

PRIVATE TRUST COMPANIES

A private trust company, or PTC as it is commonly known, is a useful vehicle to consider in the planning and establishment of trust structures for high net worth and ultra high net worth families. Rather than transferring assets to a professional service provider's trustee company, these clients may prefer to establish their own corporate trustee to be the trustee of the trusts which they plan to create.

Depending upon the circumstances of the individual client, a variety of factors may influence such a decision: these may include a desire to retain a measure of control in relation to the structure being created; a wish to preserve confidentiality; or a focus on ensuring that the trustee will have a working knowledge in relation to the assets held within the structure (such as a family business) and will be able to respond speedily whenever commercial decisions need to be taken.

A PTC also allows for a change of professional services provider at PTC board level should this be required rather than a change of trustee which can be a more drawn out and complex process (i.e. the board of the PTC will change but the PTC remains as trustee of the trust).

PTCs are usually companies which operate as corporate trustees. However, it should be noted that it is also possible, in certain jurisdictions, for a foundation to act as a trustee, and in those jurisdictions a private trust foundation can be established instead of a private trust company. In this briefing however we focus on a private company being used to fulfil such role although we do explore the option of such private company being owned by a foundation.

DIRECTORS OF A PTC

Like any other company a PTC needs a board of directors. The board of directors will

frequently be comprised of a mix of family members and professionals. Having family members on the board allows the family to be part of and retain a degree of influence over decision-making within the trust, whilst professionals will add good governance, experience and impartiality to the decision making process.

OWNERSHIP STRUCTURES

By its very nature of being a company, a PTC will have shares in issue and those shares need to be owned by someone. The ownership structure selected for a PTC will be influenced by the particular circumstances (including family dynamics and tax considerations) and wishes of the individual client. One option for consideration is for the shares of the PTC to be held directly by the client and other family members; alternatively, the PTC may be owned by a trust, purpose trust, or foundation. We discuss each of those options hereunder.

The client or their family

Whilst direct ownership by the client and/or other members of the client's family may be the simplest ownership structure to put in place, it may not necessarily be advisable or suitable. PTC shares owned by an individual will be assets in that person's estate and can create difficulties in the event of death or insolvency. In the event of death, for example, thought will need to be given to whom those shares will devolve and probate will also need

to be applied for in order to transfer such shares.

Purpose trust

An alternative to the above is to establish either a purpose trust (or a STAR trust in Cayman) to hold the shares in the PTC. Purpose trusts can often be established for an unlimited period of time, which can be helpful in a dynastic trust situation. With most non-charitable purpose trusts, an enforcer is usually required and thought will therefore have to be given as to who should fulfil this role. Usually the enforcer must be a separate entity from the trustee and it may be that an established professional family adviser or a family member is considered appropriate.

Foundation

A further possibility for consideration is the establishment of a foundation to hold the shares in the PTC. As with a trust, it is usually possible to create such a foundation for an unlimited period of existence and, unlike a company, a foundation does not have shareholders so that ownership issues as to who should own the foundation will not arise.

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Ocorian was recognised as the 'Trust Company of the Year' at the annual STEP 2016/2017 awards ceremony

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