



THE SAFEGUARDING OF UNIT HOLDERS' INTERESTS

A Q&A WITH AMANAHRAYA TRUSTEES BERHAD

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LITTLE HAS BEEN WRITTEN ON THE TRUSTEE'S ROLES & RESPONSIBILITIES. WHAT ARE THE KEY ROLES OF A TRUSTEE AS AN IMPORTANT ELEMENT BEHIND A UNIT TRUST FUND?

The history of unit trusts in Malaysia can be traced way back to 1966, and over the years, the industry has evolved and diversified tremendously. Consequently, the trustee's roles and responsibilities have also been enshrined in various legislations. However, nothing has impacted the traditional role of a trustee. Lack of awareness or rather, the non-popularity of a trustee's role perhaps is attributable to the nature of the duties which are more confined to backroom services. This is albeit the public's common thoughts on what a trustee does.

Essentially, a trustee provides comprehensive trustee and custody services to unit trust management companies with the paramount duty of safeguarding the interests of the unit holders i.e. the investors. The assets in a unit trust scheme are placed under the care of the trustee and this lends confidence to the investors. Each unit holder that has invested in a unit trust fund has every right to be concerned with his investment. The trustee appointed has a role in ensuring the unit trust management company allocates the assets of the fund according to the investment restriction and limitations stated in the Deed and the prospectus of the fund. The statutory provisions are enacted to protect the interests of investors and can offer a level of comfort. Moves by the Securities Commission have benefited the unit trust industry through the disclosure-based approach where the investors' interests are protected as they have sufficient information via the Deed and prospectus to make investment decisions.

The Capital Markets and Services Act 2007 (Act 671) [CMSA] has wide provisions on the roles and responsibilities to be fulfilled and discharged by a trustee to a unit trust fund.

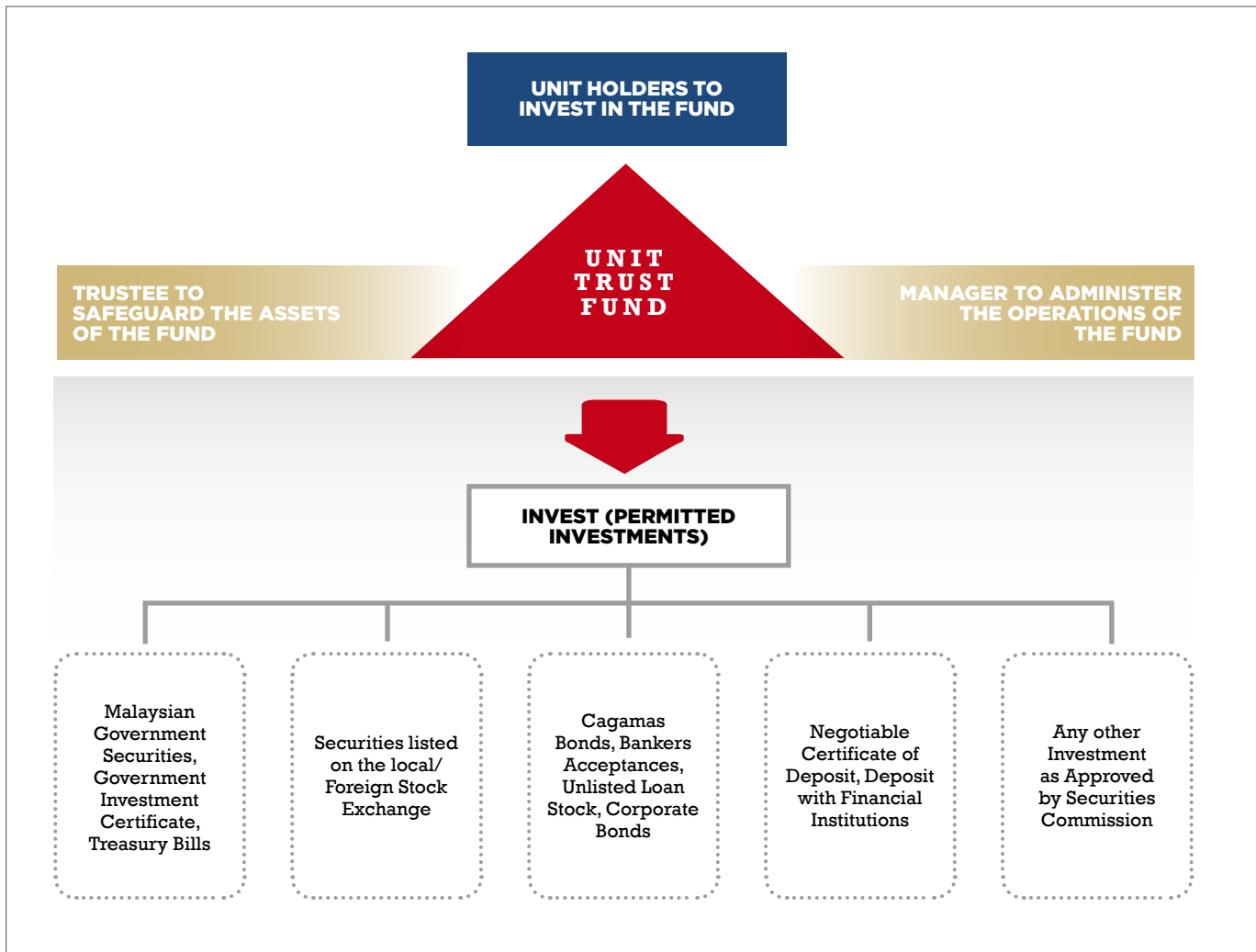
Sections 288 and 289 of the CMSA provides for the appointment of a trustee approved by the SC to act as trustee to unit trust scheme or prescribed investment scheme. There are certain requirements to be fulfilled, as set out in section 290 of the CMSA before a person shall be eligible to be appointed as trustee. The duties of a trustee are enumerated under section 300 which include:

- Taking custody and control of all securities, property and assets of a unit trust scheme or prescribed investment scheme and hold it in trust for the unit holders
- Exercise reasonable diligence to ascertain whether the management company has committed any breach of the provisions of the deed or provisions of the CMSA
- Do everything to ensure the management company remedies any breach known to the trustee
- Notify the SC of any irregularity, any breach, consistency or contravention of the deed, covenants or provisions of the laws
- Comply with any direction given to the trustee at a unit holders' meeting

Additionally the trustee has to also:

1. Exercise all due diligence and vigilance in carrying out its functions and duties in accordance with the Deed, CMSA, SC Guidelines and other securities laws
2. Monitor permitted investment to ensure that the management company manages and administers the funds in accordance with the Deed, CMSA, SC Guidelines, and other securities laws
3. Ensure proper records are kept of all transaction, dividends, interest and income received and distribution of income to the Unit Holders
4. Require the management company to keep the Trustee fully informed as to the details of the management company's policies in investments and any changes thereof
5. Ensure the accounts are audited at the end of each accrual period by the auditors and ensure that each Unit Holder receives a copy of the audited annual accounts within two months after the financial year end

DIAGRAM 1 Unit Trust Scheme



6. Has the authority to appoint Auditors, Tax Agents and Legal Advisers for the unit trust funds
7. Has the power of to call a meeting if Management Company fails to remedy any breach of the provisions or covenants of the Deed, Act and any securities laws
8. Has the power to wind up scheme(s)

Therefore, the appointment of the right trustee can ensure that the rights of the unit holders are safeguarded and that the assets of the fund are managed wisely. Basically a Unit Trust scheme operates as depicted in Diagram 1.

AS A TRUSTEE, WHAT ARE THE ISSUES OR MAIN RISKS IN ASSOCIATION WITH THE FUNDS?

Issues: Is investment in unit trusts safe? There are substantial benefits investing in unit trust funds which include affordability, professional fund management and the comfort of regulations.

Risks: Relating to the investors, they have to know their risk appetite, review their investment goals as well as the performance of their investment, and rebalance their port-

folio to control the risk profile. In the prospectus, there are disclosure of risk factors; information on fund’s performance and also the “Management Expense Ratio (MER)” which can provide unit holders the necessary facts.

WHAT QUALITIES ARE NEEDED IN A TRUSTEE AND WHAT ARE THE BENEFITS TO INVESTORS?

Trustees are regulated by the Securities Commission and section 289 of the CMSA provides the requirements on who can be trustee. There are many requirements to be met for the trustee to be able to discharge its statutory and fiduciary duties under the CMSA.

The expectations of the Securities Commission are that the trustee company will be able to:

- Have proactive monitoring and surveillance capabilities of funds’ operations
- Ensure fair and equitable handling of unit holders’ requests/complaints/feedbacks
- Conduct independent review
- Trustee need to ensure it has adequate human and IT resources; able to retain and upgrade staff’s skills with legal, accounting and other essential professional mix

- Effective monitoring of statutory obligation would require robust system which is well maintained

The trustee must have adequate internal control and compliance in place. The trustee has to make a declaration that they have adequate human resources with the necessary qualification and experience to manage and administer the fund. Also required are adequate and appropriate systems, procedures and processes to manage and administer the unit trust funds in a proper and efficient manner.

WHAT ARE YOUR RECOMMENDATIONS OR ADVICE TO INVESTORS?

Investors can expect a trustee to extend and offer information required by them relating to the industry and that the response would be given within reasonable time frame. Apart from the public awareness and education programs launched by unit trust management companies, potential investors or the investing public themselves have to understand their financial status, as even if they are advised by financial advisers, they have to approach the advice with some level of financial understanding in order to make their own decisions. They should know their investment horizon, risk appetite, expected returns and investment knowledge. Of course the financial advisers owe a duty of care to provide right and timely advice, nevertheless the investment decision lies with the investors. Investors should read the Prospectus as it would spell out the investment objectives; strategy; target market, rights and liabilities of unit holders; maximum fees and charges; permitted expenses of fund; and process and conditions for unit holders' meeting.

When an investor invests in a unit trust fund, the factors that they should look at are: 1) if the managers of the fund have the expertise in managing funds; 2) if the fund has a low expense ratio where investors look for competitiveness and reasonableness of the fees; and 3) if the fund has consistently outperformed its benchmark indices.

AS ONE OF THE KEY PLAYERS IN THE MARKET (AMANAH RAYA TRUSTEES BERHAD), WHAT ARE THE KEY CHALLENGES YOU CAN SEE? CAN YOU SHARE YOUR PERSPECTIVE ON THE FUTURE ROLES OF TRUSTEES IN THE OVERALL UNIT TRUST INDUSTRY?

We need to look at the unit trust industry collectively; that it is a business that has seen tremendous growth due to the many efforts of the regulators, government and industry players. This includes the trustee. To boost investors' confidence, the SC requires a collective effort among all these parties to display resilience in the domestic capital market.

The trustee has to make a declaration that they have adequate human resources with the necessary qualification and experience to manage and administer the fund.

In determining the future roles of trustees, it is essential and fundamental to manage the expectations of the regulators and the unit holders/investors. The corporate trust services market is a highly competitive market, but at the same time it is lucrative to service providers because of the recurring fee income it provides. Although the revenue generated from the trusteeship of unit trust funds may continue to be significant contributors, their growth rate will likely flatten out as more and more competitors enter into the fray. In addition, the flattening out of the industry net asset value (NAV) is also a concern.

There is also the expectation from management companies to require the trustee to offer additional services such as fund valuation and fund accounting. It is expected that trustees will oblige and offer such services so as to remain competitive.

The trustee must continue to invest in developing their expertise in this segment as well as to further enhance their IT support system that enables the automation of the monitoring, control and compliance checking (which forms the thrust of a trustee's functions).

In order for trustees to be able to meet the expectations of investors and regulators, it must first build up the appropriate levels of market intelligence, price structures and other relevant information. Furthermore, there is a need to carve a niche within the Islamic financial services industry as it has become a driver of economic growth and development. To be able to be effective in offering trusteeships to this segment, trustees must be seen to have the necessary skills and knowledge to differentiate themselves from the competition. A trustee would need to:

- Develop their internal body of knowledge on Syariah compliant trust and financial instruments
- Increase training on developing the appropriate body of knowledge
- Strengthen the role of their Syariah Advisory Council
- Recruit a Syariah compliant financial instrument specialist
- Develop occasional working papers on Syariah compliant instruments
- Create awareness of the company's Syariah expertise by publishing occasional working papers through appropriate medium and build relationships with relevant bodies

Note: AmanahRaya Trustees Berhad became the first trustee (as the Public Trustee then) to the first unit trust fund launched in Malaysia in 1966.