

# Solution spotlight

## Family trusts



Family trusts can protect assets from lawsuits and claims; ensure the orderly distribution of funds to beneficiaries; fund future generations' education, medical, and marriage requirements; enable professional asset management; and minimise the tax impact on inheritances in certain jurisdictions.

Trusts are legally binding arrangements under assets are entrusted to a third party to pass on the assets (and any benefits arising from those assets) to other parties. Arrangements are formalised through a trust deed.

As legal vehicles, trusts maintain bank and investment accounts in their own name and can contract with third parties.

Family trusts are trusts established by someone during their lifetime to hold assets or run a business for the benefit of family members (including future generations). A wide variety of assets can be assigned to a family trust, including cash, financial investments (both liquid and illiquid), real estate, artefacts, precious metals, business interests, life insurance policies and debts.

Family trusts can be set up to protect the ownership of assets – after the settlor's death – against law suits and claims on estates; to ensure the orderly distribution of funds to intended beneficiaries over a period of time; to set aside money for future generations for special reasons – such as education, medical or marriage; to provide for professional asset management; and to minimise the tax impact on inheritances in some jurisdictions.

Parties to the trust include the party who owns the assets and has decided to pass them (the **settlor**); the parties who will receive the assets and benefits (the **beneficiaries**); and the party to whom the assets are entrusted (the **trustee**). Trustees also maintain accounting records and prepare financial statements.

Trusts may also have a **trust protector** (appointed to direct trustees in relation to their administration of a trust), a **trust enforcer** (a person other than the trustee who enforces a trust in relation to its non-charitable purposes) and a **co-trustee** (jointly responsible for managing assets where a settlor names more than one trustee).

In Bahrain, trustees must be licensed and are regulated by the Central Bank of Bahrain (CBB) as either Category A (with full powers and duties) or Category B (with limited powers and duties). Category B trustees have less onerous licensing requirements and can only act alongside a Category A trustee.

Trustees generally take ownership of a trust's assets, manage those assets and arrange for beneficiaries to receive their benefits according to the settlor's wishes. As independent parties, trustees are legally bound to act in beneficiaries' best interests on decisions regarding assets and distributions.

All trusts in Bahrain are governed by law 23 of 2016. Trusts are established through a trust deed, in English or Arabic, signed by both the settlor and trustee (or by the settlor alone if created by a unilateral declaration of trust), notarised by a notary public and logged in the register of trusts maintained by the CBB. Trust deeds must identify the initial trust property to be transferred to the trust; the purpose of the trust; the beneficiaries (or class of beneficiaries); the trust's name; its registered office; and details of the trustee.

## Frequently asked questions

1

### **Do trusts have minimum wealth requirements?**

No – but parties contemplating setting up a trust should carefully analyse short and longer-term costs.

2

### **What fees do trustees charge?**

There are two categories of fees charged by trustees – set-up fees (which are one-offs) and ongoing maintenance and compliance fees (such as regulatory costs, audit fees and ongoing administration fees). Both implementation and ongoing fees will be impacted by the size and complexity of the trust being established – including reporting requirements, activities, responsibilities, audits, transactions, volumes and custody.

3

### **Do settlors and/or beneficiaries of Bahrain-registered trusts have to be Bahrain residents?**

No.

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### **Are beneficiaries required to travel to Bahrain during the term of the trust?**

No.

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### **Should beneficiaries be named individually in the trust deed?**

Beneficiaries can be named individually or as a group – such as the settlor's legal heirs.

6

### **Should beneficiaries be notified – and are they required to sign the trust deed?**

No – but they must be notified when they become entitled to receive the benefits (for instance, when the settlor dies). Beneficiaries are not required to sign deeds.

7

### **Can a settlor change the beneficiaries or their entitlements after setting up a trust?**

Yes – provided the trust deed allow for changes. This power can be delegated to a trust protector (if appointed).

8

### **Can trustees and (if appointed) the trust protector, trust enforcer and co-trustee be changed during a trust's term?**

Yes. All parties to a trust can be changed based on its deed's terms and processes.

9

### **Can assets in foreign countries (such as real estate, investments or bank balances) be included in a Bahrain-registered trust?**

Yes, as long as the trust is able to exercise ownership rights, such as the right to hold and transfer ownership or receive benefits.

10

**Can real estate in Bahrain be included in a trust where beneficiaries are non-citizens (either resident or non-resident)?**

While a trust may own real estate in Bahrain through a legal entity set up by the trust, it cannot at present be the registered owner of real estate. Where ownership is not restricted to Bahraini citizens, it can be transferred to beneficiaries according to the trust's terms. Where ownership is restricted to Bahraini citizens, legal ownership cannot be transferred to the beneficiaries – but they can enjoy its economic benefits.

11

**Other than relevant CBB officials, who can access the CBB's register of trusts?**

The register of trusts is confidential and can only be accessed with a court order.

12

**Who holds legal title to a trust's assets?**

While legal title to assets are generally held by the trustee, a settlor can stipulate that they should be held in a co-trustee's name (if appointed).

13

**Once a family trust is established, who is responsible for buying and selling its assets?**

While trustees are generally responsible for investment decisions and transactions, the trust deed can delegate this responsibility to an investment manager. The terms of the trust can provide for the settlor or the trust protector to appoint the investment manager.

14

**Are there reporting requirements relating to Bahrain trusts?**

If a trust's assets are held through a legal entity owned by the trust, the laws of the jurisdiction where that entity was set up govern reporting requirements. For example, if the assets are owned by a Bahrain-incorporated company, audited financial statements and ultimate beneficial ownership (UBO) information must be filed with the Ministry of Industry, Commerce & Tourism (MOICT). Information on compliance with economic substance ruled (if applicable) must be filed with the National Bureau of Revenue (NBR), as well as beneficiaries' Foreign Account Tax Compliance Act (FATCA) and common reporting standards (CRS) requirements.

15

**Can trusts have tax implications for beneficiaries?**

Bahrain currently has no income or wealth taxes. Beneficiaries resident elsewhere should investigate tax implications in their particular jurisdiction. Generally, there are tax implications for beneficiaries only when they receive benefits (accrued or paid) from the trust. If a beneficiary is only entitled to benefits in the future (such as after the settlor's death), there should be no tax implications while the settlor is still alive.

16

**Are beneficiaries required to file FATCA or CRS returns?**

Beneficiaries need not file FATCA or CRS returns in their country of residence for trust assets and income. However, trustees of Bahrain-registered trusts may be required under FATCA and CRS to report benefits payable – or paid – to beneficiaries as well as assets belonging to them and held in trust to the Bahrain regulators.

17

**What is the term of trust?**

Except for trusts established for charitable or retirements purposes (which can be extended), the maximum term of a Bahrain trust is 100 years from the date of creation.

18

### What roles can the parties to a trust have?

Permissible roles for trust parties	Trustee	Trust protector	Trust enforcer	Co-trustee
CBB-licensed Category A trustee	√			√
CBB-licensed Category B <sup>1</sup>				√
Settlor		√	√	
Beneficiary		√	√	
Family member/third party		√	√	

<sup>1</sup>Provided eligibility criteria are met, family members can apply to be licensed as Category B trustees and act as co-trustees.

## About Keypoint Trust

- Keypoint Trust B.S.C.(closed) (Keypoint Trust) is licensed by the CBB as a Category A trustee.
- As a trust service provider, Keypoint Trust has acted as trustee and offered trust administration services since 2009, establishing a range of trusts including family trusts, employee benefit trusts, trusts from debt realisation structures and real estate investment trusts.
- Keypoint Trust uses its deep expertise and proprietary systems across all facets of the family trust process including:
  - Brainstorming thought processes
  - Drafting trust deeds and having them legally reviewed, notarised and filed with the CBB
  - Maintaining trusts' books of accounts
  - Distributing benefits to beneficiaries according to the settlor's wishes
  - Preparing annual financial statements
  - Ensuring applicable regulatory reporting requirements are met
  - Arranging for audits – if required
- Keypoint Trust's board and senior management consists of long-established highly regarded senior business leaders. **Nandakumar Narasimhan** has led Keypoint's trust function since its establishment. **Guruparan Kumarasamy** was a partner in a leading professional services firm in Bahrain and has lived in Bahrain since 1982. **Wajdi Al Jallad**, a Bahraini national, is the managing director of the Keypoint group. An independent director, **Peter Griffiths** was a partner in a leading professional services firm in Bahrain and has been resident mainly in Bahrain since 1983.

#### Contact us



**Nandakumar Narasimhan**  
Senior Director | Trust services  
[nandakumar.narasimhan@keypoint.com](mailto:nandakumar.narasimhan@keypoint.com)  
+973 1720 6860

#### Keypoint Trust's board



**Guruparan Kumarasamy**  
Director  
[guruparan.kumarasamy@keypoint.com](mailto:guruparan.kumarasamy@keypoint.com)  
+973 1720 6881



**Wajdi Al Jallad**  
Director  
[wajdi.aljallad@keypoint.com](mailto:wajdi.aljallad@keypoint.com)  
+973 1720 6880



**Peter Griffiths**  
Independent Director  
[peter.griffiths@keypoint.com](mailto:peter.griffiths@keypoint.com)  
+973 1720 6888

#### Disclaimer

This solution spotlight is based on our analysis of Law 23 of 2106 (Bahrain trust law) and our knowledge of Bahrain's regulatory environment. It is for general information only. Seek professional advice in relation to your particular circumstances.