



TWO SEAS TRUST



June 2010

## Briefing: Bahrain Unit Trusts

### Preface

This briefing has been prepared for the assistance of clients considering the establishment of a unit trust in Bahrain. It is intended to provide a summary of the general principles applicable to the establishment of a unit trust, when a unit trust might be used and the advantages of using unit trusts. It is not intended to be comprehensive in its scope and it is recommended that a client seek legal advice on any proposed transaction prior to taking steps to implement it.

### 1. Unit Trusts

#### Principal Features:

- In contrast to an investment company, a unit trust is not a separate legal entity but is a trust arrangement whereby legal ownership of the fund's assets is vested in a trustee who holds the assets of the fund on trust for the benefit of the unitholders.
- The unit trust will generally be constituted by means of a trust instrument which regulates the rights of the unitholders. It is usual in a structure for the manager to promote and manage the trust with the trustee delegating the administration to a third party service provider. In Bahrain the Central Bank of Bahrain ("CBB") requires a trustee led arrangement for unit trust funds in which the trustee will retain control over the appointment and removal of the manager and independent valuation agent. Subscription proceeds will be paid to the trustee who will act as custodian of the investment assets of the fund. In addition, the trustee will generally supervise compliance by the manager with its obligations to the trust.
- The trust instrument will generally contain provisions regulating the issue, redemption and valuation of units, the appointment and removal of the trustee, its duties and remuneration, borrowing powers, investment restrictions and for the winding-up of the trust.



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## 2. Advantages

Where a fund is to be offered to the public in the Middle East, the CBB is currently promoting the use of trusts within the region and it is anticipated that Bahraini unit trusts will become a popular choice for Middle Eastern investors.

If many of the prospective investors or targets for an investment fund are in the Middle East, Bahrain may be an appropriate location to domicile the fund because of the proximity of the jurisdiction to the prospective investors or because of regulations relating the holding of certain GCC situs assets.

Investment funds can be established in Bahrain without the imposition of direct taxes. In addition to the tax advantages promoters and managers may find other advantages in choosing Bahrain for domiciling their funds including:

- the ability to define investment strategies and objectives for Accredited Investors without consumer protection restrictions being imposed and the consequent absence at fund level of expensive reporting requirements;
- certain types of funds (an example being property unit trusts) can be more widely marketed to institutional investors and are often listed on a stock exchange (such as the Bahrain Stock Exchange) to facilitate this;
- the assets of the fund are held by the trustee as trustee and will be unaffected by the bankruptcy of the trustee or manager;
- the trustee will be licensed by the CBB under the Financial Trusts Law. The trust instrument and the Financial Trusts Law set out the duties of the trustee to each of the unitholders;
- the Financial Trusts Law is a modern and flexible statute allowing purpose trusts and imposing statutory duties on the trustees for the protection of unitholders; and



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- Bahrain is home to a concentrated level of fund management and administration expertise, including experienced law firms, administrators and all of the major accounting and auditing firms.

### 3. Regulatory Framework

The establishment and operation of investment funds structured as unit trusts is regulated by the CBB pursuant to the regulations promulgated as the Collective Investment Undertakings Module of the CBB Rulebook (the 'Module').

The definition of a collective investment undertaking within the Module is an undertaking:

- the sole object of which is the collective investment of capital raised from the public in financial instruments or other assets and which operates on the basis of risk-spreading; and
- the holdings of which are re-purchased or redeemed, directly or indirectly, out of those undertaking's assets.

There are three categories of collective investment undertaking in Bahrain, namely:

- a. Retail – open to all investors and subject to detailed regulation and supervision by the CBB. Retail collective investment undertakings are subject to restrictions on diversification and the types of financial instruments or assets that can be held by the collective investment undertaking. A retail collective investment undertaking must be authorized by the CBB.
- b. Expert – may only be offered to Expert Investors and require a minimum investment of US\$10,000. Expert Investors are individuals or commercial undertakings which have financial assets of at least US\$100,000. Expert collective investment undertakings are also subject to restrictions on diversification and the types of assets that can be held but are able to utilize higher aggregated and individual exposure limits than retail collective investment undertakings and may invest in a wider range of asset classes, including among other things, real estate, commodities, unlisted securities and hedge funds. An expert collective investment undertaking must be authorized by the CBB.
- c. Exempt – may only be offered to Accredited Investors and require a minimum investment of US\$100,000. Accredited Investors are individuals or institutions with financial assets having a value of at least US\$1,000,000. Exempt collective investment undertakings are subject only to high level disclosure and reporting requirements and not to any restrictions on their investment policies. An exempt collective investment undertaking must register with the

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CBB prior to being offered to prospective investors. An exempt collective investment undertaking must not quote the CBB as its regulator, must clearly disclose that it is considered exempt for the purposes of the Module and must delegate its administration and custody of assets to third party licensed institutions which are licensed by or otherwise acceptable to the CBB.

The Module provides for retail and expert collective investment undertakings to be Shari'a compliant within the meaning of the Module, which requires that two or more Shari'a advisers be appointed, disclosure of the names of each such adviser and of the provisions describing the Shari'a compliant nature of the collective investment undertaking. The Shari'a compliant undertaking must also comply with all applicable standards issued by the Accounting and Auditing Organisation for Islamic Financial Institutions and its annual report must include an opinion on such compliance issued by the undertaking's Shari'a advisers.

The offering document of a Bahrain collective investment undertaking must be kept up to date and any subsequent material changes to the document, including changes of service providers or to the investment strategy or fees applicable to the undertaking, require the prior approval of the CBB. A collective investment undertaking must adopt a valuation policy which has been agreed with the CBB and must ensure that an independent, fair and regular valuation of its assets is carried out in accordance with that policy. All operators, managers, administrators and custodians of a collective investment undertaking and any placement agent offering interests in a collective investment undertaking to persons resident in Bahrain need to be approved by the CBB and generally the administrator and custodian are required to be CBB licensees for an undertaking to be authorized by the CBB.

The approval process for an Exempt Bahrain fund can be completed in a time frame of between one to two months.

#### 4. Marketing into Bahrain, Kuwait, Qatar and Saudi Arabia

Marketing of the interests of a Bahrain fund into Kuwait, Qatar or Saudi Arabia requires the registration or approval of the local regulator and may require the appointment of a locally resident and regulated distributor.



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## 5. Stock Exchange Listings

Investment funds established in Bahrain can be listed on all of the major international stock exchanges including the NYSE, NASDAQ, the London Stock Exchange, AIM, Euronext, the Toronto Stock Exchange and the Channel Islands Stock Exchange.

## 6. Recognised Stock Exchange

The Bahrain Stock Exchange (BSE) has been designated a 'recognized stock exchange' by the UK Inland Revenue for the purposes of alternative finance investment bonds.

## 7. Background Information

Set out below is some other information about Bahrain which may be of interest.

### (a) Political and Economic Stability

Bahrain is well established as a principal center for regional banking, insurance, and business operations in the Middle East. The Gulf Cooperation Council (GCC) comprising Bahrain, Kuwait, Oman, Qatar, the UAE, and Saudi Arabia provides for regional defence and coordinates policy on trade and economic issues. Whereas the majority of GCC countries grant ultimate power to a single family whose leading member rules as Amir and generally employs an advisory body whose members are drawn from outside the royal family, Bahrain has gone beyond this traditional independent balance and has set up a separate parliament with power to draft local legislation. The legal system of Bahrain is based on several sources, including customary tribal law (urf), three separate schools of Islamic Shari'a law, and civil law as embodied in codes, ordinances, and regulations. Civil law in Bahrain is heavily influenced by English common law which is familiar to the international business community. The civil court system consists of summary courts and a supreme court, the Supreme Court of Appeal is the highest appellate court in the Kingdom and also decides on the constitutionality of laws and regulations. Bahrain launched the Bahrain Centre for Dispute Resolution in association with the American Arbitration Association in January 2010 providing a purpose-built solution for the rapid, effective and certain resolution of commercial disputes.

### (b) Integrity and Reputation

Bahrain is a recognised jurisdiction for the purposes of the Financial Action Task Force ('FATF') for its anti-money laundering legislation thereby enabling investors in any jurisdiction to be satisfied that it has adopted standards equivalent to or higher than those of their own jurisdiction. Such considerations are important for institutional investors and government

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organisations. In respect of investments, it is also often to the fund's advantage that it can demonstrate to the authorities in the jurisdiction where it seeks to invest that it is properly regulated in an internationally recognized jurisdiction. Payments are also assisted in and from the target jurisdiction due to the recognition of Bahrain.

### (c) Cutting Edge Legislation and Regulations

Bahrain's government recognises the importance of working closely with the private sector to provide legislation which meets market needs.

### (d) Absence of Direct Taxes and Currency Exchange Controls

Investment funds can be established in Bahrain without the imposition of direct taxes. Bahrain has no currency exchange controls.

### (e) Good Communications and Access

The communications system in Bahrain is first class and the legal and financial service providers operate information technology systems on par with those available in any other major financial centre.

## Services Offered by Two Seas Trust

In connection with the establishment of an investment fund structured as a Bahraini unit trust, Two Seas Trust is able to provide the following services: advice and liaison with professional advisers in other jurisdictions in order to recommend the most practical and efficient structure to achieve the manager's objectives; preparation of the trust instrument and formation of underlying Bahraini companies to hold the trust assets; and preparation and review of documentation relating to commercial transactions underlying the trust.

## Administration

A full range of trust administrative services is provided by Two Seas Trust which is regulated and authorised to conduct trust company business by the CBB. Should you wish to proceed with the establishment of a Bahraini unit trust please contact any member of the team listed at the back of this client briefing.

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## About Two Seas Trust

Two Seas Trust B.S.C.(c) is a joint venture between Ogier Fiduciary Services (Jersey) Limited and Keypoint Consulting W.L.L.

Two Seas Trust is regulated by the CBB for trust company business.

## About Ogier

Ogier is one of the world's leading providers of offshore legal and fiduciary services employing over 850 professional and support staff. The group has a presence in nine jurisdictions around the world, namely Bahrain, the British Virgin Islands, the Cayman Islands, Guernsey, Hong Kong, Ireland, Jersey, London and Tokyo.

Ogier provides advice on all aspects of BVI, Cayman, Guernsey and Jersey law and associated fiduciary services through a global network of offices that cover all time zones and key financial markets including the rapidly growing Asian and Chinese markets.

Ogier continues to be recognised as a leading law firm by the leading legal directories, including Legal 500 and Chambers. In Legal 500 Ogier has more tier 1 rankings for individual practice areas than any other Jersey firm.

## About Keypoint

Keypoint is a leading provider of statutory advisory, accounting, fund administration and recruitment services in the Middle East. Based in Bahrain they currently provide corporate administration and fund administration services to a wide variety of clients including banks, individuals, real estate and private equity houses.

Prior to 2006, Keypoint formed a part of Ernst & Young Middle East.

Keypoint is licensed by the Ministry of Industry and Commerce in Bahrain and where relevant by the CBB for the conduct of all aspects of its business.



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