

## THE BAHAMAS Private Trust Companies

### For more information

Should you require specific advice on **Private Trust Companies**, we invite you to contact any of the following attorneys at Higgs & Johnson:

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*The information contained in this memorandum is provided for the general interest of our readers, but is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This guide can in no way serve as a substitute in such cases.*

### INTRODUCTION

We are able to act on behalf of clients in the incorporation and licensing of Private Trust Companies. The main distinction between Private Trust Companies and institutional trust companies is that Private Trust Companies can be tailored to suit a family's needs. The Private Trust Company does not provide trustee services outside of a family group of the settlor or to the public. A Private Trust Company is subject to regulation by the Central Bank of The Bahamas through a Registered Representative such as H&J Fiduciary Services Ltd., but neither licensing nor prior approval from the Central Bank is required before it is incorporated. Functions of the Registered Representative include that of secretary, director, and Bahamas Agent (which must be under a service agreement). The Registered Representative is responsible for ensuring that the Private Trust Company is established for a lawful purpose and that it operates as a Private Trust Company.

In The Bahamas, a Private Trust Company can be a company incorporated either under the Companies Act, 1992 or the International Business Companies Act, 2000.

### FORMATION PROCEDURE

The Bahamas Government  
was short-listed in the category of  
Best Government Initiative for the  
Society of Trust and Estate Practitioners  
2007-2008 Private Client Awards.

Under the Banks and Trusts Companies Regulation Act, 2000 (as amended) each Private Trust Company requires a Registered Representative in The Bahamas. As Registered Representative, we require the following items when forming a Private Trust Company:

#### 1. NAME

##### *Proposed Name of the Private Trust Company*

As a company with a similar name may already be registered, please provide (3) three or more names in order of preference. The name can include the abbreviation "PTC" but the final word of the name must be indicate that it is a limited company e.g. "S.A.", "Limited" or "Ltd". The name of the Company must be approved by the Registrar General and cannot be similar to that of an existing company or misleading, e.g. suggesting an association with royalty. Although the Central Bank of The Bahamas can authorise the use of the word "Trustees" or any derivation of this word it has indicated that such authorisation is unlikely.

#### 2. DESIGNATED PERSON & DESIGNATING INSTRUMENT

##### *Name and Address of Designated Person*

Each Private Trust Company must state in its memorandum and articles of association that it acts as a trustee only for a trust(s) created by or at the direction of a Designated Person, an individual who is named in a Designating Instrument. If there is more than one Designated Person named, then each Designated Person must be a blood relative of or related by some other family relationship to the other Designated Person(s). A Designated Person can be deceased, and his trust

established by testamentary disposition.

#### ***Designating Instrument***

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It should be noted that the beneficiaries of trusts administered by a Private Trust Company are not restricted in any way.

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The Designating Instrument names the Designated Person(s), the individual(s) who creates the trust. The Private Trust Company completes the Designating Instrument. H&J Fiduciary Services can provide this standard form.

### **3. SPECIAL DIRECTOR(S)**

#### ***Name and Address of the Special Director(s).***

Where we act as Registered Representative, the Private Trust Company must have at least one Special Director who has knowledge of trust administration or at least five years' experience in a discipline relevant to trust administration (law, finance, commerce, investment management, or accountancy). We will require a copy of the Special Director's professional résumé.

### **4. FORM OF ACKNOWLEDGEMENT**

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It should be noted that the Special Director need not be a resident of The Bahamas or an expert in the discipline.

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Where possible, the settlor of each trust administered by the Private Trust Company must complete a Form of Acknowledgement. By executing this Form, the settlor acknowledges that he is aware that Private Trust Companies do not require: (i) directors to possess expertise in trust administration, (ii) a fidelity bond, (iii) capital exceeding \$5,000 and (iv) an annual audit.

### **5. STRUCTURES & SHAREHOLDERS**

#### ***Names, addresses and nationalities of the persons who are to be the shareholders and the number of shares to be held by each shareholder.***

If a Private Trust Company is incorporated under the Companies Act, 1992, it must have a minimum of two shareholders. The Private Trust Company will be incorporated with nominee shareholders from H&J Corporate Services Ltd. However, the Exchange Control Department of the Central Bank of The Bahamas will require the names and addresses of the ultimate beneficial owners of the shares, which is public information.

If a Private Trust Company is incorporated under the International Business Companies Act, 2000, it can have just one shareholder. We are required to maintain a record of the beneficial owners of the shares and a register of shareholders. There is no public record of the names of the shareholders or beneficial owners.

Bahamian legislation provides for a number of shareholding structures. For example, the shares of the Private Trust Company can be held by the trustees of an authorised purpose trust, a foundation, corporate or individual shareholders.

### **6. ANCILLIARY DOCUMENTS REQUIRED BY SHAREHOLDERS**

We are required by our regulatory authorities to obtain certain information and documents in respect of the owner or ultimate owner and the directors and officers of the Company. All information provided will be kept in confidence. When you decide on the appropriate structure, we can provide the appropriate client profile form.

### **7. DIRECTORS**

#### ***Names, addresses and nationalities of persons who are to be Directors and Officers of the Private Trust Company.***

A Private Trust Company incorporated under the International Business Companies Act, 2000, must have at least one (1) director, whereas a Private Trust Company incorporated under the Companies Act, 1992, must have at least two (2) directors.

In addition, we recommend at least one Officer – a Secretary. These positions may be filled by Companies. Directors may be of any nationality.

### **8. CAPITAL**

Private Trust Companies must have a minimum capital of \$5,000 limited by shares or by guarantee.

### **9. DOCUMENTS TO BE KEPT AT THE OFFICE OF THE REGISTERED REPRESENTATIVE**

- a. The Registered Representative must obtain an annual compliance certificate from the directors of the Private Trust Company stating that the Company has not undertaken any business as trustee for a trust(s) other than for a Designated Person(s) and that the directors have acted honestly and in good faith with a view to the best interest of the Private Trust Company.

- b. Copies of the following documents:
- (i) The Memorandum and Articles of the Private Trust Company;
  - (ii) Designating Instrument;
  - (iii) Professional résumé of Special Director;
  - (iv) Trust instruments for each trust;
  - (v) Form of Acknowledgement as mentioned in iv above; and
  - (vi) Client profile forms for particular individuals or entities as set out in 11 below.

## 10. FINANCIAL STATEMENTS

We recommend that financial statements be prepared; however, an annual audit of the Private Trust Company is not required.

## 11. REGULATION OF THE PRIVATE TRUST COMPANY

According to the Regulations, the Registered Representative must also fulfill know-your-customer requirements in accordance with the Financial Transactions Reporting Act and Regulations. Such requirements include the verification by the Registered Representative of the identities of the shareholding structure settlor and any person providing the funds or assets which are subject to the trust, the Designated Person, the protector of any trust of which the Private Trust Company is trustee, and the vested beneficiaries of such trust. Further, the Registered Representative shall report any suspicious transactions to the Financial Intelligence Unit.

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No money laundering reporting officer  
need be appointed for a Private Trust  
Company.

The Registered Representative upon request is entitled to receive information on request from the Private Trust Company about its transactions.

## TRUST COMPANY WITH A RESTRICTED LICENCE

In The Bahamas it is also possible to form a trust

company which has a restricted license issued by the Central Bank of The Bahamas. The regulatory requirements for this type of company are much more onerous than for a Private Trust Company. A restricted licence enables the trust company to carry on business as specified in the licence. Typically, a company with a restricted trust licence cannot administer more than five trusts; however, such trusts need not be related to each other.

## FEES

### 1. Acceptance and Incorporation

US\$6,000 (minimum) for initial formation documents, service agreement, and initial resolutions.

### 2. Yearly Fees for Registered Office/Registered Agent & Provision of Registered Representative Services

- (i) Bahamas Agent: US\$7,000 (min)
- (ii) Bahamas Agent plus  
Secretary to the Board: US\$9,000 (min)

As necessary, the above fees shall be prorated as follows:

- (i) After the first three (3) months but before the end of the sixth (6<sup>th</sup>) month of a calendar year – 75% of the yearly fee.
- (ii) After the first six (6) months of the calendar year – 50% of the yearly fee.

### 3. Government Fees (per Private Trust Company)

Yearly Fee: US\$7,500 (not prorated but waived in the year of incorporation if incorporation takes place after 1st September)

We reserve the right to charge additional fees on a time-spent basis as might be warranted by the particular case. Any services provided by Higgs & Johnson, Counsel and Attorneys-at-Law, will be additional.