



Cayman Islands Unit Trusts  
and the Importance of the Trustee

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# Cayman Islands Unit Trusts and the Importance of the Trustee

Cayman Islands unit trusts have become an increasingly popular vehicle, particularly for Japanese investors who are seeking to gain exposure to global assets. The Cayman Islands unit trust has similarities to Japanese domestic funds but often with increased flexibility, which can enable investment strategies, hedging and/or currency exposures and distribution features to be implemented that are not always possible to implement through other vehicles.

A Cayman Islands unit trust can be either "closed-ended" or "open-ended." In a closed-ended unit trust, the units issued are not redeemable at the option of the investor. In an open-ended unit trust, the units are redeemable at the option of the investor. A unit trust can be structured as a "stand-alone" trust, also known as a single portfolio trust, or as an "umbrella" trust, which enables multiple sub-trusts or series trusts to be established under the umbrella.

In an umbrella structure, separate series trusts can be established which each provide exposure to a different portfolio of assets. The series trusts are legally separate and distinct from one another, thereby ring fencing the assets and liabilities from one another. The umbrella structure is also sufficiently flexible to allow for the appointment of different service providers in respect of the various series trusts. The umbrella unit trust structure has therefore proved popular with promoters who wish to establish a platform that can be used to conduct multiple fund launches.

Umbrella trusts and stand-alone trusts are both popular vehicles for Japanese clients, whether seeking to attract a large investor base or for use by large institutional Japanese investors wishing to have a "single investor" unit trust. A common feature of either structure is that it requires a trustee to declare the trust and who will then delegate a series of functions and powers to third party service providers typically including, but not limited to, an investment manager, administrator and transfer agent, a custodian and, in some cases, a distributor. Notwithstanding such delegation, the trustee retains supervisory duties for delegated functions, as the Cayman Islands Monetary Authority has made clear in its Statement of Guidance for Regulated Mutual Funds on Corporate Governance. The trustee is responsible for safeguarding the trust fund and also owes common law fiduciary duties to investors.

The choice of trustee is therefore critical and investors should give thought to the quality and standing of their trustee, the size and depth of the team representing the trustee, as well as their familiarity with unit trusts and their administration. A trustee's responsibilities should include, but not be limited to, reviewing the fund documents and service provider agreements, executing discretions provided to it in the fund documents, having regular interaction with the service providers of the fund, reviewing any relevant reports, and conducting an in-depth review of the annual financial statements. In addition, a trustee should have a robust infrastructure to match the complexity and demands of the various trusts it provides oversight to. Most importantly, a trustee must carry out their duties in a manner that serves the best interest of all unitholders.

Recognising that the investment funds industry is evolving in response to investor demands and regulation, so too will governance practices. As such, MaplesFS is committed to assessing and updating its processes on the delegation and supervision of service providers on an ongoing basis to ensure the delivery of superior independent oversight, in line with industry best practices, on the unit trust vehicles that it serves.

As a market leader in the provision of fiduciary services, MaplesFS 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. Clients benefit from the firm's existing relationships, agreed standards of care and limited recourse provisions which can become complicated and protracted during the course of the set up phase of a new unit trust.

MapleFS has also developed a number of market leading trust deeds, providing maximum flexibility and incorporating best practice, which have been designed so that they are ready to go "off the shelf," without the need for negotiation or amendments, thereby ensuring that client products can be brought to market quickly and at minimum cost.

The experience of MaplesFS' team of dedicated unit trust professionals and our unparalleled offering often facilitates cost savings and enhanced efficiencies with fund launches.

### **About the Authors**

#### **Abali Holett**

Abali is a senior vice president at Maples Fiduciary, where he serves as an independent director on a wide range of alternative investment funds, including hedge funds, fund of hedge funds and private equity funds. Prior to joining Maples Fiduciary in 2013, Abali was a vice president at Intertrust Fund Services (Cayman) Limited (formerly Walkers Fund Services Limited) from 2007 to 2012. During his tenure, Abali provided independent trustee and director services and was actively involved in the review and approval of the transactional documents used to govern trust and investment fund structures. Prior to that, Abali was employed by RBC Dominion Securities (Global) Limited, a wholly owned subsidiary of RBC Dominion Securities Inc. starting there in 2005. While at RBC Dominion Securities (Global) Limited, Abali was charged with creating investment portfolios for institutions and high net worth clients and facilitating securities trading and management of these portfolios.

#### **Sabrina Foster**

Sabrina is a vice president at Maples Fiduciary, 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 Maples Fiduciary 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 and commercial and private trust structuring, as well as advising with respect to ongoing corporate governance, financing and regulatory matters relevant to 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.



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