law of England and Wales. Previously, Orchid worked at Clarien Bank Limited in Bermuda as Senior Legal and Regulatory Compliance Officer. Prior to this, she worked at HSBC in Bermuda as Global Legal Counsel and Appleby in the Cayman Islands as an Associate.