

# Trustee Services

## Frequently Asked Questions

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The Maples Group is a leading service provider offering clients a comprehensive range of legal services on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg, and is an independent provider of fiduciary, fund services, regulatory and compliance, and entity formation and management services. The Maples Group distinguishes itself with a client-focused approach, providing solutions tailored to their specific needs. Its global network of lawyers and industry professionals are strategically located in the Americas, Europe, Asia and the Middle East to ensure that clients gain immediate access to expert advice and bespoke support, within convenient time zones.



### What Trustee Services are provided by the Maples Group?

The Maples Group's fiduciary services team provides trustee services to a wide range of clients and trust structures. Our professionals are market leaders in the provision of fiduciary, formation and management services and trust and private client services to investment funds, private and institutional trusts, structured finance vehicles and corporate entities established in the Americas, Europe, Asia and the Middle East. The trustee services we provide are based on the needs of these vehicles, with the unit trust a popular structure for investment funds and structured finance transactions in common law jurisdictions.



### What is the Maples Group?

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### Who are your clients?

Our clients include global financial institutions, institutional and high net worth investors, investment funds, structured finance vehicles and corporate entities established in the Americas, Europe, Asia and the Middle East.



### Why do clients choose the Maples Group for trust and fiduciary services?

Our clients choose to work with us because of our institutional infrastructure, the depth and breadth of our professionals and our solutions-oriented approach.

As one of the leading global fiduciary service providers, we have extensive experience in the provision of trustee services to alternative investment funds established as unit trusts. We look to add value over the entire life of the structure, from establishment of new trusts and the restructuring of existing ones through to advising on best practices, dealing with distressed issues and overseeing the termination of trusts.



### Is the Maples Group licensed by any regulatory bodies to offer trustee services?

The Maples Group's trustee services business is regulated in the Cayman Islands by the Cayman Islands Monetary Authority ("CIMA"), in Bermuda by the Bermuda Monetary Authority ("BMA") and in Jersey by the Jersey Financial Services Commission ("JFSC"). We operate our Cayman Islands trustee services business under the Banks and Trust Companies Act (2021 Revision) ("the Act") and our Bermuda trustee services business under the Trusts (Regulation of Trust Business) Act 2001. Our trustee services business and our 100% owned and controlled subsidiaries, Maples Trustee Services (Cayman) Limited and Maples Trustee Services (Bermuda) Limited, Maples Trustees (Jersey) Limited are independently audited, in addition to being subject to an annual internal audit by the Maples Group's internal audit team.



### What is a controlled subsidiary and can it act as trustee?

The Act enables a Cayman Islands licensed trust company to form wholly owned controlled subsidiaries to act as trustee of all types of trusts, including unit trusts. Pursuant to section 5(3) of the Act, a trust company that is a controlled subsidiary does not require a separate license to carry on the business of issuing debt instruments or to carry on other trust business that is: (a) connected with the trust business of the licensee by which the controlled subsidiary is owned; and (b) within the scope of that licensee's trust license.

Where we are approached to provide trustee services in the Cayman Islands, there are two options available. The first option is to create a new and separate wholly owned subsidiary of MaplesFS Limited, to act as trustee exclusively to the client's trust. It is a straightforward process whereby two CIMA approved directors are provided to serve on the board of this controlled subsidiary, which acts as trustee to the trust. The second option is to use our already existing controlled subsidiary, Maples Trustee Services (Cayman) Limited, which is a controlled subsidiary (under the meaning of the Act) of our licensed trust company, headquartered in the Cayman Islands. As a Cayman Islands trust is not normally considered a separate legal entity from the trustee, there is a remote risk that counterparties may have recourse to the assets of other trust structures where the

Maples Trustee Services (Cayman) Limited acts as trustee. The benefit of using a separate controlled subsidiary is that it eliminates the risk of contagion of trust assets between unrelated trust structures.

In Bermuda we offer trustee services through Maples Trustee Services (Bermuda) Limited, which holds an unlimited trust license under the Trusts (Regulation of Trust Business) Act 2001 of Bermuda. In Jersey we offer Trustee services through Maples Trustees (Jersey) Limited under their Trust Company Business licence issued by the JFSC.



### **Does the Maples Group have its own compliance officer, risk officer, internal auditor and general counsel?**

Yes, the Maples Group is supported by a dedicated compliance group comprised of our Chief Risk Officer and a team of experienced compliance professionals. In addition to our annual external audit, our fiduciary and trustee services teams are also subject to an annual audit by the Maples Group's internal audit team.

The Maples Group's fiduciary team, Maples Trustee Services (Cayman) Limited and Maples Trustee Services (Bermuda) Limited also have a full-time in-house General Counsel and Assistant General Counsels.



### **How is the trust group within the Maples Group structured?**

We believe that the best results are achieved by adopting a team approach. That is why our fiduciary professionals work in teams within a group structure. By operating in teams, we also encourage a collegial environment, designed to produce a consistent approach and institutional quality level of service. Our clients have access to a team of highly qualified professionals who have first-hand experience in the financial services industry with backgrounds in law, accounting, investment management, banking, corporate finance, risk management, management consultancy, trust and private client services, trust administration and fund administration.



### **Are the trust and fiduciary professionals in the Maples Group members of any professional bodies?**

The Maples Group is a member of the Alternative Investment Management Association. Along with holding various undergraduate and postgraduate degrees, many of our professional staff belong to globally respected accounting societies, the CFA Institute, the Society of Trust and Estate Practitioners and are or have been admitted to practice law in England and Wales, the Cayman Islands and Bermuda.



### **Please describe any continuing education established to keep professionals current on legal, regulatory and industry changes?**

The Maples Group has a formal education policy that encourages professionals to further their academic and professional qualifications. We provide a combination of internal and external training to keep our professionals current on legal, regulatory and industry changes. Our trustee and fiduciary experts have access throughout the year to market leading technical training given by the Maples Group's senior legal services professionals. These sessions focus on topical industry news and provide appropriate refreshers on technical expertise. Externally, we engage accredited

education consultants to give training courses and industry education seminars. These include updates on international accounting standards and other specialised technical issues.

For our staff with annual Continuing Professional Education requirements, we have structured our education programme to ensure they fulfil their professional requirements.



### **How do you become satisfied with the due diligence involved in accepting new appointments as trustee and in the ongoing monitoring of the trusts you provide services to?**

Prior to accepting an appointment as trustee, the responsible team member will undertake a detailed review of the trust's proposed service providers and will hold several calls with the investment manager and/or promoter or sponsor. A particular focus is placed on the quality and experience of third party service providers along with the pedigree, experience and infrastructure in place at the investment manager. If the team member wishes to recommend proceeding with the appointment, a detailed submission is made to the Maples Group's Business Acceptance Committee. During the launch process, the trustee is actively involved in the review and approval of the statutory documents and agreements.



### **What procedures does the Maples Group follow in preparation for the typical annual trustee meeting to approve audited financial statements?**

Our professionals follow a thorough process, undertaking detailed procedures for reviewing and approving the annual financial statements of the trust.

We request that the auditor, administrator and investment manager attend the financial statement review meeting to present their findings and reports to the trustee. This also gives our professionals the opportunity to ask any relevant questions. Each meeting follows a formal agenda.



### **Why does the Maples Group require indemnification language in the trust deed?**

Unlike a company, a trust does not have separate legal personality and therefore it cannot contract with third parties. Instead, the trustee (as the legal owner of the trust assets) enters into all agreements, for the account of the trust. The trustee will therefore be primarily liable for all debts and obligations it enters into with counterparties in relation to the trust. As such, the trustee will look to be indemnified out of the trust assets for any losses, costs, expenses and other liabilities that the trustee may incur.



### **Why does the Maples Group require limited recourse language in contractual agreements?**

When the trustee enters into transactions, for the account of the trust, the trustee does so in a principal contracting capacity with full liability for all claims made by a counterparty under the relevant contract. In the ordinary course of events, the trustee will be able to use the assets of the trust, in order to indemnify itself against such claims. However, there may be circumstances in which a counterparty's claim exceeds the amount of available assets in the

trust. In such circumstances, the trustee will continue to be liable for the full amount of the claim to the counterparty, notwithstanding that there are insufficient assets in the trust in order to settle such claim. In practice, this means the trustee will be liable to pay the shortfall arising under the transaction out of its own assets.

For this reason it is common practice for a trustee to require limited recourse language in all transactions that the trustee enters into, for the account of the trust, which limits the counterparty's recourse to the amount of assets that are available to the trustee in the trust. Once those assets are exhausted, the counterparty's claim is extinguished. Where various functions have been delegated to the investment manager, the trust deed and investment management agreement shall provide that the investment manager will be required to ensure such limited recourse language is contained in all transaction documents.

Contractual limited recourse language does no more, nor less, than put a counterparty in exactly the same position it would be in if dealing with a corporate fund. When contracting with a corporate fund the counterparty's recourse is limited to the available assets of the corporate fund and once those assets are exhausted the corporate fund goes into liquidation and the counterparty's remaining claim is extinguished.



### What are the duties of the trustee?

The primary obligation of a trustee is to administer the trust, with diligence and in good faith, according to the terms of the trust deed, for the benefit of beneficiaries/unitholders. It is worth noting that there are various duties of the trustee which are onerous and include:

- A trustee must administer the trust impartially in the interests of all the beneficiaries/unitholders;
- A trustee must keep trust accounts and accurate records of all distributions and decisions;
- Unless the trust deed specifies to the contrary, a trustee may not delegate any of its powers or duties;
- A trustee is not like an agent, it cannot wait for and act on the instructions of others. It must take its own decisions and actively administer the trust; and
- A trustee must invest the trust fund with care, skill and caution in the investments that the trust deed or the law authorises.



### Does a trust need to have an auditor?

If the trust is registered with CIMA pursuant to the Mutual Funds Act (2021 Revision), CIMA will require confirmation from the auditor of the trust that they are aware of their duties and the audited accounts will need to be signed off by an approved auditor located in the Cayman Islands. Similarly, depending on the type of Bermudan registered trust, the trust may be required by the BMA to appoint an auditor and file audited accounts. An audit is not typically required for a Jersey Trust.

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