



Unit Trust Fact Sheet

A unit trust is a common legal structure wherein the trust's assets are held and administered by the trustee on behalf of the holders of units in the trust. The relationship between the trustee and unitholders is governed by the unit trust deed.

Unlike discretionary trusts (where the beneficiaries' rights to income and capital are subject to the discretion on the part of the trustee), unit trusts pre-determine the unit holders entitlements, which may be for income, capital, or both.

Unit trusts are generally used to hold commercial assets rather than personal investments. The assets might be passive in nature, such as a commercial property or land to be used for development purposes, or active assets such as an operating business. It is common for the unitholders to be unrelated and those unitholders might be individuals, family trusts or companies. One feature that must be borne in mind is that the trust will need to distribute all of its taxable income in each year. Failure to do so will result in the trustee being subject to tax on the income at the highest individual rate of tax.

Drafting a unit trust deed can be a complicated process, so we have put this fact sheet together to provide you with a better understanding of what is involved and what decisions you'll have to make when establishing a unit trust.

Step 1: Decide who owns the trust.

- You will need to decide who the Unit Holders are.
- Also known as the beneficiaries, these are the individuals or corporations that have contributed capital to the trust, and therefore hold and beneficial interest in it.
- You'll need to provide their full name, address, company name (and ACN) and whether the person or company is acting as a trustee.

Step 2: Decide how the equity or ownership of the unit trust is defined (by units in the unit trust).

- For each unitholder, you will need to decide on both the number of ordinary units held and the dollar value per unit. Ordinary units generally give the holder a right to vote, a right to income and capital of the trust and a right to a distribution of assets on the winding-up of the trust.
- You can also decide upon the number of special units and their dollar value per unit as well. Special units usually only have a discretionary right to income. The holder



does not typically have a right to vote and is usually only entitled to receive the issue value of the unit when the trust is wound-up.

Step 3: Decide who will be the Trustee (this person is the figurehead that operates the trust).

- The Trustee is the figurehead of the trust who legally owns the trust property.
- As the legal owner, they can be personally sued in their capacity as Trustee but they do have an indemnity against the assets of the trust if they suffer a loss.
- The Trustee can be a company or a person.
- You will need to provide their full name and address (and can if a company).

Step 4: Decide on the name of the trust.

- If the name is to be used to operate a business, it is advisable to register that name with ASIC and possibly obtain a registered trademark.
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Step 5: Prepare a Unit Holders Agreement (if necessary).

- This legally binding document is in addition to the trust deed and is executed by the unitholders. It addresses the additional and complementary legal, financial and management aspects of operating your unit trust. This is an important document if the units are held by unrelated parties.
- Features of this agreement include:
 - Management and operation of the Corporate Trustee
 - Succession Events and Pre-Emptive Rights
 - Sale of business and/or Units to a Third party
 - Valuation of the Unit Trust
 - Default in Payment
 - Guarantees, Indemnities and Charges
 - Restraints of Trade
 - Termination
 - Dispute Resolution
- If necessary, our team can prepare these comprehensive agreements for \$3,300 to \$5,500 including GST, but plus disbursements.
- Please contact one of our lawyers to discuss if you or your client requires a Unit Holders Agreement. A minimum 1-hour meeting with our lawyers is included with the preparation cost of the agreement to address Unit Holder's queries and/or to make any customised changes.



Other Important Information:

- Our fee for drafting a unit trust deed is \$715 including GST, but plus disbursements (for 2 copies of the Trust Deed).
- Changes to these instructions incur additional costs. Our lawyers are able to provide additional advice at a rate of \$577.50 per hour including GST.
- If a corporate trustee needs to be incorporated, we can attend to this for a fee of \$1,320 including GST(which also includes ASIC disbursements of a full secretarial file)

Need More Clarification?

Feel free to get in touch by calling us on [\(08\) 9388 3100](tel:0893883100) or emailing us at reception@murfett.com.au.