

Private Trust Companies

WHAT IS A PRIVATE TRUST COMPANY?

A Private Trust Company (PTC) is a corporate trustee which solely acts as trustee of a limited number of trusts, usually restricted to trusts connected to an identified family group.

Due to this limitation, and coupled with the lack of requirement and resulting restrictions in its articles of association for a PTC to charge commercial fees for acting as a trustee, a PTC does not generally require to be licensed as a fiduciary in its jurisdiction of incorporation, nor to meet the standard local capitalisation requirements for licensed trust companies, as it is deemed not to be carrying out business as a fiduciary. However, it is a standard regulatory requirement for the PTC to have to be administered by an existing licensed professional trust company in that jurisdiction, and indeed the licensed professional trust company will play a significant role in providing fiduciary advice to the members of the board of the PTC, including being represented on the board of the PTC.

WHY IS A PTC ATTRACTIVE TO THE WEALTHY FAMILY?

Firstly, the key concern for wealthy families is succession planning. A PTC enables the family to effectively exercise an acceptable degree of “control” over the PTC as corporate trustee of the family trusts and also to select and appoint the board of directors of the PTC. This can result in the board being made up a mixture of family members, both young and old (as desired and if appropriate), plus “wise and trusted” professionals who know the history, needs and circumstances of the family members, plus external trust professionals who can provide trust technical advice. By comparison, without a PTC the board of

directors of the corporate trustee would be made up entirely of senior executives of that institution, who will have minimal knowledge of the family’s history, characteristics and specific requirements. The use of a suitably-structured PTC therefore ensures that key trustee decisions affecting the family will be made by a board of directors which possesses the optimum knowledge and skill sets to make decisions which are truly in the best interests of the family members as beneficiaries, without any element of making decisions merely to protect the institutional trustee.

Secondly, many wealthy families with complex global assets will often hold a substantial stake in the family business from which the family wealth may have been generated over several generations. For a professional trustee, it can create a major fiduciary dilemma when it comes to making crucial decisions regarding the family business if shares in the family company are held as a trust asset, particularly when the decision may be whether to sell or retain the family business, in which only certain family members are actively involved. As a general rule, a trustee has a duty to diversify the trust fund in order to spread the risk, and so a decision to retain rather than sell the family business prevents such diversification. Many professional trustees, particularly several of the major trust companies owned by international private banking groups, are very uncomfortable with accepting the risk of being sued for failing to diversify the trust fund, or for making high-risk investments which the family are particularly keen for the trustees to make, and so they prefer to eliminate those risks altogether. The historic manner in which those risks were managed by an institutional fiduciary was generally to be over-cautious or even totally risk-averse, usually against the express wishes of the family, causing friction in the relationship between the family and the trustee. By using a PTC it is possible to ring-fence these fiduciary risks and thereby keep the

wider activities of the professional trust company completely separate.

Thirdly, with a carefully-structured board of directors which takes into account the residency status of the directors, it is possible for certain family members to be directors of the PTC and thus retain more influence and control over the family trusts than would ever be possible where a professional trust company acts as trustee. This is particularly relevant in cases where the family originates from a jurisdiction where the concept of a trust is not well known. The PTC assumes the fiduciary risks of, for example, failing to diversify the trust fund. If the PTC as trustee is sued, then it has no other assets to claim against, and the board members are generally not at major risk provided that they have acted in good faith.

OWNERSHIP OF THE PTC'S SHARES

The ownership of the shares of the PTC has to be very carefully structured. Somebody has to own the shares and if the family members own the shares themselves then they are in a position to exercise a degree of indirect control which may well have adverse tax implications in their country of residence and/or domicile. It is therefore common for the shares of a PTC to be owned by an offshore purpose trust, the express purpose of which is to hold and retain the shares of the PTC. As the PTC is not trading for profit, there will never be any profits to distribute to the purpose trust, nor will the shares of the PTC carry any capital value. A purpose trust has no beneficiaries but instead has an "Enforcer" to whom the trustees are accountable. The Enforcer can be either a senior family member or a trusted family advisor, or even a corporate body of which the board of directors could be made up in accordance with the family's overall governance committee.

ADMINISTRATION OF A PTC

There are several offshore trust jurisdictions which have enacted and further developed very specific legislation

in relation to PTCs, including the Bahamas, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey amongst others. Whilst some of these jurisdictions may provide a specific minor advantage over the others, in general terms the choice of jurisdiction in which to incorporate the PTC is far less important than the choice of jurisdiction in which to have it administered, the choice of licensed professional trust company to administer it, and the structure of the board of directors of the PTC. Any one of a number of combinations is possible. For example, Praxis could establish a PTC in the Bahamas, the shares of which may be owned by a Guernsey purpose trust, with the administration of the PTC carried out in either Guernsey or Geneva, as preferred by the family.

On the face of it, the administration of a number of family trusts and underlying companies within a PTC structure, along with the administration of the PTC itself, might achieve some slight cost savings compared with using a licensed professional trust company as trustee of the same family trusts, but in practice the added logistical costs of dealing with family members and professional advisors as directors of the PTC, together with the statutory costs of forming and maintaining the PTC itself as the corporate trustee, are likely to absorb any such cost savings. It would be fair to conclude that in many cases a PTC is unlikely to result in substantial cost savings because the time costs to be incurred by the professional licensed trust company as administrator of the trusts and underlying companies are unlikely to be any different than if they acted as the corporate trustee themselves. Any potential cost savings are secondary to the aforementioned advantages of greater influence and investment diversification flexibility.

Praxis would normally provide at least one professional member of the board of directors of the PTC, for which an appropriate responsibility fee would be charged.

OUR SERVICES

Praxis has particular expertise in providing bespoke consolidated financial reporting services to multi-entity

structures for family offices and other wealthy private clients, and these services are tailor-made for PTC structures. Praxis can also provide an in-house tax planning and tax compliance service for structures with a UK tax element.

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