

PURCHASING A PROPERTY IN THE TURKS AND CAICOS ISLANDS

In this memorandum we hope to provide clients, and prospective clients of Saunders & Co., with basic information on the transfer of title to land in the Turks & Caicos Islands along with information on holding title to property through a property holding company or trust. This memorandum also briefly explains some of the possible benefits of land ownership in the Turks & Caicos Islands (“TCI”).

Transfer of title to land in the Turks & Caicos Islands

Land in the TCI is registered under the Registered Land Ordinance, legislation that provides for a Torrens Registered Land system. The significance of a Torrens Registered Land system is that one can rely on the Register (which is maintained at Her Majesty’s Land Registry in Grand Turk) for details of most interests effecting property. It is therefore not necessary to investigate prior title. One can rely on the entries on the Register to demonstrate, among other things, the identity of the owner of property and any defects that encumber a property. The system is similar to the one in England & Wales save that there is no residual unregistered land.

There is no restriction on the holding of land in the TCI, save if land or developed property is to be held by a company the company must be a Turks & Caicos Islands Ordinary company. A foreign company therefore cannot *directly* hold title to local property.

There is no restriction, however, on a foreign individual holding land, and there is no restriction on a foreign individual holding the shares of a Turks & Caicos Islands Company, which might, in turn, hold land. There is also no prohibition on a foreign company holding the shares of a TCI company that holds land. A brief overview of some of the options to hold title to property follows:

Property held in the names of the owners

One option is to take title to property in a buyer’s name, the buyer and his partner’s names or in the name of the buyer and one of his children: either as Joint Tenants or Tenants in Common. The essential difference between these methods of holding property is that under a joint tenancy property automatically passes to the surviving joint tenant on the death of one of the owners. The nature of the ownership is that the parties each own the entirety of the property and on the death of one of the owners there is no need for probate or other legal formality save the lodgement of a simple form of application in the Land Registry to delete the deceased person’s name, such death being evidenced by certified copy of a Death Certificate

Where property is held under a Tenancy in Common, on the death of one of the owners that person’s share of the property devolves to his estate and is distributed in accordance with his/her will or under intestacy rules. The nature of this type of ownership is that each person has an independent divisible interest in the relevant property.

Married couples or couples living as husband and wife usually hold property as joint tenants.

Property held by a Property Holding Company

A second option is to hold property in the name of a company.

There are often great advantages in using an offshore holding company for the purpose of holding overseas property. Such advantages may include avoidance of inheritance tax, avoidance of capital gains tax, ease of sale, which is achieved by transferring the shares in the company rather than transferring the property owned by the company, privacy and reduction of a property's purchase costs. The specific benefits of establishing a company to take title to a property, however, will largely depend on an individual purchaser's circumstances and needs.

Privacy is obtained because the shares of the property holding company can be held by nominee shareholders. In addition, nominee directors and a nominee secretary can also be appointed to a property holding company's Board of Directors. The consequence of this, combined with the obligations under Turks & Caicos Islands' confidentiality laws, is that the buyer (or buyers) is provided with privacy as to his ownership of property.

Another advantage of a company owning property is that the beneficial interest in the property can be transferred by a simple transfer of the shares in the company. This process avoids, for the purchaser, the potential lengthy delays in having title at the Land Registry transferred into his, or her, name.

A company should also provide protection from liability flowing from the property in the event, for example, of insurance being inadequate to cover loss or damage to an invitee or in the event of such insurance being voided for any reason. Certain purchasers may find it convenient to have title to the property placed in a company so that any income earned will be attributable to the company and not to the individual directly. Thereafter, the company may, in due course, pay dividends to the individual shareholders if there are any profits left over after expenses, management fees, etc. Finally, registering title in a company may afford the purchaser the facility of structuring the company such as to provide for estate planning or inter vivos gifts between himself and his blood relatives as deemed appropriate. (Note that under current Turks and Caicos Islands Stamp Duty Laws it is possible for a parent to transfer property to his/her child/children free of stamp duty. Transfers between spouses are also currently free of stamp duty. Note also that stamp duty is payable in respect of transfers of shares in land holding companies as well in situations where land and/or condo itself is sold.)

Note that the shares of a company which is holding land may be held directly by an individual or by a group of individuals or they may, as is quite common in the Turks and Caicos Islands, be held by local management companies in trust for the beneficial owners. Again, this can afford the purchaser a certain degree of anonymity and facility to deal with the ownership of the land both during his lifetime and after the beneficial owner's death. The share may be held on what is known as a bearer trust declaration: a simple form of declaration whereby the nominee management company simply acknowledges that while it is registered as holding the share, it is, in fact, holding the share as the trustee for the beneficial owner or owners. In such situations it is

common, for example, for a purchaser to provide that the shares shall be held in trust for the husband and wife or for the lifetime of the survivor partner and thereafter to their children in equal shares. This arrangement avoids probate being required upon the death of the first deceased partner and also the surviving partner (also discussed below).

Another option for a prospective purchaser is that the property be purchased directly in the name of a trust, or more correctly the trustee. For example, the title to the property could be taken in the name of a trustee under the declaration of trust as described above.

There are additional benefits where one owns a property holding company through a trust. Our fees for the establishment of a property holding company, set out below, is generally reduced by 35% when the establishment of the company is part of a seamless property transaction

Owning a property holding company through a trust

The beneficial owner of an offshore property holding company will naturally have a desire in the event of his or her death to transmit assets to the next generation (or, possibly, a charity) in an efficient and discreet fashion. Whilst an offshore company provides anonymity for the eventual ownership of property and removes that property from the view of other potential claimants, technically, it creates other assets for the estate, namely the shares in the offshore company itself.

Generally speaking upon death in respect of shares held in one's own name, or even through nominee shareholders, probate will have to be obtained before the shares can be passed on to one's heirs. As a result, there might be exposure to inheritance tax in one's country of domicile and/or the country in which particular assets are situated. Further, obtaining probate invites publicity and the attention of tax authorities and generally involves legal and/or accounting fees.

Consequently, the shares in the company can be held under a full-blown discretionary trust deed. This is a trust document that basically sets forth a discretionary trust arrangement whereby beneficiaries may be added to or taken away from the trust in accordance with the terms of the trust deed itself. The trust deed in such circumstances will provide that there will be a protector to the trust. The protector is something akin to the trust's best friend, and has the right of veto in respect of certain trustee activities such as, for example, adding or taking away from the list of beneficiaries or making distributions to the beneficiaries from time to time. It is possible, therefore, to have a discretionary trust arrangement whereby no tax domicile individual is named as beneficiary at the outset and, thus, effectively seek to postpone taxation in the hands of such beneficiary. Care must be had, however, in respect of all these trust arrangements. (Please note that we are not American, Canadian, or English tax advisors and clients are advised to seek and obtain professional tax advice in respect of any particular method of acquisition or holding property.)

If the shares of the company are placed into a suitably arranged discretionary trust then certain advantages may accrue:

1. No inheritance tax would be payable upon the death of the beneficial owner of the company.

2. There will be no need to bequeath assets by will and therefore no need for probate to be obtained in order for chosen heirs to have the benefit of those assets, so that one avoids the attendant cost and delays of probate.

3. Effective asset protection may be secured against unknown future creditors. This can eliminate the anxiety of the professional or businessman who otherwise might live in fear of potential malpractice or negligence claims. It may be possible, however, for the courts in a beneficial owner's home country to apply sufficient pressure to have the beneficial owners instruct offshore trustees to liquidate assets and repatriate the proceeds of sale of a property.

4. For the wealthy individual, a suitable trust structure allows disposition of assets on the basis of the owner's choice rather than according to obligations which might be imposed under divorce laws, for example, or force heirship laws of certain countries.

Considerable advantages may be obtained by placing shares of an offshore property holding company (and any other assets) into a suitably structured trust. We have enclosed our standard memorandum on Turks & Caicos Trusts that outlines some of the characteristics of Turks & Caicos trusts if you are interested in this option.

Permanent residency

The purchase or investment of \$500,000, or more, into a home (or business) qualifies the owner for the grant of a Permanent Residency Certificate (hereafter "PRC"). The certificate is granted to the applicants as investors and it is to be noted that this category of PRC is endorsed with a prohibition against gainful employment. It is possible to get a PRC without such an endorsement but an applicant will have to have lived and worked on the island (under a work permit) for at least five years to qualify.

Permanent Residency gives the owner a right to freely enter and leave the country and to permanently reside here. It is essentially citizenship without the right to vote or receive certain other citizenship preferences (e.g. the grant of crown land at preferential prices, the right to first preference when hiring, etc.).

Note also that the government fee upon grant of a PRC to an investor is \$15,000.

The main benefit of a PRC is that, in certain jurisdictions, it might effectively establish the holder's residency, for tax purpose, outside of a taxable jurisdiction.

Visitor and Residence Permits

Upon entering the country a visitor is generally given thirty days under a Visitors Permit. This can be extended for further periods of thirty days or the applicant, instead, can obtain a Residence Permit for periods from one month up to a year. The government fee for a Residence Permit is \$100 for each month granted.

Retainer and fees in property transactions

Legal fees for property transactions in this jurisdiction are between 1-2% of the value of the property transferred, plus our disbursements (or alternatively charged on a time spent basis). The Purchaser is also responsible for payment of stamp duty, land transfer fees, courier fees, fees for a copy of the register post registration (showing the person as the proprietors), etc. If for any reason a purchase transaction falls apart you will be charged on a time spent basis where the retainer was based on a percentage of the value of the property transferred. Note that sellers in this jurisdiction generally require a ten percent deposit upon execution of a sale and purchase agreement. Attorneys also generally require a retainer on account of disbursements and work in progress.

Structuring of the sale

Purchasers will have to indicate how they wish to hold title to property. They will need to advise if they wish property in their names, as joint tenants, or through a company (or have the shares held on trust for both).

Our due diligence obligations

As a result of stringent money laundering regulations there are onerous due diligence obligations on attorneys. We will need to know exactly what activities you propose engaging in. We must also ask you to provide us with a copy of the photo page of your passports (witnessed by your bank, notarised, witnessed by a consulate), two references (one from your banker and one from a professional who has know you for at least three years), and independent verification of your address (e.g. a utility bill). We realise that this might seem draconian but as part of our "Know Your Client" obligation we must obtain this information.

We trust that you will find the above the above of some assistance. Please do not hesitate to contact us should you have any questions.

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