



Department for Levelling Up, Housing and Communities (DLUHC)

HM Treasury (HMT)

HM Revenue and Customs (HMRC)

The Department for Business and Trade (DBT)

By email to: trusttransparency@levellingup.gov.uk

21 February 2024

The UK Depository Association response to the government consultation on the Transparency of land ownership involving trusts.

The UK Depository Association represents the depositaries and trustees of UK authorised funds and alternative investment funds including Open Ended Investment Companies (OEICs, also referred to as Investment Companies with Variable Capital), Unit Trusts and Authorised Contractual Schemes (ACS).

We welcome the opportunity to comment on the consultation.

We agree with the aims of the consultation to lift the veil of secrecy that is currently afforded to those land-holding trusts that are created to obscure the ownership of assets and make it easier for corrupt individuals to operate.

However, whilst we agree with improving the transparency of land ownership, authorised and unauthorised unit trusts as defined under s237 of the Financial Services and Markets Act 2000, for which our members may act as trustee, should be exempt from the scope of the proposals in this consultation.

Unit trusts are created as collective investment schemes and investors in such schemes do not direct or control the investments of the fund. There is therefore no public interest or benefit in bringing unit trusts within the scope of the proposals.

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No responsibility can be accepted by the Association for action taken which is the result of information contained in this correspondence. Recipients should take specific advice when dealing with specific situations.

We note that authorised unit trusts (AUTs) are not required to register on the Trust Registration Service as registrable express trusts.¹

We also believe that any publication requirements should not extend to bare trusts established by trustees or depositaries of UK authorised Funds and alternative investment funds for the purpose of holding legal title to assets held within such funds. Bare trusts established in this way are effectively an extension of the Fund and so should be treated in the same way as the Fund itself.

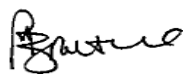
It is also important that the obligations fully reflect UK legal structures, and responsibilities are correctly and unambiguously assigned to the parties most appropriate to perform those tasks.

We note that there are key differences in the role and responsibilities performed by trustees of unit trusts compared to other types of express trusts due to the division of regulatory responsibilities between managers or operators and trustees of unit trusts. The trustee is the entity that performs the depositary function for a unit trust and has responsibility for custody of or control over fund assets, oversight of the activities of the manager and protection of the interests of the beneficiaries, i.e. incoming, ongoing and outgoing share/unit holders.

In the case of collective investment schemes, whether OEICs, unit trusts or ACS, responsibility for executing transactions in units/shares and maintaining unitholder/shareholder registers of the applicable scheme falls on the Authorised Fund Manager (AFM) as operator of the scheme. In accordance with the UK regulations for authorised collective investment schemes, the AFM is the entity responsible for ensuring that information regarding the beneficial owner(s) is contained in the unit register and that the information is always complete and kept up-to-date at all times.

Please do not hesitate to contact us if you would like to discuss any points made in this consultation response.

Yours sincerely

p.p. 

Adam Tyrrell
Chair, The UK Depositary Association

¹ <https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm10030>