CM ADVOCATES LLP

TRUSTS AND FAMILY INVESTMENT STRUCTURES FOR FOREIGN OWNERS OF KENYAN PROPERTY

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AT A GLANCE

Foreign nationals may own property in Kenya, establish Kenyan companies and create or benefit from family trusts. These structures can support succession, governance, asset protection and investment continuity. However, they do not override the constitutional restriction limiting foreign ownership of land in Kenya to leasehold tenure of no more than ninety-nine years.

INTRODUCTION

Foreign families frequently acquire Kenyan homes, commercial property, hospitality assets and investment portfolios in their individual name or through corporate structures. As the family, portfolio and number of jurisdictions grow, direct ownership may become inefficient for succession, governance, privacy and continuity.

Kenyan law now expressly recognizes family trusts as estate planning and wealth preservation vehicles. A family-owned company or family investment company may complement the trust by carrying on investment or trading activity, holding shares in property specific companies and creating a governance platform for family capital.

CORE STRUCTURING PRINCIPLE

The family trust is generally the succession and stewardship layer, the family investment company is the ownership, investment and governance layer; and property-specific companies may be used to segregate material assets and liabilities.

1. FOREIGN OWNERSHIP OF LAND IN KENYA

Article 65 of the Constitution limits a non-citizen to land held on leasehold tenure for a term not exceeding ninety-nine years. Any document purporting to confer a longer interest on a non-citizen is treated as conferring a ninety-nine year leasehold interest.

A body corporate is treated as a Kenyan citizen for this purpose only if it is wholly owned by one or more Kenyan citizens. Accordingly, a company incorporated in Kenya that has any foreign ownership is treated as a non-citizen landholder for the purposes of Article 65.

NO CIRCUMVENTION

A trust cannot be used to circumvent the constitutional restrictions on foreign land ownership. Under Article 65 of the Constitution, property held in trust is regarded as being held by a citizen only where **all** the beneficial interests in the trust are held by Kenyan citizens. If any beneficial interest is held by a foreign national or a non-citizen entity, the trust is treated as a non-citizen landholder and is therefore subject to the constitutional restrictions on foreign ownership, including the requirement that any interest in land be held on a leasehold basis for a term not exceeding ninety-nine years.

2. AGRICULTURAL LAND REQUIRES SEPARATE ANALYSIS

Transactions involving agricultural land in an area designated as a controlled area are regulated by the Land Control Act. Controlled dealings, including sale, transfer, lease, mortgage, partition and other disposals, require the consent of the Land Control Board.

The Land Control Board must refuse to grant consent where agricultural land or a share in such land is proposed to be sold, transferred, leased, exchanged or partitioned in favour of a person who is not a Kenyan citizen or a private company or co-operative society whose members are all not Kenyan citizens. Confirm whether the property is agricultural land and lies within a land-control area.

PRACTICAL TIPS

Before acquiring or structuring an interest in Kenyan property, foreign investors should keep the following practical considerations in mind:

A. Do not assume that a trust or corporate special purpose vehicle (SPV) cures the nationality restriction.
B. Obtain legal advice before signing transaction documents, paying substantial consideration or funding development.
C. Consider whether a long-term lease, operating agreement or other legally permissible investment structure is available.

3. WHAT IS A FAMILY TRUST?

A family trust is a legal relationship created by a **settlor** that takes effect in their lifetime or after death, when assets are placed under the control of a **trustee** for the benefit of **beneficiaries**, or for a specified purpose. A family trust is incorporated by the settlor for the purpose of planning or managing their estate.

A family trust is expressly a non-trading entity. It can hold and administer property and investment assets, but active business or repeated commercial activity should ordinarily be conducted through an appropriately incorporated and taxed company.

4. WHY FOREIGN PROPERTY OWNERS USE FAMILY TRUSTS

a) Continuity on death or incapacity without changing the trust's underlying governance.
b) Orderly benefit for spouses, children, future generations and vulnerable beneficiaries.
c) Separation of control from immediate entitlement to capital.
d) Protection against fragmentation of property among multiple estates or beneficiaries.
e) A framework for education, maintenance, healthcare, occupation and investment distributions.
f) Reduced risk of succession conflict through a clear trust deed and family governance process.
g) Coordination of Kenyan assets with wills, trusts and succession planning in other jurisdictions.

A trust is not an absolute shield. A court may invalidate or unwind a trust established through fraud, duress, misrepresentation, breach of fiduciary duty, illegality or to evade creditors. Transfers made after liabilities arise require particularly careful review.

5. FAMILY-OWNED COMPANIES AND FAMILY INVESTMENT COMPANIES

5.1 Family-owned property company

A family-owned company may hold one or more properties, borrow, enter leases, contract with managers and segregate property liabilities from family members. Shares, rather than the underlying land, become the primary family ownership interest.

The family company's articles of association and shareholders' agreement should regulate voting, reserved matters, transfers, pre-emption, death or incapacity, director appointments, funding, distributions, valuation, dispute resolution and exit.

5.2 Family investment company

A family investment company (FIC) is typically a private company established to hold and manage a wider portfolio, which may include shares in property SPVs, securities, private businesses, cash, intellectual property or other investments. Kenyan law does not create a separate statutory company type called an FIC. A FIC is a conventional company with bespoke investment objects, capital and governance arrangements designed to hold, manage and preserve family wealth across generations.

FIC COMMON FEATURES

A. Different share classes to separate voting control, economic participation and future growth.
B. A family constitution to guide values, employment, distributions and family decision-making.
C. Investment and distribution policies to preserve capital and manage liquidity.
D. Property SPVs to isolate financing, co-investors and asset-specific risks.
E. A board or investment committee to provide professional oversight and support succession planning.

6. COMPARING THE PRINCIPAL STRUCTURES

Structure	Typical ownership chain	Best use	Principal consideration
Direct ownership	Foreign individual - Kenyan leasehold property	Single residential house or investment property	Subject to the constitutional limitation to leasehold tenure of up to 99 years, succession, incapacity and personal liability should be planned for
Family trust	Trust - property or investment assets - beneficiaries	Succession planning, asset protection and controlled intergenerational wealth transfer	A trust does not circumvent Article 65. The trust is treated as a citizen landholder only where all beneficial interests are held by Kenyan citizens
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Fami-ly-owned company	Family shareholders - company - property	Joint ownership, governance and ring-fencing	The company is treated as a non-citizen landholder where it has any foreign ownership and is therefore subject to foreign ownership restrictions.
Family investment company	Family/trust shareholders - FIC investments or SPVs	Managing diversified family wealth, reinvestment and long-term governance	Requires careful tax, corporate governance, beneficial ownership and regulatory compliance. The FIC does not alter the constitutional restrictions on foreign land ownership.
Hybrid structure	Family trust - FIC - property SPVs	Larger family portfolios requiring succession, governance and asset segregation	Offers flexibility but increases legal, tax, accounting and governance complexity. Each layer must independently comply with Kenya's land, company and tax law

7. THE HYBRID STRUCTURE

For families with substantial property and investment portfolios, a hybrid structure can combine the benefits of a family trust, a Family Investment Company (FIC) and property-specific special purpose vehicles (SPVs). In a typical structure, the family trust owns the shares in the FIC, while the FIC holds investments directly or through SPVs established for individual properties or projects.

The family trust provides long-term succession planning by preserving wealth across generations and setting out how family members will benefit from the assets. The FIC acts as the central investment vehicle by acquiring and managing assets, receiving income, retaining and reinvesting profits and implementing the family's governance framework. Property SPVs protect individual assets, separating financing arrangements, co-investors, liabilities and operational risks from the rest of the portfolio.

Each layer performs a distinct function. The trust focuses on succession and asset preservation; the FIC manages the family's investments and governance and the SPVs hold specific assets and contain risk. Governance is typically shared between the company's board, which oversees investment and business decisions, and the trust's governance mechanisms, such as an enforcer or family council, which help ensure that the family's long-term objectives and values are upheld.

IMPORTANT

The nationality of the ultimate beneficial owners remains relevant. A trust-owned or Kenyan-incorporated company does not become a citizen landholder merely because its registered trustees, nominee shareholders or directors are Kenyan.

8. BENEFICIAL OWNERSHIP AND TRANSPARENCY

Kenyan companies must identify, maintain and lodge prescribed information on their beneficial owners. The analysis looks beyond registered shareholders to natural persons who ultimately own, control or exercise significant influence over the company.

Where shares are held by trustees or corporate vehicles, the company should map the complete chain, identify reportable natural persons, maintain supporting records and update changes within the prescribed time. Trust arrangements should also be disclosed to banks, regulated professionals, tax authorities and counterparties where required by law or due-diligence procedures.

PRACTICAL TIPS

A. Do not rely on nominee shareholders to conceal ownership.
B. Align company registers, trust records, tax filings and banking declarations.
C. Document the source of wealth and source of funds for acquisitions and capital contributions.
D. Review sanctions, politically exposed person and anti-money-laundering requirements.

9. TAX AND TRANSACTION-COST CONSIDERATIONS

The tax implications of holding Kenyan property will depend on whether the asset is owned directly, through a family trust, a family-owned company, a Family Investment Company (FIC), or a property-specific special purpose vehicle (SPV). Depending on the ownership structure and the nature of the transaction, relevant taxes may include income tax on rental income, corporation tax for companies, capital gains tax on disposals, stamp duty on transfers, withholding tax on certain payments and annual land rates. While these structures may provide governance, succession, liability management or investment benefits, they do not, in themselves, create tax exemptions or avoid tax liabilities. The applicable tax treatment will depend on the legal form of the vehicle, tax residency, the ownership and funding arrangements and the requirements of Kenyan tax law and any applicable double taxation agreement. Accordingly, the tax consequences should be assessed at the structuring stage to ensure the chosen vehicle is both commercially appropriate and tax compliant.

NO AUTOMATIC EXEMPTION

Registration as a family trust does not make every receipt, transfer or distribution tax-free. Each asset contribution, income stream, disposal and beneficiary distribution requires separate analysis.

10. SUCCESSION AND MATRIMONIAL PROPERTY COORDINATION

a) The trust deed, company constitution, shareholders' agreement, wills, marital-property arrangements, beneficiary nominations and foreign estate plan must operate together. Inconsistency can create litigation, tax exposure and competing claims.
b) Determine whether the property is matrimonial property or a family home and obtain required spousal consents.
c) Record whether family funding is equity, debt, gift, trust contribution or beneficial interest.
d) Coordinate Kenyan wills with foreign wills and avoid accidental revocation.
e) Address forced-heirship, community property or estate tax rules in other relevant jurisdictions.
f) Provide mechanisms for minors, persons with disability and financially vulnerable beneficiaries.

11. RECOMMENDED IMPLEMENTATION PROCESS

1. Map the family, present and prior unions, children and dependants, nationalities, tax residences, matrimonial regimes and succession laws.
2. Audit each Kenyan asset, title, tenure, use, financing, income and regulatory status.
3. Define the family's objectives for control, benefit, succession, protection and liquidity.
4. Select direct, trust, company, FIC or hybrid ownership for each asset class.
5. Model tax, stamp duty, financing, consent and registration consequences before transfer.
6. Prepare the trust deed, company articles, shareholders' agreement, family constitution and governance policies.
7. Obtain Land Control Board, lender, lessor, spousal, regulatory or contractual consents where applicable.
8. Complete valuations, tax filings, stamping, beneficial-ownership disclosures and land or share registrations.
9. Establish banking, accounting, investment, distribution and annual-compliance procedures.
10. Review the structure after material acquisitions, marriages, divorces, births, deaths, relocations or tax-law changes.

12. STRUCTURES TO AVOID

a) A Kenyan nominee holding freehold or agricultural land secretly for a foreign beneficial owner.
b) A sham trust in which trustees have no genuine duties or independent decision-making.
c) Transferring assets after creditor claims arise without insolvency and fraudulent-transfer analysis.
d) Using a family trust to carry on an active trading business contrary to its statutory character.
e) Placing all properties and operating risks in one company without asset segregation.
f) Ignoring beneficial-ownership, source-of-funds, tax, matrimonial-property or foreign reporting obligations.

13. CM ADVOCATES LLP: INTEGRATED PRIVATE-WEALTH SUPPORT

The WELL Practice (Wealth, Estate, Legacy & Lifestyle) is CM Advocates LLP's integrated private-client platform for individuals, families, family offices, trustees and internationally mobile wealth owners. The Practice brings together legal, tax, property, succession, family-governance and lifestyle planning to preserve, administer and transfer wealth across generations.

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The WELL Practice (Wealth, Estate, Legacy & Lifestyle):

Through the WELL Practice and its specialist teams, CM Advocates LLP advises foreign and internationally mobile families on Kenyan property ownership, confidential family-status and succession-risk audits, family trusts, family-owned companies, family investment companies, property SPVs, matrimonial-property coordination, beneficial ownership, governance and cross-border implementation.

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Where nationality, family mobility, children, succession, property or cross-border planning issues arise, the Practice works with the International Family Advisory Unit.

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