

**FAMILY**  
**OFFICES**  
**BENEFICIARIES**  
**PLANNING**  
**RESPONSIBLE**  
**DYNASTIC** **GOVERNANCE**  
**FOUNDATIONS**  
**INNOVATION** **EXPERIENCE**  
**MANAGEMENT**  
**DISCRETION**  
**SUCCESSION** **BESPOKE**  
**LEADER** **TRUSTS**  
**EXPERTISE**

Wealth Management in The Bahamas: **A Wealth of Experience**



EXECUTIVE ENTITY

COMMITMENT

FIDUCIARY

COMMON LAW

FLEXIBLE

PROTECTOR'S SERVICE

ADMINISTRATION

TRANSCONTINENTAL PRIVATE BANKING

PROTECTION

PURPOSE TRUSTS

LEADER

DISC  
SUCCESS

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WEALTH MANAG

TRUSTED

ASSET MANAGEMENT

SOLUTIONS

PROGRESSIVE

DIRECTED

DISPOSITIONS  
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FAMILY OFFIC

DYNASTIC

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INNOVAT

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# Wealth Management in The Bahamas: **A Wealth of Experience**

**The first trust company** established in The Bahamas in 1936 was The Bahamas General Trust Company Ltd., subsequently known as the RoyWest Trust Corporation of The Bahamas and now known as Société Générale Private Banking (Bahamas) Ltd. Almost 80 years later, The Bahamas is widely recognised as a leader in trusts and wealth management. The ever-expanding legislative tool kit now consists of trusts, foundations and other innovative entities that can assist wealth creators with asset protection and succession planning spanning generations.

**The emphasis** on expertise in trust administration and wealth planning is magnified in The Bahamas. The jurisdiction now hosts the largest branch of STEP (Society of Trusts and Estate Practitioners) qualified practitioners in the region and is now home to over 250 banks and trust companies including a third of the top 20 global private banks.

# The History of Trust Laws in The Bahamas

**As a former British Colony,** The Bahamas inherited all the laws of the realm including the English Trusts Act of 1898. By virtue of the Declaratory Act of 1799, English common law is in force within The Bahamas as it is in Great Britain. This means that Bahamian courts can call on the substantial precedent of English courts in dealing with matters of trusts and estates except where our statute has departed from common law precedent.

In this way the modern Bahamas trust benefits from the best of both worlds: a deep bench of precedent and guidance and a very progressive statutory framework which has freed it from many common law constraints. This has been accomplished by innovative statutory amendments that make it possible in The Bahamas to have perpetual trusts, protective trusts, trusts for purposes both charitable and non-charitable, private trust companies to administer the trusts of related settlors, trust substitutes like the foundation, and pure governance structures like the Bahamas Executive Entity.

## TIMELINE | TRUSTS AND FOUNDATIONS LEGISLATION

1898

Trusts Act.



1989

**Trusts Choice of Governing Law Act.** Choice of Bahamas Law recognised as pre-eminent for all questions.

1991

**Fraudulent Dispositions Act.** Creates a two-year time period to challenge a trust on the ground of fraudulent disposition to defeat creditor, after which statute barred.

1998

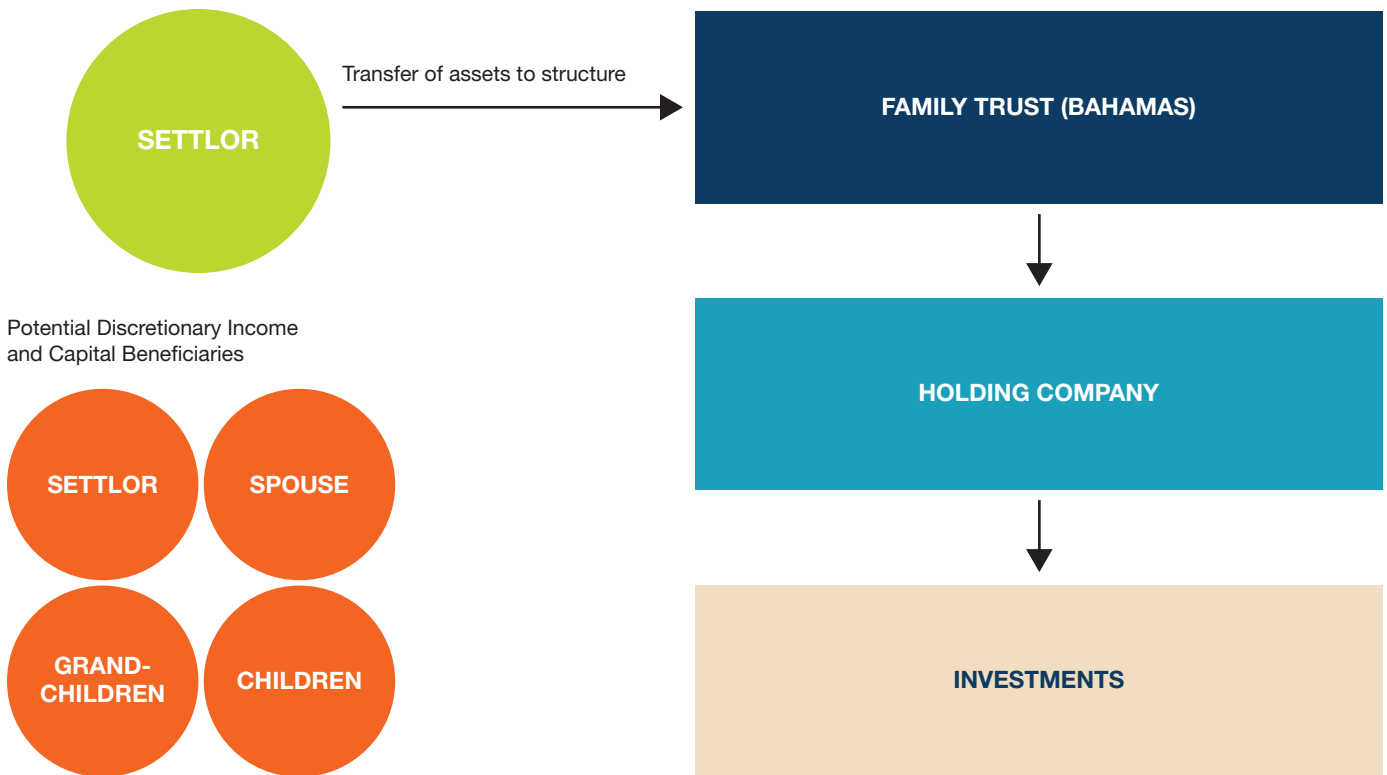
**Trustee Act.** Landmark Act creating flexibility and acknowledging settlor's reserved powers, anti-forced heirship laws, etc.

2004

**Foundations Act.** Adapts civil law foundation to create a legal entity that could operate in very similar manner to Bahamas trusts.

**Purpose Trust Act.** Facilitates the creation of authorised purpose trusts.

## Trusts in Practice



2007

2011

### **Banks and Trust Companies (Private Trust Companies) Regulations.**

Provides specific legislation addressing the manner in which a Private Trust Company may be established in The Bahamas.

### **Trustee Amendment Act and Bahamas Executive Entities Act.**

Allows for dynastic structures by abolishing the rule against perpetuities, introduced trust arbitration provisions, affirmed validity of hostile

beneficiary clauses and introduced concept of "directed" trusts. The BEE Act created a legal entity that could act as a "wrapper" for individuals wishing to serve as protector or in other governance roles.

### **Rule Against Perpetuities (Abolition) Act.**

Abolishes the rule against perpetuities in relation to wills and trusts.




# Features of The Bahamas Trust

## **FLEXIBLE ...**

Trusts may be established giving the trustee full discretion (subject of course to its fiduciary obligations) as to the making of distributions, timing of distributions, selection of beneficiaries, exclusion of beneficiaries as well as investment of trust assets. These may be guided by a non-binding letter of wishes issued by the settlor.

It is also possible for the settlor to reserve many of the powers described above without invalidating the trust or to “direct” the Trustee as to the exercise of its investment powers under the terms of the trust. Directed trusts allow for these powers to be exercised at the settlor’s direction or at the direction of a third party identified in the trust instrument, which direction the trustee must follow in the absence of fraud.

Many settlors have sophisticated investment experience or have trusted advisors that do. Directed trust provisions can allow for the trustee to be concerned with the administration of the trust assets, while leaving the investment of trust assets to the settlor or a trusted advisor. A common concern of settlors who have operating businesses is the extent to which a trustee may be required by its fiduciary duties to interfere in the management of such a company. Many trust deeds also include clauses which do not require the trustee to interfere in the management of an underlying operating company. These provisions are common in



Bahamas trusts (and statutorily valid) whether directed or not; however, incorporating a directed trust provision makes it clear that a settlor may direct how a trustee should exercise voting rights attached to the shares of the trust asset, while relieving the trustee from liability for executing the direction. An investment power includes, “a right or power attaching to any trust property (including any power to vote or pass resolutions as a member of a company, a holder of any security in a company or a partner of a partnership)”.

## **PRIVATE AND CONFIDENTIAL ...**

Trust deeds in The Bahamas are not publicly registered though Trustees are obliged to perform due diligence on the Settlor, Beneficiaries and other parties in accordance with The Bahamas’ robust AML, CFT regime. For the purposes of FATCA reporting, a Bahamas trustee will be required to report in respect of trusts with US beneficiaries only.

Under Bahamas trust law disclosure to contingent beneficiaries is limited. If at any time there are no beneficiaries with vested interests, trustees have an obligation to ensure that at least one person capable of enforcing the trust is informed of its existence.



# Bahamas Law is Supreme

**Once** Bahamas Law is chosen to govern the trust, all questions are referred to Bahamas law including but not limited to questions about:

- (a) the capacity of the settlor;
- (b) any aspect of the validity of the trust or disposition, or of its interpretation or effect;
- (c) the administration of the trust, whether the administration be conducted in The Bahamas or elsewhere, including questions as to powers, obligations, liabilities and rights of trustees and their appointment and removal;
- (d) the existence and extent of powers, conferred or retained; including powers of variation or revocation of the trust and powers of appointment, and validity of such powers.

**Note that these provisions do not validate dispositions which would have been invalid because the settlor did not own the property transferred to the trustee upon trust nor to dispositions of real property in other jurisdictions which by their laws would invalidate such a transfer.**

## **ASSET PROTECTION**

Bahamas laws contain various provisions that enable the Settlor of a Trust or the Founder of a Foundation to transfer assets to a trustee or foundation with the expectation that his structure and his intention will be respected by Bahamian courts.

The Fraudulent Dispositions Act 1991 explicitly states that a transfer or disposition made at an undervalue with the intent to defraud shall be voidable:

- 1 At the instance of the creditor with the burden of proof on the creditor to prove fraudulent intent; and
- 2 Only to the extent necessary to satisfy the creditor's claim; and
- 3 Within two years from the date of the relevant disposition after which the claim is absolutely statute barred.

In some jurisdictions there is an unlimited time period in which to void the disposition making them incredibly creditor friendly but settlor averse. Others have swung the pendulum the other way, aggressively marketing the “practical barriers” to enforcement. The Bahamas has recognised that there is a legitimate aim of protecting creditors against fraudulent transfers and an equally legitimate expectation that settlors’ structures should be respected and not open to indefinite attack.

## **DYNASTIC**

In 2011 The Bahamas abolished the Rule Against Perpetuities which (with further statutory modification) had limited the duration of Bahamas Trusts to a period of 150 years. Bahamas trusts can now be set up for an unlimited period with an outlook that recognises the dynastic intentions of many wealth creators – a sustaining plan for wealth that enables generations to contribute to and benefit from the structures set up generations before.

These dynastic structures require institutionalised governance in order to recognise the long term goals and aspirations of the family. Governance in wealth structures can often be supported through a protector or protector committee which may give advice to the Trustee as to the investment of trust assets, timing of distributions and addition or exclusion of beneficiaries. The protector or protector committee may also retain a “consent” feature with respect to fundamental decisions as to the trust



assets. Usually the protector is a trusted advisor to the family or a committee of advisors which may or may not include the Settlor or other family members.

This move toward institutionalised governance is a good thing but the fiduciary nature of the office of protector was something which could subject individuals to almost unlimited liability, and corporate vehicles which required some structure for ownership made wealth plans more complex.

To solve this problem, The Bahamas created the Bahamas Executive Entity to act in governance, office-holding, and fiduciary roles like a protector, a council member of a foundation or other committee, a director, or officer. The BEE is ideal because:

- 1 The BEE is a legal entity with limited liability, whose council may comprise individuals which by extension have limited liability;
- 2 The BEE is designed and acknowledged as having a governance or office-holding purpose;
- 3 The BEE is able to purchase liability insurance;
- 4 The BEE is “ownerless” and self-contained; and thus lends itself extremely well to the executive purpose of holding the shares of and exercising voting rights in respect of a private trust company or other company; and
- 5 The BEE can operate in multi-jurisdiction structures, not just Bahamas structures.

## FOUNDATIONS

The genesis of both foundations and trusts can be traced back to the middle ages, but it is arguable at least in the common law world which was a late adoptee of the concept, that only recently has the law and regulation of foundations matured in such a way as to allow the extension of its traditional private planning and charitable uses to other non-traditional applications. The foundation was adopted in The Bahamas for its extrinsic and intrinsic characteristics. The extrinsic characteristics accommodated the culture and custom of potential founders from Latin America and the rest of the civil law world. Its intrinsic characteristics meant that there was a reduced fiduciary responsibility for those administering the foundation’s assets.

Central to the development of the Bahamas foundation was the typical Latin American client’s resistance to the idea of being alienated from control of his money, a paradigm that is central to the creation of a conventional Anglo-Saxon trust.

While the landmark Bahamas 1998 Trustee Act provided for settlor “reserved powers” trusts, a consensus developed that a foundation, a legal entity recognizable under the laws of the client’s home country, was an essential tool for both Latin American and European originating clients. The Bahamas replicated many of the provisions found within its trust law applying it where the context permits to the foundation. The Bahamas foundation is similar to trusts in three ways:

- 1 It has provisions which recognise the supremacy of the governing law of the foundation;
- 2 It has provisions which protect against forced heirship claims;
- 3 It has provisions which provide for termination of a beneficiary’s interest upon challenge.

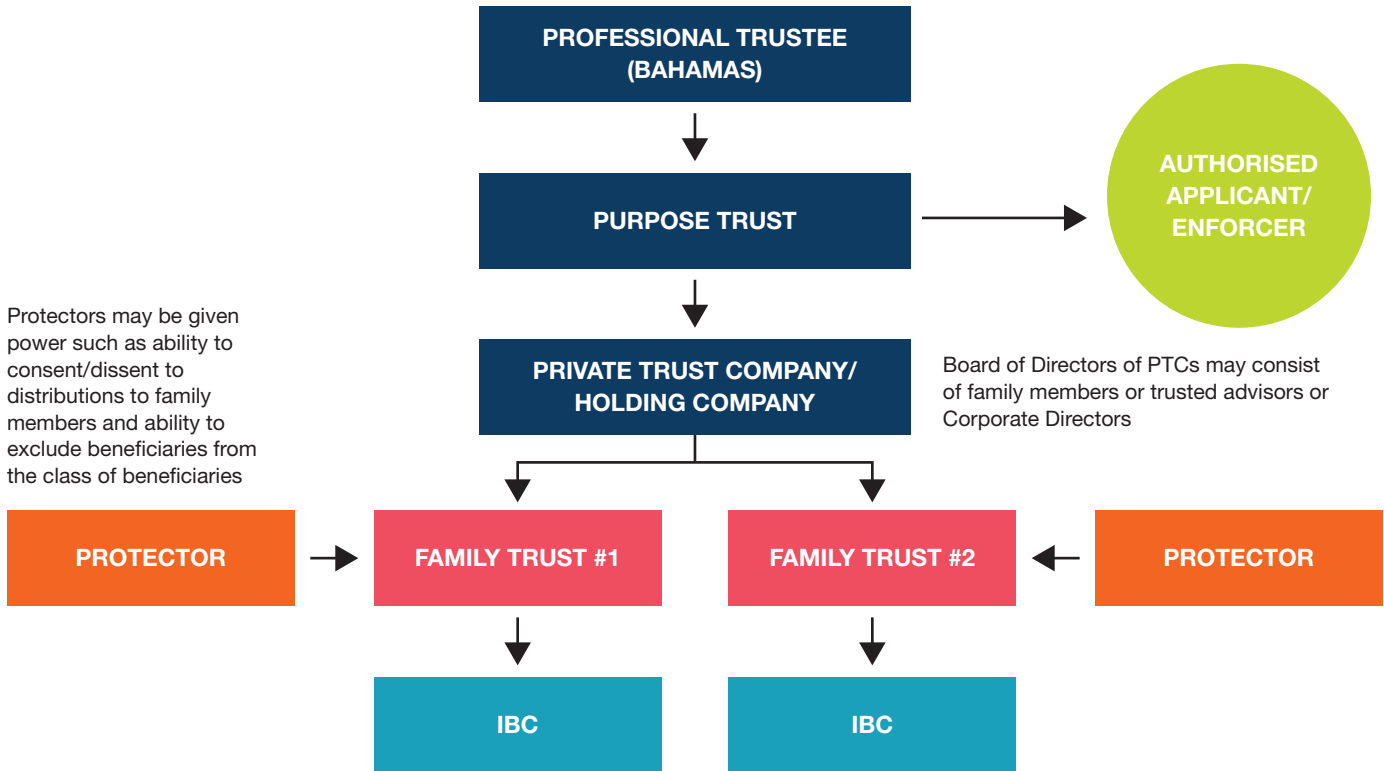
## PRIVATE TRUST COMPANIES AND FAMILY OFFICES

After the financial crises many wealth generators suffered a crisis of confidence in their institutional services providers. As a result, private trust companies have grown in popularity because they allow wealth creators to achieve more control, greater efficiency and better governance.

A Private Trust Company (PTC) is a trust company that acts as trustee of one or more trusts for a Designated Person or Designated Persons or an individual or individuals who are related by consanguinity or other family relationships to the Designated Person. PTCs which are not institutional trustees but private companies can then be established to administer trusts for family members. There are a number of key advantages:

- (a) The ability to involve trusted advisors and family in the governance and administration of the trusts;
- (b) Efficiencies created by the consolidation of administration within one single purpose entity;
- (c) No limitation on the type of assets that can comprise the trust, including operating businesses and other “risky” or “wasting” assets which institutional trustees might be reluctant to accept;
- (d) Ease of changing service providers, including trust administration if sub-contracted.

## Private Trust Companies



### PURPOSE TRUSTS

The Purpose Trusts Act 2004 allows for the formation of Purpose Trusts in The Bahamas. As a general rule, trusts, with the notable exception of charitable trusts, are required to benefit named beneficiaries or classes of beneficiaries rather than expressed purposes. The Purpose Trusts Act permits the establishment of a trust for non-charitable purposes. This makes it a commonly utilised structure for holding the shares of private trust companies and other legal entities, as in the example above.

Alternatively, the BEE may also be utilised for the foregoing purpose eliminating the need for the appointment of an authorised applicant/enforcer and a professional trustee.

### FAMILY OFFICES

The Bahamas is an ideal platform for family offices either as a stand-alone family office or an “offshore” branch of a family office established in another jurisdiction. Family offices increasingly are becoming institutionalised with a significant focus on risk management and performance measurement and an emphasis on governance and purpose.

The Bahamas provides a financial infrastructure without peer which can support the family office giving it access to institutional asset management options and first class service providers. This has been designated as a key growth area for The Bahamas as families and their advisors have begun to recognise that there is flexibility

in the “size” of the family office footprint in The Bahamas. They can choose to build their family offices around one or any number of structures or licences which provide true and in some cases fully regulated substance in The Bahamas:

- 1 Private Trust Companies;
- 2 Financial and Corporate Service Providers Licence;
- 3 Advising and Managing Securities Licence;
- 4 Bank and/or Trust Licence;

#### **A COMMITMENT TO COMPLIANT BUSINESS**

The Bahamas has implemented rigorous KYC/AML standards and trust companies are required to collect due diligence on parties related to the trust. The Bahamas Phase I and II Global Forum Peer Reviews were conducted in 2011 and 2013. The Bahamas became a member of the restructured OECD Global Forum in 2009, and a part of the Peer Review Group that same year. When the Global Forum released its Compliance Ratings in November 2013, high ratings were assigned with an overall rating of largely compliant. The Bahamas has signed over 30 Tax Information Exchange Agreements.

More recently, The Bahamas in October 2014, adopted the new OECD/G20 standard on automatic exchange of information agreeing to implement the same in 2018. By agreeing to implement the Standard bilaterally and in a balanced manner, The Bahamas has affirmed its position as a responsible member of the international community.

The Ministry of Finance has been designated as the Competent Authority for TIEAs, FATCA and AEOI and has been fully resourced for this purpose.

FAMILY OFFICES

POSITIONS  
HOLDERS

CONTINUITY  
ADVISORY

DIRECTED

COMPLIANT  
MANAGEMENT

WITH MAINTENANCE

TRANSCONTINENTAL  
PRIVATE BANKING

PROTECTION

PURPOSE TRUSTS

DISCREET

SOPHISTICATED

TOOLKIT

EXECUTIVE ENTITY

COMMITMENT

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FAMILY

WEALTH MANAGEMENT

ADMINISTRATION

TRANSCONTINENTAL  
PRIVATE BANKING

PROTECTION

PURPOSE TRUSTS

THE Bahamas Advantage

Call the Bahamas Financial Services Board to learn more about  
The Bahamas Advantage (242) 393 7001 or email [info@bfsb-bahamas.com](mailto:info@bfsb-bahamas.com)  
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