

# A Matter of Trust: New QFC Trust Regulations Impact uses of Trusts for Property Ownership in Qatar

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In December 2017, the Qatar Financial Center ('QFC') introduced legislative changes to the existing QFC Trust Regulations.

Some of the key changes introduced were:

1. A registration requirement – no trust is established, valid, and binding unless first registered with the Qatar Financial Centre Authority ('QFCA');
2. A professional trustee company requirement – a trustee must be a licensed firm, authorised firm, or a QFCA approved foreign person;
3. Charitable trusts are no longer permissible under the QFC;
4. Disclosure requirements have been imposed on trustees to disclose the trustee's status in all business

- relationships, contracts, and transactions;
5. A retention obligation is imposed upon the trustee – to maintain certain information regarding the identity and beneficial ownership of a settlor, trustee, beneficiary, protector, or any other person with effective control over the trust;
  6. A trustee may now seek directions from the QFC Court regarding the management of the trust;
  7. Powers have been granted to the QFC court to amend the terms of a trust;
  8. The settlor may now reserve certain rights and powers, as are normally performed by the settlor; and
  9. The QFCA has been granted powers to impose penalties for contravention of the QFC Trust Regulations.

### **Mandatory use of Professional Trustee Company**

One of the central amendments introduced, namely the requirement for the trustee of a QFC Trust to be a professional trustee company, may impact the use and effectiveness of QFC Trusts as a vehicle for holding Qatar real estate.

The QFC Trust Regulations (as amended) stipulate in Part 9, Chapter 1, Article 38(3) of the amended QFC Trust regulations that:

‘Subject to such further requirements as may be prescribed by the Rules, a Trustee must be:

- Licensed Firm that is a DNFBP\*;
- an Authorised Firm; or
- a Person approved by the QFC Authority that is duly licensed or authorised in a jurisdiction outside of the QFC and is subject to adequate requirements in respect of anti-money laundering and counter terrorism financing, by the laws applicable to the Person.’

\*Designated non-financial business or profession under the AML/CFT Rules

Article 38 of the amended QFC Trust regulations further states, by way of a guidance note, that a ‘Licensed Firm’ or an ‘Authorised Firm’ that wishes to carry on the provision of the administration of trusts by way of business, must be licensed or authorised to do so. Currently, there are only two active QFC entities listed on the QFC public register as licensed to carry out the business of administration of trusts.

Whilst Article 16(2)(B) of the amended QFC Trust regulations does recognise that a trust may be created by title to the trust property being ‘held in the name of the Trustee or is held in the name of another Person on behalf of the Trustee’ it is not clear as to how that other person holding title effectively creates a second trust that also has to comply with the foregoing rules. Until a court has determined what this rather vague statement actually means, one cannot be sure that having a property in the name of a person holding the same for a trustee does not in fact create a separate trust relationship.

### **Limitations of QFC trusts as a vehicle for holding Qatar Real Estate**

The new mandatory requirement to have a QFC professional trustee company as trustee, rather than individual trustees at the discretion of the settlor/protector, has three major potential disadvantages for the use of QFC trusts as a vehicle for holding Qatar real estate.

#### **1. Foreign Ownership Restrictions**

As set out in Law No. 5 of 1963, the general rule for real estate ownership in Qatar is that only Qataris (that is, Qatari nationals or entities 100 percent owned by Qatari nationals) are permitted to own freehold

real estate in Qatar. However, in 2004, the government opened the country's real estate market to foreign investors, permitting foreigners to own freehold real estate in three particular zones, with three additional zones for GCC nationals. Foreigners were also permitted to hold usufruct rights for 99 years in 18 particular zones. As such, freehold ownership for foreigners is still particularly restricted.

The foreign ownership restrictions limit the ability to transfer legal title of Qatar real estate to the trustee.

In line with such real estate foreign ownership restrictions, any professional trustee company would have to be 100 percent Qatari owned, in order to hold legal title to any real estate in Qatar, for the exempt zones. Whereas the use of a QFC trust for holding real estate had been particularly useful for asset protection and succession purposes for Qatari nationals, it is envisaged that any professional trustee companies looking to license and register with the QFC would naturally originate from jurisdictions experienced and adept at administration of trusts. As a civil law jurisdiction, which does not recognise the concept of trusts, there would be limited experience for 100 percent Qatari-owned businesses in this field. Therefore, the inability of professional trustee companies with any foreign ownership to hold legal title to most real estate in Qatar restricts the usefulness of a QFC trust holding land.

## **2. Perceived Loss of Control/Transparency in Family Trusts**

As the intended purpose of many trusts is for asset protection and succession in family arrangements, many potential settlors may not feel comfortable to transfer family property, or indeed any property, to an unknown foreign professional trustee company with no retained control other than in the role of protector, appointer, etc. By vesting a family real property in a corporate trustee, families may feel that there is loss of control over such property. A settlor may prefer the security of selecting their own individual trustee, such as a trusted friend, relative, or professional advisor, with whom they have an established and trusted relationship, or having some level of management control over any such trustee company by family members, or indeed fulfilling the role of trustee themselves. In addition, individual trustees or corporate trustees with management control by family members may be more visible to settlors, and the handing and administration of the trust by a unknown corporate trustee could be seen as a loss of transparency in the affairs of the trust.

Whilst the QFC has launched a new regime under the QFC Foundations Regulations, the same requires the board of a foundation to contain a 'Registered Representative' who must also be a DNFBP, and the Registered Representative has certain powers that might not be acceptable to a family arrangement. Furthermore, whilst a trustee that is a Qatari-owned incorporated trustee or a Qatari individual would be acceptable to the Real Estate Registration Department of the Ministry of Justice as the owner of land on a land title, it is not clear how a QFC foundation would be treated by that Department.

## **3. Costs**

Even where it is possible that someone can hold real property for the trustee (pursuant to Article 16 of the amended QFC Trust Regulations), there will be a concern by potential settlors as to the costs involved in the mandatory appointment of a QFC professional trustee company, which cannot be avoided even if it is not the person on title. Corporate trustees will usually be more expensive than individual trustees and, due to the limited number of QFC licensed entities able to carry out such function, there will be limited competition in order to promote competitive pricing between QFC professional trustee companies, even where such professional trustees were permitted to hold real estate.

As the amendments to the QFC Trust Regulations are fairly recent, we have yet to see how the legislative changes will impact the use of trusts in the QFC. Yet, the requirement for a professional trustee company will certainly impact on the ability and likelihood of families to adopt trust structures for estate planning or

asset protection with regard to Qatar real estate.

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