

Delaware Statutory Trusts – The Preferred Vehicle for Structured Finance Deals

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The Delaware statutory trust ("DST") has become an efficient and popular mechanism for the preservation of property and the conduct of business. In particular, DSTs are widely viewed as the preferred vehicles for certain structured finance transactions such as asset securitizations.

One major advantage that a DST has over a common law trust is a comprehensive statutory framework: the Delaware Statutory Trust Act (the "DST Act"), which authorizes the creation of DSTs and provides specific rules governing a DST's internal affairs. The DST Act provides that a DST is a separate legal entity, and may carry on any lawful business or purpose. Except to the extent otherwise provided in its governing instrument, a DST has perpetual existence, and the death, incapacity, dissolution, termination or bankruptcy of a beneficial owner will not result in the termination or dissolution of the DST.

Formation of a DST

A DST is formed by the filing of a certificate of trust with the Delaware secretary of state and the parties' entering into a governing instrument. The certificate of trust need only set forth the name of the DST and the name and business address of at least one trustee who is a resident of, or has a principal place of business in, Delaware. (A Delaware based trust company such as CSC Trust Company of Delaware not

only can satisfy the Delaware trustee requirement, but also can provide administrative, management and other useful services as desired by the parties.) The governing instrument may include one or more documents containing provisions relating to the business of the DST, the conduct of its affairs and its rights or powers, and the rights or powers of its trustees, beneficial owners, agents or employees.

Ownership Flexibility

The interests of the beneficial owners of a DST may be evidenced by the issuance of trust certificates or by book entry registration, in conformity with the applicable provisions of the governing instrument. Except to the extent otherwise provided for in the governing instrument, the beneficial owners are entitled to the same limitation of personal liability extended to stockholders of Delaware corporations. A beneficial owner typically is entitled to an undivided beneficial interest in the property of the DST and may share in the profits and losses of the DST in the manner set forth in the governing instrument. A beneficial owner's interest in a DST is deemed to be personal property notwithstanding the nature of the property held by the DST.

Management Flexibility

The business and affairs of a DST normally are

managed by its trustees, but a governing instrument may provide for management of the DST in whole or in part by beneficial owners or other persons. A trustee acting as such is not personally liable for the obligations of the DST. The governing instrument may contain any other provision relating to the management of the business and affairs of the DST, and may also contain other provisions defining the rights, duties and obligations of the beneficial owners, the trustees, and any other person managing the business and affairs of the DST. The governing instrument may also provide for the taking of any action, including the amendment of the governing instrument, the accomplishment of a merger or consolidation, the conversion of the DST to another form of Delaware business entity, or the sale or other disposition of all or any part of the trust property, with or without the vote or approval of any particular trustee or beneficial owner, as the parties may desire.

Business Combination Flexibility

A DST may merge or consolidate with another DST or with an "other business entity" (including, but not limited to, corporations, limited liability companies, and partnerships), whether such other business entity is existing under Delaware law or the laws of another jurisdiction. A DST also may be converted to another form of Delaware business entity. Unless otherwise provided in the governing instrument, a merger or consolidation or a conversion must be approved by all of the trustees and all of the beneficial owners.

To learn more about Delaware Statutory Trusts or CSC Trust Company visit www.csctrustco.com or call 800-205-9887.

This article is an excerpt from "Delaware: Preferred Gateway to the U.S. Marketplace" by Robert L. Symonds Jr. and Matthew J. O'Toole, partners in the Delaware law firm of Morris James LLP .