



TWO SEAS TRUST



October 2010

Briefing: Philanthropy

Preface

This memorandum has been prepared for the assistance of clients considering creating a philanthropic structure. It is intended to provide a summary of the general principles applicable to philanthropic structures. 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.

Philanthropic Purposes

Greater interest has developed in the Middle East in the use of Bahraini trusts for the management of charitable or philanthropic giving due to comfort of knowing that Bahraini trustees are regulated by the Central Bank of Bahrain and to the availability of professional and experienced administrators in Bahrain. Bahraini trusts offer the opportunity to establish well-defined, efficient and professional structures for effective charitable or philanthropic donations. Common reasons for setting up a philanthropic structure include:

Zakat Ul-Mahl and Zakat Al-Fitr

A philanthropic structure may be established in order to manage periodic religious contributions to a wide range of charitable purposes.

Waqf

A philanthropic structure might be used to fund, own and/or operate schools, universities, hospitals or medical facilities and or to own the land on which they are constructed or to generally benefit certain classes of society.

Sadaqa

Philanthropic structures can be set up to provide relief funding for victims of natural disasters or of conflict including emergency support through the provision of medicines and food to longer term support through regeneration projects, infrastructure, education and healthcare.

24th Floor, NBB Tower, Government Avenue, PO Box 10476, Manama, Kingdom of Bahrain
t +973 1720 6800 f +973 1720 6801 info@twoseastrust.com

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Philanthropic Structures

For individuals and families looking to create platforms for charitable or philanthropic giving, Two Seas Trust is able to utilise its expertise to choose the right vehicle and can provide all relevant administration services out of Bahrain in a time zone convenient for GCC clients. As the nature of the charitable giving becomes more strategic and focused, we can draw upon our experience and range of contacts to ensure that the agreed framework satisfies your values or those of your family and meets your philanthropic objectives in an efficient and cost effective manner.

Trusts

A trust is a legally binding arrangement whereby a person (known as a settlor) transfers assets to another person (known as a trustee) who is entrusted with legal title to the trust assets, not for his own benefit, but for the benefit of other persons known as beneficiaries (which may include the settlor) or for a specified purpose. The instructions from the settlor to the trustee as to the disposition of trust assets will normally be contained in a document called the trust instrument. This is for the benefit of all parties as it will ensure that the settlor, the trustee and the beneficiaries know precisely their respective rights and duties. The trust instrument will usually provide that the trustee has the power to manage the trust assets in accordance with the terms of the trust instrument and the strict duties imposed on the trustee under trust law. The initial trust property can be added to by donations from any number of other donors including the settlor.

Trusts in Bahrain

Bahrain's Financial Trust law was promulgated on 15 August 2006 issued by Royal Decree no.(23) of 2006. It contains comprehensive regulations and rules to govern the establishment and management of financial trusts where Bahrain is considered one of the first countries in the Middle East to implement such legislation.

A Bahraini trust may be established for the promotion or advancement of any purpose allowing the trust to be tailored to the specific philanthropic purposes of the settlor and the intended donors.

Bahrain based trustees are regulated by the Central Bank of Bahrain under the Financial Trusts Law adding regulatory comfort to the donor and beneficiaries of a philanthropic or charitable Trust that the trust assets will be handled in an efficient and responsible manner.

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In addition to the statutory duties of the trustee under the Trust Law the trust instrument will set out duties that the trustee has towards the beneficiaries of the trust allowing for specific protections and safeguards to be incorporated into each structure.

Flexibility

The investment objectives and strategy of a trust can be widely drawn whilst remaining compliant with appropriate Shari'a principles allowing diversification of assets and investment in high yield investments in addition to low risk assets for the benefit of the philanthropic or charitable purposes of the trust.

The settlor or a committee of family members or trusted advisors can be appointed as co-trustees, as trust protectors or to advise or manage the trust assets or to direct the trustee on matters relating to its administration or management and the distribution of funds to beneficiaries. This allows flexibility, control and comfort to the settlor that the trust will be administered effectively to ensure the philanthropic or charitable purposes of the trust are met.

A settlor may retain the power to appoint and remove the trustees of the trust and to direct the trustee to appoint and remove any manager, advisor, administrator, auditor or other delegate appointed by the trustee in order to ensure the efficient performance of the structure in respect of its investments and its distributions to causes and beneficiaries.

The trust instrument can be tailored to the specific accounting, reporting and audit requirements of the settlor providing complete transparency in the administration and operation of the structure.

Confidentiality

The identity of the settlor and the beneficiaries of a Bahraini trust are not in the public domain and therefore confidentiality can be maintained.

The Components of a Trust

The Settlor

Once a trust is created the settlor will have divested himself of legal ownership of the trust assets. The settlor may be a beneficiary and, in certain circumstances, he may also act as a co-trustee. The settlor may also retain a degree of control over the trust, such as the power to approve distributions, the power to appoint and remove trustees and the power to terminate the trust. However, it is essential to the validity of a trust that the settlor actually

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relinquishes ownership of the trust assets and he may not, for example, simultaneously be a sole trustee and a sole beneficiary.

The Trustee

Legal title to the trust assets is vested in the trustee under the obligations imposed by the trust and he is responsible for the administration of the trust. A trustee is required to act with due diligence, as would a prudent person, to the best of his ability and skill and must observe the utmost good faith. A trustee must exercise his powers solely for the benefit of the beneficiaries or for a particular purpose as stated in the trust instrument. The trust assets, however, constitute a separate ring fenced fund and do not form any part of the trustee's own estate.

The Beneficiaries or Purpose

Where the trust is set up for beneficiaries these are the persons entitled to benefit from the assets held on trust. Alternatively the trust may be set up for a specified purpose. As stated above, the settlor may himself be one of the beneficiaries. In order for a trust to be valid there must generally be sufficient certainty as to the identity of the beneficiaries or the purpose for which the trust's assets are to be applied. An express power for the addition of further persons to the class of beneficiaries may be included in the trust instrument, a trust may be set up for one or more purposes and may include both beneficiaries and a purpose. The beneficiaries and/or purposes may enjoy equal or unequal benefits, as the trust instrument prescribes or, in the case of a discretionary trust, as the trustee may determine.

The Trust Fund

The assets constituting the trust fund may be of any type of movable or immovable property. At any time after settlement on trust of the initial assets further assets may be added. Indeed, a common arrangement is to establish a trust with a nominal initial amount and subsequently to add more substantial assets.

The Protector

It is not essential for the validity of a Bahraini trust that there is any protector. However, in order to counterbalance the wide discretionary and fiduciary powers conferred on a trustee it is often found useful for the settlor to appoint a trusted friend or professional advisor to act as a protector of the trust. In such cases the consent of the protector will generally be required before the trustee may exercise certain strategic powers specified in the trust instrument.



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The Trust Instrument

A trust is created by the execution of a formal written instrument so that all parties know exactly what are their respective rights and duties. Trusts are created in writing by a trust instrument signed by both the settlor and the trustee and which sets out the agreement to transfer the trust property. Following execution of the trust instrument a trust will come into existence, settlement of the initial property can take place up to six months after the execution of the trust instrument and additional trust property may be added later. Two Seas Trust is able to assist with preparation of all of the appropriate documentation.

Services Offered by Two Seas Trust

In connection with the formation of trusts our team 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 settlor's objectives; preparation of the trust instrument and formation of underlying companies to hold the trust assets; and preparation and review of documentation relating to commercial transactions underlying the trust.

Creation of a Trust

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

About Two Seas Trust

Two Seas Trust is a joint venture between Ogier Fiduciary Services (Jersey) Limited and Keypoint Consulting W.L.L. and is regulated by the CBB for the conduct of trustee, administration and related services. This includes employee benefit solutions and the administration of trusts and companies which own a diverse range of assets globally and in the GCC.

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.

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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 have 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 Central Bank of Bahrain for the conduct of all aspects of its business.

Contact Details

Paul Perris

paul.perris@twoseastrust.com

t: +973 1720 6802

m: +973 3628 3882

Nevine McDonald

nevine.mcdonald@twoseastrust.com

t: +973 1720 6805

m: +973 3602 1162

Guruparan Kumarasamy

guruparan.kumarasamy@twoseastrust.com

t: +973 1720 6881

m: +973 3961 7950

24th Floor, NBB Tower, Government Avenue, PO Box 10476, Manama, Kingdom of Bahrain

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