



## **CMDA Policy Statement 5/99**

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# **Trustee for a Unit Trust**

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## **Trustee for a Unit Trust**

**Subject: Trustee for a Unit Trust**

Pursuant to the licensing requirements for unit trusts in the Capital Markets Development Authority Act 1996, the Capital Markets Development Authority (Securities Exchanges and Licensing) Regulations 1997 and the Unit Trusts Act 1978, it is the policy of the Capital Markets Development Authority to require all persons who seek approval to act as a trustee for a unit trust to meet the requirements outlined below.

**1. Unit Trusts Act**

Pursuant to s.6 of the Unit Trusts Act, the trustee must be either:

- (a) a trustee corporation within the meaning of the Trustee Act (Cap 65);
- (b) a company or bank approved for unit trust purposes by the Minister of Finance.

An individual cannot therefore be a trustee of a unit trust.

## 2. A Trustee Corporation

A trustee corporation within the meaning of the Trustee Act is:

*"The Public Trustee or any corporation authorised by the provisions of any Act to administer the estates of deceased persons and other trust estates" (emphasis added)*

The Authority is of the view that the underlined words are sufficiently broad to include, for example, trustee corporations under the Trustee Corporation Act (Cap 66) ("TCA"), referred to herein as "TCA trustee corporations". These are defined differently from trustee corporations under the Trustee Act (Cap 65).

To qualify as a TCA trustee corporation, the company must be or do the following:

- be incorporated or registered under the Companies Act [which suggests that overseas companies registered under Part X of the Companies Act qualify]: s.3, TCA;
- be authorised by its Memorandum of Association to "carry on business as a trustee corporation": s.3, TCA;
- apply for registration to the Minister of Finance: s.3(2), TCA;

- before registration, deposit with the Treasury (i.e. Ministry of Finance) Fiji Government securities to the value of \$50,000: s.5(1), TCA.

### **3. Approved Company or Bank**

Alternatively, any company (or bank) can seek approval from the Ministry of Finance either to act generally as a trustee for unit trusts or as a trustee in respect of a particular unit trust: s.6(b), Unit Trust Act.

Within this category, in supporting an application to the Minister of Finance for approval to act as a trustee for a unit trust or unit trusts, the Authority will have regard to the following factors:

- Authorised and paid up capital of the applicant
- Articles and memorandum of association of the applicant allowing it to perform this activity
- Names and addresses of the shareholders
- Names and addresses of the directors
- Statutory declarations from directors attesting to their good fame and character
- Details and qualifications of the key staff including the chief executive officer and compliance officer

- Evidence that the applicant is capable of acting as trustee and meets the requirements of s.6 of the Unit Trusts Act
- Details of the accounting, computer, compliance and operating systems to enable the applicant to comply with the provisions of the trust deed
- Organisational structure and resources
- Name of the responsible officer of the applicant
- Copy of the signed and registered trust deed

A "bank" is a bank within the meaning of the Banking Act: s.2, Unit Trusts Act (note that the Banking Act 1995 now applies as the successor to Cap. 212). "Bank" under the Banking Act 1995 means:

"Any financial institution whose operations include the acceptance of deposits of money withdrawable or transferable by cheque or other means of payment transfer."

#### **4. Bond**

A bond of up to \$40,000 must be paid to the Government by any trustee for a unit trust to ensure the proper discharge of its obligations.

#### **5. Trust Deed**

The trust deed requirements of S.9 of the Unit Trusts Act must also be complied with. S.9 requires that in order for subscriptions to be invited from the public to participate in a unit trust, there be an eligible trustee, the trust deed must provide for an appointment of a trustee and other statutory matters, the trustees must have accepted appointment as trustee and executed the deed and the executed trust deed must be lodged with the Registrar of Companies and gained his approval. The Authority will also review the trust deed before registration.

## **Capital Markets Development Authority**

**10 November 1999**