



# REDISCOVERING SHARE TRUSTEE SERVICES

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# Rediscovering Share Trustee Services

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With increased activity in the alternative investment industry and the renowned flexibility of the Cayman Islands corporate framework, the role of the share trustee has re-emerged as a preferred solution for investment managers to structure vehicles and keep abreast of the rapidly changing regulatory landscape.

The efficiency and flexibility of a management-participating share structure, which bifurcates the voting and economic interests, has long been acknowledged, and in this new regulatory environment the advantages have become more discernible. For many managers, however, the question remains as to who should hold the non-economic voting interests? Using a share trustee arrangement and having the management shares held by a third-party service provider can provide the comfort and integrity required both from a structuring and investor perspective. As structures continue to evolve in the hedge fund and private equity space, the share trust[ee] model has proven optimal across a range of scenarios.

## **The Value of the Share Trustee**

A core benefit of the trust model is that an independent third party steps in to hold the management shares on trust. Whether the trust is established as a STAR trust or a charitable trust, the Maples Group typically acts as the share trustee, taking legal title in the management shares but holding the beneficial interest on trust, subject to the trust documents. As share trustee and the legal holder of the management shares, the Maples Group has the right to exercise the voting power attaching to the shares, but is accountable for its

actions and required to abide by the terms set out in the trust documents.

The model continues to be highly attractive for investment funds, where investors' rights are appropriately protected by their class rights and the formal statutory voting rights, conferred by statute, (e.g. to change the company's name) are reserved to the management shareholder. The bifurcation of the voting rights in this way creates major efficiencies in the operation of the fund, and the introduction of the share trustee can address accounting, consolidation and other issues that would otherwise arise if the manager were to hold the management shares directly.

In addition to investment funds, the share trust structure is also critical to many special purpose vehicles established to be bankruptcy remote. The use of a charitable trust to hold the voting shares of an SPV is standard practice in the structured finance market and is broadly recognised by ratings agencies and regulators. Where a bankruptcy remote structure is needed, a charitable trust is used to hold the issued voting share capital of the client entity. This takes the SPV off the balance sheet of the related transaction counterparties such as the collateral manager and the arranging bank. The structure ensures that if an originator or seller of assets to the SPV were to suffer

an insolvency event, the creditors of such an entity could not attach the assets of the SPV.

Regulatory and legislative change, including the US Volcker Rule, has also incentivised the use of share trustees over recent years. The appointment of an independent share trustee to hold the voting rights addresses certain oversight expectations from institutional investors and ensures a separation of mind and management on key matters, which is a common objective for investment managers in certain jurisdictions.

## Share Trustee Services and Alternative Entities

While share trustee services are most commonly sought where the vehicle of choice is an exempted company, the share trust model serves the same role in other vehicles such as the Cayman Islands LLC, a hybrid entity which combines the limited liability features of a Cayman Islands exempted company with the pass-through tax structure of a partnership. In these cases, the trustee holds the managing member interests issued by the LLC, which have the authority to vote on and approve certain matters laid out in the LLC Agreement. The Cayman LLC mirrors the Delaware LLC which investors have great familiarity with and the Maples Group also provides share trustee services in that jurisdiction. As the LLC grows in popularity, particularly where an independent general partner entity is required, so too has the demand for share trustee services in this space.

## The Declaration of Trust

The actions of the trustee under the share trustee engagement is governed by the Declaration of Trust, which establishes the terms and conditions under which the trustee operates. Through our expertise and knowledge in this space, we have established a standard form Declaration of Trust, which incorporates best practice and can be put in place quickly and efficiently, with no or minimal revision required to meet

almost every situation. Clients still have the ability, where necessary, to tailor the Declaration of Trust to their specific needs and requirements for a bespoke product in some instances. The Maples Group has extensive experience working with global financial institutions and third-party service providers, both large and small, to ensure compliance with all relevant legal and regulatory requirements and that the necessary standards of governance are adhered to when providing this service.

Key considerations with a Declaration of Trust mirror other trust engagements such as a unit trust, which allows the trustee to make distributions, action investment powers or delegate powers. A key point to note, however, is the vast majority of these structures utilise the service to hold the voting shares of a company or LLC that typically does not participate in the economic viability of the company. As a result, many of those powers are rarely, if ever, actioned but are embedded in the Declaration of Trust. This ensures flexibility if and when the powers of the shares evolve or amendments are necessary to adhere to investor, client or tax regulatory considerations.

## Voting of the Shares

The share trustee acts as a gatekeeper to ensure the appropriate considerations and due diligence are performed regarding the affairs of the entity when votes are required. Subject to the commercial and regulatory requirements in each case, it may be appropriate to develop a framework or series of guiding principles or a consultation process that the share trustee will follow prior to exercising any voting rights. It should be noted that the trustee would not dispose of or otherwise deal with any of the shares unless the trustee, after consultation with key stakeholders, believed such actions are in the best interests of the beneficiaries.

## Share Trustee Outlook – The Maples Group

Having initially developed the share trustee service to meet the bankruptcy remoteness needs of CLOs and holding companies in the late 1990s, evolving structures within the alternative investment space, notably hedge funds, private equity and Cayman-domiciled LLCs, have since come into the picture. The share trustee concept meets the changing requirements of clients relating to corporate governance and regulation for fund structures across investment markets. In every stage of an entity's life cycle, a share trustee mandate can be instrumental in facilitating key decision making to support good corporate governance, including the minimisation of conflicts of interest.

The charitable trust structure has proven viable through its flexibility and adaptability, achieving key objectives whilst remaining at arms-length from the mind and management. As a pioneer of the use of a share trustee, the Maples Group's extensive experience in this field together with seasoned professionals, a well-established institutional grade infrastructure and the relevant licences, distinguish us in a fiduciary capacity within an ever-changing regulatory landscape.

diverse portfolio of investment funds, fund administrators and securities investment businesses operating in and from the Cayman Islands. He also routinely performed regulatory on-site inspections of regulated entities.

### Dalton Watler

Dalton is an Assistant Vice President within the Maples Group's Fund Fiduciary team in the Cayman Islands. He provides fiduciary services for various alternative investment fund structures, including hedge funds, unit trusts, private equity, segregated portfolio companies and multi-manager funds, as well as share trustee and trustee clients. Previously, Dalton worked as a Senior Administrator in the investor services team within the Maples Group before transitioning to the director services team.

## About the Authors

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Omar is a Vice President in the Maples Group's Fund Fiduciary team in the Cayman Islands. He specialises in the regulatory supervision of mutual funds, mutual fund administrators and securities investment business entities registered and / or licensed under the Mutual Funds Law and the Securities Investment Business Law.

Previously, Omar worked for the Cayman Islands Monetary Authority as an Analyst within the Investments and Securities division, supervising a