



# EQUITY

BANK AND TRUST BAHAMAS LIMITED

## Trusts

The trust is a unique relationship which allows an individual or a legal entity (the Settlor) to transfer assets – which may be of almost any type – to a third party (the Trustee) to be administered for the benefit of persons chosen by the Settlor (the Beneficiaries) in accordance with the provisions of a document (the Trust Deed). The concept is based on the separation of legal ownership of the Trust assets (which rests with the Trustees) from the beneficial ownership (which rests with the Beneficiaries).

Trusts are extremely versatile and this accounts for their long-standing use in wealth management. Examples of trusts include, Asset Protection, Purpose Trusts, Pensions Trusts, Voting Trusts and Charitable Trusts. They provide the following advantages:

- Flexibility in the distribution of the client's assets following his or her death.
- Wealth preservation for the next generation.
- Separation of income benefits from capital.
- Avoidance of lengthy and complicated probate court procedures.
- Retention of shares for employees.
- Confidentiality.
- Maintenance of property for those who cannot hold it for themselves, e.g. minors.
- Avoidance of disputes among heirs and beneficiaries by securing the services of an impartial person to administer assets.
- Protection of property and other assets from legal and political actions that may be taken against the Settlor and Beneficiaries by transferring legal ownership to the Trustee.

Bahamian law recognises trusts and the Supreme Court has a long history of upholding the principles of equity. Trust assets may include securities, real estate, art work, bank accounts etc. In establishing a Bahamian trust, planners do not need to take local taxes into consideration, as there are no income, capital or estate taxes in the jurisdiction.

### Key Legislation Applicable to Trusts in The Bahamas

The Bahamas legislative regime has assisted with the development and protection of the Bahamian Trust through the following legislation:

#### The Trustee Act

This Act has modernized Bahamian Trust law so as to strengthen the Bahamas standing as an International Financial Centre. This modern and standard-setting statute places The Bahamas in the forefront of international jurisdictions in terms of premier trust legislation.

Key aspects of the Act include:

- **Discretionary Powers:** The Act enables a Settlor to retain certain discretionary powers without compromising the validity of the trust.
- **Investment of Trust Assets:** Trustees have been vested with wide discretionary powers of investment and of dealing with the trust property. In this regard trustees have full powers of investment and of changing investments as those possessed by individual beneficial owners absolutely.
- **Managing Trustee/Protector:** The trust may provide for a managing trustee, and a Protector may be appointed with wide discretionary powers thereby ensuring that the wishes and intention of the Settlor are properly carried out in accordance with the trust instrument. The Act formally recognises the role of the Protector.
- **Court Advice:** The Act allows a process whereby a trustee may seek advice and directions from a Judge of the Court in chambers without the necessity of filing an action.
- **Maintenance and Advancement:** The powers of maintenance and advancement can be applied in respect to any minor who has an interest in the income of a trust property.
- **Access:** The Act creates certainty as to who may be able to have access to the trust documents.
- **Risk:** The Act provides for appropriate flight clauses



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so that if there is any political upheaval, or any serious activity that would place the trust at risk, the trust and its administration would be transferred immediately and automatically to another country.

• **Registration:** Trust instruments and subsequent documents do not have to be registered (except for conveyances of Bahamian real property or personal property) under the Registration of Records Act.

The Trustee Act also provides for protection of assets against potential creditors, avoidance of forced heirship laws, and indemnities for Trustees.

## Trust (Choice of Governing Law) Act

This Act protects Bahamian Trusts from 'forced heirship' claims or the enforcement of foreign judgments which may occur in civil law jurisdictions and which may hinder the Settlor's free disposition of assets or property.

## Fraudulent Dispositions Act

This act provides protection to Settlers against creditors in respect of claims made more than two years after assets have been placed in the trust. Creditor protection trusts are generally established as irrevocable, discretionary trusts and in crafting the legislation parliament was careful to ensure that the Act exists for solvent Settlers seeking to protect their assets from future claims. The Act does not provide assistance to proposed Settlers wilfully seeking to defeat an existing or contingent obligation or claim due to a creditor.

## Rule Against Perpetuities (Abolition) Act

This act abolished the requirement for a trust to have a perpetuity period so that now a trust established under Bahamian law can be established to be perpetual. Prior to this Act, there was the Perpetuities Act 1995 which as amended in 2004 and based on the English Perpetuities and Accumulation Act 1964 which required a Bahamian trust to have a perpetuity period of 80 years which in 2004 was increased to 150 years. The Rule Against Perpetuities (Abolition) Act 2011 allow families to plan for wealth preservation for generations to come.

## Purpose Trusts

Traditionally private trusts have named beneficiaries or classes of beneficiaries. However purpose trusts do not fit this mould and are often compared to charitable trusts. A significant difference, however, is that, with limited exceptions, trusts will only be considered charitable if they are for the relief of poverty; the advancement of religion; the advancement of education or some other purpose beneficial to the community. Like many other offshore jurisdictions, The Bahamas has recently introduced legislation which recognises trusts for non-charitable purposes.

## The Purpose Trust Act

The law dealing with purpose trusts in The Bahamas is contained in The Purpose Trusts Act, 2004 (amended 2011). Authorised purpose trusts must satisfy the following requirements:

- The purpose must be possible and sufficiently certain to allow the trust to be carried out;
- The purpose must not be contrary to public policy or unlawful; and
- The trust instrument must specify the event upon the happening of which the trust terminates and provide for the disposition of surplus assets of the trust upon its termination.

The Act provides for authorised applicants i.e. persons appointed as such under the trust instrument or the settlor of the trust or a person appointed by the Court. These authorised applicants have rights to make certain applications to the Court including administrative proceedings and proceedings for breach of trust and also rights to information (unless excluded by the settlor).

An authorised purpose trust may create trusts for one or more authorised purposes and one or more individuals, corporations and charitable purposes. While individuals may benefit indirectly from the authorised purpose trust, they do not necessarily have the status of an authorised applicant.