



Unit Trusts in the Cayman Islands

Tuesday August 10th, 2021

Unit trusts are commonly used to operate investment funds in the Cayman Islands. A unit trust is a form of an express trust whereby the interest in the underlying assets is unitised under the terms of the trust instrument. Units issued to investors in a unit trust confer a proprietary interest in all the underlying investments, but does not entitle the unitholder to any particular asset comprised in the trust fund. Ownership of a unit entitles an investor to a right to redeem or have its units redeemed in return for cash based on the net value of the trust assets.

How do you establish a unit trust?

A unit trust is typically established through a trust deed that documents the terms on which the trustee will hold the trust assets for the benefit of unitholders. When establishing a unit trust, it is possible to use either a trust deed to which only the trustee is a party (a single party declaration of trust) or a trust deed to which both the trustee and the investment manager are party (a two-party trust deed). An investment manager may be inclined to use a two-party trust deed when it wishes for its powers and duties to be set forth in the trust instrument itself. There may also be regulatory requirements to consider. For example, unit trusts which are publicly offered in Japan will need to be structured as a two-party trust deed.

The trustee of a Cayman Islands unit trust will commonly be a corporate trustee in the Cayman Islands and will therefore be licensed as a trust company under the Banks and Trust Companies Act (Revised). The Cayman Islands trustee will thus be regulated and supervised by the Cayman Islands Monetary Authority.

Stand-Alone vs Umbrella Trusts

A stand-alone unit trust is a single trust established by trust deed and is most appropriate where there is a single investment strategy for the trust fund.

An umbrella unit trust is the name given to the structure of a collection of sub-trusts established pursuant to a master trust deed and is typically used where the investment manager intends to pursue multiple investment strategies. It may also be used to establish a platform with different investment managers and/or other service providers appointed to each sub-trust. Each sub-trust is a separate and distinct trust and is intended to segregate the assets into separate funds. Therefore, the unitholders in one sub-trust will only have an interest in the property held in respect of that sub-trust.

Separate Legal Personality

Under Cayman Islands law, a trust is not a legal person and it does not exist as a separate legal entity. Therefore, it cannot enter into contracts on its own behalf. As a consequence, a trustee (or its delegate) must enter into all contracts and own the assets for the benefit of the unit trust.

Trustees are personally liable for all the liabilities of the unit trust. It is therefore important for trustees to include “limited recourse” language in contracts that it enters into for the benefit of the unit trusts. Such language seeks to contractually limit the relevant counterparty's recourse to the net assets of the unit trust and once the unit trust's net assets are exhausted the counterparty's claim is extinguished.

Registration

A unit trust will typically opt to be registered as an exempted trust under the Cayman Islands Trusts Act (Revised) on the basis that its beneficiaries are not and will not include any person at any time resident or domiciled in the Cayman Islands. The purpose of such registration is that the trust is then entitled to obtain an undertaking from the Government of the Cayman Islands that the trust will pay no Cayman Islands taxes for a fixed period of up to 50 years from the date of the creation of the unit trust. In any case, there are

currently no corporation, capital gains, income, profits or withholdings taxes in the Cayman Islands.

If the unit trust meets the definition of a mutual fund under the Mutual Funds Act (Revised) or a private fund under the Private Funds Act (Revised) then the trust will also need to be licensed or registered with the Cayman Islands Monetary Authority.

If you require further information on unit trusts, please contact

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Please note that this briefing is intended to provide a very general overview of the matters to which it relates and is not intended as legal advice and should not be relied upon as such.

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