



GLOBAL FUND SERVICES
AML Working Group

Registration of Personal Trusts on TA Systems



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Introduction

A trust is an arrangement where, the **trustor or settlor**, transfers ("settles") property (often but not necessarily a sum of money) upon the **trustee/s** for the benefit of the **beneficiary/ies**. A trust provides legal protection to ensure the trustor's assets are distributed according to their wishes. Once assets have been transferred to a trust, the assets are legally owned by the trustees themselves.

Across the UK Fund Industry some Transfer Agents place the name of the trust on their systems in the same location as they might normally and otherwise place the name of registered holder(s) for non-trust holdings. Other TAs will record the trustees as they would for any other legal owner. However irrespective of how the TA has recorded the account the legal owners of the assets are always the trustees (not the trust).

Irrespective of how the TA records the trust or trustee the administrative requirements are the same.

This document outlines the administrative requirements and the potential issues that might arise when the TA for the purpose of **its records**, notes the legal owner as the trust or records the legal owner as the trustees.

Core Requirements - irrespective of Registration Method

- Accounts related to Trusts must be clearly identifiable on systems to enable them to be readily distinguishable between personally held investments and those held for the benefit of others for both manual processing (to reduce the risk of errors) and also for regulatory reporting (e.g. FATCA/CRS and OI) where information about the Trust needs to be provided to the appropriate authorities.
- Firms should be alert to situations where an account has not been disclosed as a trust but carries clear indicia that a trust may exist. (See Appendix 1) Where appropriate, firms should seek to clarify the situation with the client or their representative.
- Where an individual trustee is representing multiple trusts or is recorded against a combination of both personal and trust assets, they must be separately identifiable on systems and outbound documentation (e.g. periodic statements) to mitigate the risk of misunderstandings and/or incorrect handling in the event of future events - e.g. to prevent trust assets being inadvertently included in probate valuations.
- Trustees' personal investments should be considered separately from those of the Trust for risk-rating purposes.
- Firms should not treat designated accounts (meaning those which have a designation of up to 15 characters provided by the client/s) as a Trust unless they have sight of any form of Trust Deed/documentation, being either of the Will, Court of Protection, Trust application



form or other deed or formation document. However, where the characteristics of the account may suggest a Trust exists (See appendix 1) contact should be made with the customer or their representative to clarify the position.

- All named settlors, Trustees, controllers and named beneficiaries to a trust must be identified and verified in accordance with the firm's AML policies, and included in any scheduled or automated screening processes performed by the firm. Firms must also have processes in place to ensure those records are kept up to date either periodically and/or following a relevant trigger event.
- Where firms elect to add roles/contexts to the name fields on systems (e.g. suffix of "as trustee of ABC..."), appropriate action should be taken to ensure that 'fuzzy' name matching processes utilised by any PEP, Sanction and Adverse Media screening tools is not adversely affected by the additional information.
- Firms should define their standard registration methodology for Trusts and ensure that their investor literature, systems, procedures, controls and processes meet their obligations under the relevant regulations.
- Where firms elect to enforce one registration method over another but have a combination of historical accounts using both methods, firms should either ensure their procedures and controls cater for both situations or should take steps to migrate existing accounts into the preferred format.
- Whilst the trustees are legally responsible for acting in accordance with the Trust Deed, the possibility exists that other representatives of the trust could claim against the firm for those losses if there is a reasonable expectation that firms should have acted differently upon receipt of inappropriate instructions. To that end, firms should consider what procedures, controls and formal risk acceptances need to be in place to mitigate the potential risks associated with such activity. Potential scenarios include:
 - Removing existing holders (i.e. trustees) without a deed of variation
 - Registering assets in the name of a single person (i.e. trustee) where a minimum of 2 is usual practice.
 - Paying any monies direct to one of the holders (i.e. trustees) ○ especially the first holder who is normally the sole recipient of all correspondence in respect of the investment account. (Note that some TA systems make the first holder the default payee in recognition of the fact that joint holders often do not have joint bank accounts),
 - Including Trust assets within Probate valuations for a trustee ○ Including Trust assets within any bankruptcy related activity for a trustee ○ Stock transferring assets to a person/entity who is not within the scope of the 'beneficiary' definition as stated in the trust deed. ○ Switching assets from the account into an ISA into one/each of the holder names ○ Holding trust assets in an ISA in the name of a trustee ○
 - In the case of pension trust accounts, paying money directly to the named individual (pensioner) instead of to the Pension Trustee company responsible for adhering to relevant tax regulations.

This is not intended to be an exhaustive list, and in some cases the requested activity may be subsequently proved to be entirely valid and reasonable.



Scenario 1 - Record in the name of the Trust

Benefits:

- **Ongoing Maintenance is less onerous** - Changes to Trustees could be reflected on systems without disturbing the account, allowing the account number to be retained, investment/performance history is continuous, and distributions are not interrupted.
- **Clarity of account purpose** - reduces the risk of the underlying trust being overlooked at the account opening stage (e.g. by omitting a designation), potentially only being identified in the future at account closure or redemption.
- **Clear documentation from firms** - by clearly identifying the Trust there is less risk of confusion with investments owned personally by the Trustees. This is particularly relevant for documentation that may need to be shown to the HMRC to evidence support tax returns for the trust or the trustees themselves. In the case of distributions, this avoids the need for trustees to prove that income is taxable to the trust rather than the trustees themselves.
- **Preventing Inappropriate payees** - TA systems often adopt a process whereby the first holder becomes the default payee for joint accounts in the event of a redemption or distribution payment (because joint holders often do not have joint bank accounts), which would rarely be an appropriate outcome in the case of a Trust.
- **Simplification of system design** - Treating a Trust as a type of entity enables firms to leverage functionality (e.g. risk rating, periodic reviews, third party payment controls) that already exists to support the verification of those entities with a legal personality. This is also likely to assist with designing and implementing additional controls to identify potentially inappropriate behaviour according to each firm's risk appetite.

Additional Considerations:

- **Legal position** - As indicated in the introduction, the trust has no legal personality, hence cannot be recorded as the 'unitholder' within the Register as per regulations. However, it is believed that firms could, subject to agreement from their respective legal team, define their 'Legal Register' to consider this fact - namely that it is made up the list of holders on their systems except for Trusts, where the legal holders are the trustees, along with any other exceptions (e.g. ISAs¹).

¹ Some TA systems may record the name of the ISA holder on their systems in the same location as they might normally and otherwise place the name of registered holder(s). For an ISA the legal owner is the ISA nominee or both the ISA nominee and the ISA holder but the sole legal owner can never be the ISA holder.



- **Implementation** - It is thought that most firms will currently operate a model that supports 1-4 unitholders per account, possibly with some reference to the assets relating to a Trust, hence there will be costs associated with enabling that ownership structure to be inverted, including across any existing control reports and processes.
- **Existing Account Migration** - Where firms have an existing population of Trust accounts recorded in the names of the Trustees, it may be a significant undertaking to migrate those accounts into the name of the Trust, especially where a trustee holds personal and trust assets, in addition to the costs of communicating those change to existing clients.

Scenario 2 - Record in the names of the Trustees

Benefits:

- **Aligns to the legal position** - The trustees are legal owners of the trust. It may also simplify any future litigation process - e.g. in the event of non-payment of a subscription order that incurs a loss to the firm
- **Minimal changes required to investor literature** - Investor application forms are typically designed for either private individuals (1-4) or organisations, with little recognition for unincorporated bodies such as Trusts that do not fit either classification. This causes confusion for the trustees (who are typically not qualified professionals) and as a result they feel compelled to complete the application process as private individuals, exacerbating the problems outlined here. Enabling individuals to indicate their relationship to the account - e.g. owner or trustee - would be a relatively simple addition to existing application forms, rather than needing to create complex bespoke variations.
- **Unchanged Process** - Avoids confrontation with professional trustees (e.g. solicitors) who have been completing application forms in the same way for many years, hence challenge the validity of seeking to register accounts in the name of the trust, rather than the trustees as legal owners.

Additional Considerations:

- **System Development to capture Trust information more holistically** - firms may need to enhance the amount of information captured within their systems in respect of the Trust, including enabling the storage of information about all other named parties to the trust, in addition to those of the (up to) 4 trustees as unitholders.
 - **System Development to prevent inappropriate activity** - firms may need to enhance their controls and associated processes to enable the identification of potentially inappropriate activity - e.g. where payment is being requested to be made to a payee other than that of the trust - according to their risk appetite.
 - **Procedures and controls** - Due to the increase level of registration changes that are likely to arise (i.e. change of trustee) from this recording method, firms should ensure that their procedures and processes are adequately designed to determine when the account relates to a trust, enabling any additional validations and/or alternate procedures to be performed as required.
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Appendix 1 Trust Indicators

Indicators that an account may be holding assets belonging to a Trust:

- More than 2 joint holders on an account.
- Joint holders are a mix of private individuals and organisations (typically pensions).
- Any of the joint holder addresses refers to a Solicitor or legal firm.
- Joint holders have different surnames with no obvious familial or other link to each other.
- Joint holders have different addresses to each other.
- Joint holders refer to themselves as Trustees or acting in a Trustee capacity in any written or verbal dealings with the firm.
- Trust correspondence (e.g. deeds of variation / retirement / appointment) received in respect of the account either unaccompanied or along with another request (e.g. stock transfer form).
- Incoming payments are being made from an account in the name of a Trust or third party (settlor).
- Outgoing payments are requested to be made to an account in the name of a Trust or third party (beneficiary).
- The designation could indicate the presence of a trust - e.g. ending WT, TST, SETT or other similar text other than an undecipherable alpha or numerical reference. (Parents opening an account with a designation representing the initials of their children are not deemed to be trusts, in the absence of other legal documentation)

This not an exhaustive list and the presence of one or more of these flags may not necessarily prove that assets belong to a Trust but should initiate steps to be taken to ascertain this definitively.



Appendix 2 Regulatory References

This is not intended to be an exhaustive list but provides some specific references to definitions within the applicable Laws and Regulations.

While human beings acquire legal personhood when they are born (or even before in some jurisdictions), juridical persons do so when they are incorporated in accordance with law. Legal personhood is a prerequisite to legal capacity, the ability of any legal person to amend (enter into, transfer, etc.) rights and obligations. Since a trust is not incorporated it follows that a trust has no legal personhood and cannot therefore enter into contractual arrangement. A trust is not a legal person but an unincorporated arrangement between those that have legal personhood.

Companies Act 2006

<https://www.legislation.gov.uk/ukpga/2006/46/section/126>

s126 Trusts not to be entered on register

No notice of any trust, expressed, implied or constructive, shall be entered on the register of members of a company registered in England and Wales or Northern Ireland, or be receivable by the registrar.

FCA COLL Section widely quoted as preventing Trusts being named on the Register

<https://www.handbook.fca.org.uk/handbook/COLL.pdf>

FCA COLL 6.4.4(R)

(4) No notice of any trust, express, implied or constructive which may be entered in the register is binding on the manager or trustee or the authorised fund manager or depositary, but this does not affect their obligations under n COLL 6.4.9 R (1) (Plan registers).

FCA COLL Section outlining information that should be on the Register

<https://www.handbook.fca.org.uk/handbook/COLL.pdf>

FCA COLL 6.4.4(R)

(3) The **register must contain**:

- (a) the name and address of each unitholder (for joint unitholders, no more than four need to be registered);
- (b) the number of units of each class held by each unitholder;
- (c) the date on which the unitholder was registered for units standing in his name; and (d) the number of units of each class currently in issue.

FCA Definition of a Unitholder

<https://www.handbook.fca.org.uk/handbook/glossary/G1233.html>

(a) (in relation to an ICVC, ACS47 or an AUT as appropriate, and subject to COLL 4.4.4 R (Special meaning of Unitholder in COLL 4.4)):

(i) (in relation to a share in an ICVC that is represented by a bearer certificate) the person who holds that certificate; or (ii) (in relation to a unit that is not represented by a bearer certificate) the person whose name is entered on the register in relation to that unit; or (b)

(in relation to a unit in a collective investment scheme not within (a)):

- (i) the holder of the 71 bearer certificate representing that unit; or
 - (ii) the person who is entered on the register of the scheme as the holder of that unit.
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Appendix 3 Other References

Law Firm - Legal Capacity Of Trusts – A Must Read For Trust Practitioners **<https://www.pearse-trust.ie/blog/bid/100844/Legal-Capacity-Of-Trusts-A-MustRead-For-Trust-Practitioners>**

“As we are aware, a trust is created when a settlor transfers assets to a trustee to hold for the benefit of one or more beneficiaries. The term ‘trust’ simply describes the fiduciary arrangement or relationship between those parties. It is not a legal entity, and does not have juristic personality. It is therefore incapable of holding assets, entering contracts or undertaking any other legal formalities in its own name. Indeed, as Adderly J commented in *Tenesheles Trust & ors v BDO Mann Judd* (Supreme Court of the Bahamas, 16 November 2009), ‘it is trite law that a trust lacks legal capacity...a trust is an arrangement, not an entity’.

In a trust arrangement, the appointed trustee is the person or entity with capacity to undertake these legal formalities. In assuming this function, the trustee acts as representative of the trust. The manner in which the trustee exercises this function is governed by the terms of the trust agreement and relevant local trust law.

Holding Of Assets

It is a common misconception amongst practitioners that the assets in a trust fund are owned by the trust. As mentioned above, a trust simply does not have capacity to hold assets in its own name. Legal title to assets is vested in the trustee (or its nominee). As the legal owner, the trustee may enforce all property rights relating to trust assets against any third party.”

Law Society Interpretation of s126 of the 2006 Companies Act

<https://www.lawsociety.org.uk/policy-campaigns/consultationresponses/documents/transparency-and-trust---law-society-response/>

8. Requiring the trustee(s) of express trusts to be disclosed as the beneficial owner of a company? “It is a fundamental principle of the Companies Act 2006-s126, that trusts must not be reflected in the register of members. This principle exists for a purpose in that there was concern that otherwise companies might become involved in claims and litigation between people with interests in the trust. If the company had notice of a trust, it could become involved in an unwitting breach of the trust. This is a key reason why in the UK trusts are not referred to. To alter this would require a significant rethink of the Companies Act 2006 and the body of corporate law that lies behind it.”

UK Pensions Regulator - Guidance for Trustees

<http://www.thepensionsregulator.gov.uk/guidance/guidance-for-trustees.aspx#legalRequirements>

Holding scheme assets securely



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As a trustee, you have a duty to make sure that the scheme's investments are held securely on your behalf. This includes share certificates, title deeds to property, and any other documents of title showing which assets belong to the pension scheme.