

The Guernsey private trust company

INTRODUCTION

Recent legislative changes¹ have made Guernsey private trust companies increasingly attractive and easier to establish. The use of private trust companies has become more prominent over the last decade and it is anticipated that this trend will continue. In particular, they are of interest where a family appreciates the use and flexibility of trusts, but likes the idea of retaining more clearly defined powers which can be exercised by the board of directors of the private trust company rather than expecting individual or institutional trustees (with whom they may not have had a relationship before) to abide by their wishes.

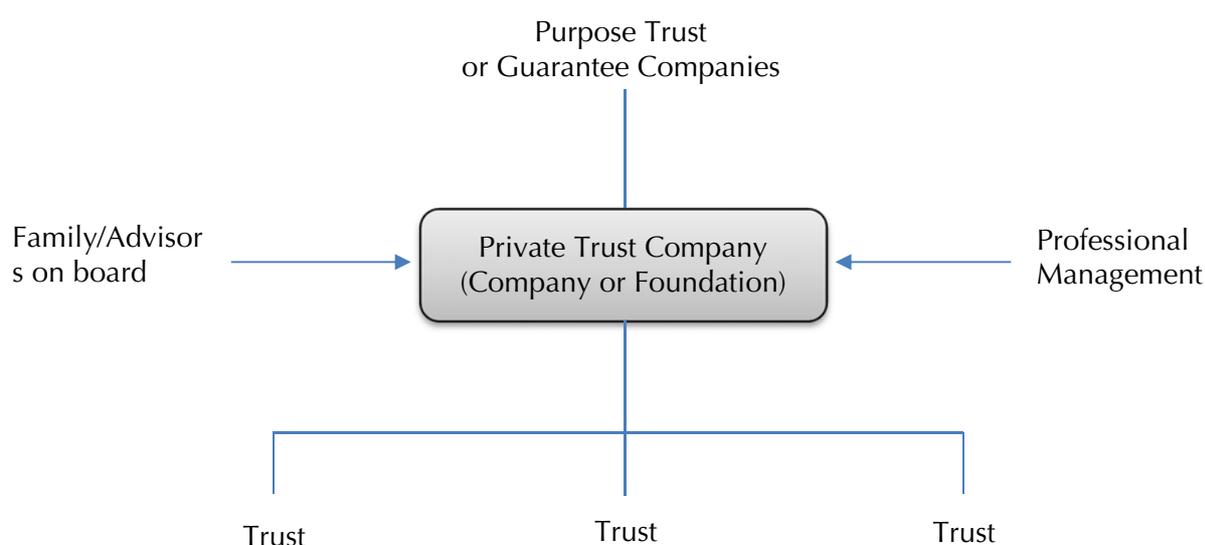
This paper provides an overview of many of the features of a private trust company.

WHAT IS A GUERNSEY PRIVATE TRUST COMPANY?

It is a company with the ability to act as trustee, which does not require licensing to undertake what would otherwise be a regulated business.² Acting as a trustee in a professional capacity would usually be treated as a regulated activity for which a licence may be required. For a private trust company, however, there are various options which include:

- Undertaking regulated activities as a full licensee
- Obtaining an exemption from licensing from the Guernsey Financial Services Commission
- Opting out of the regulatory framework (by falling outside the “regulated activities” regime)

Common Private Trust Company Structure



¹ The Trusts (Guernsey) Law, 2007 and Foundations (Guernsey) Law, 2012

² The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (“the Regulations”).

ADVANTAGES OF A PRIVATE TRUST COMPANY (“PTC”)

Set out below are a number of the key advantages:

- **Control:** Trustees will need to act in accordance with the terms of the trust deed and comply with the governing legislation. Often trustees will have wide discretionary powers in the administration of the assets that form part of the trust fund. Typically, the trustee will be a professional corporate trustee who may be remote from the family. A PTC enables family members or trusted advisers to participate either directly by sitting on the board, or as consultants and advisers. Through the PTC, the family retains greater influence over the management of trusts (through the PTC) than it might otherwise.
- **Comfort:** A PTC will act as trustee, who may have underlying asset holding vehicles with substantial assets. Families may feel more comfortable having these assets owned and administered by a PTC rather than a potentially remote institutional trustee.
- **Cost:** Assuming the PTC is either “exempt” or “opts out” of the fiduciary regulations in Guernsey, the process of establishing and running a PTC should not be expensive. Indeed, if there is a large group of family trusts, the consolidation under one PTC could save considerable costs, particularly when an institutional trustee has been acting on an ad valorem fee basis.
- **Familiarity:** Because families from civil law countries may be unfamiliar with the trust concept, a PTC can bring into play the use of a corporate vehicle whose make up and regulations are much more familiar.
- **Confidentiality:** The A PTC can be used to limit the extent of information that would otherwise normally be provided to third parties. Documents and confidential information remain in the control of its board.
- **Transferability:** An increasingly common issue with large trust structures under offshore management is when there is a need or requirement to change jurisdictions or administrators. Complexities arise if the relationship with the overseas professional trustee has started to break down and/or the request of retiring trustees for lengthy indemnities result in extensive negotiations. Usually, the PTC’s local service providers will have a contractual relationship with the board of directors such that the transfer of administration should not be subject to the same risks associated with the transfer of trusteeship. Either the board or shareholders of the PTC can terminate the contract for the provision of services with the local service provider and appoint another third party in the same or a different jurisdiction. The appointment and removal of directors will normally be set out in the PTC’s Memorandum and Articles of Association, but usually, as a last resort, the PTC’s shareholders can unilaterally replace the board.
- **Consolidation:** While institutional trustees may often be unwilling to own certain types of assets such as private company shares or active businesses, the PTC’s board can make its own policy decisions.
- **Choice of advisers:** The PTC’s board can contract and outsource any of the responsibilities that the company has at its own discretion. Offshore institutional trustees may often have differing views as to who they can or cannot appoint. A PTC therefore provides much greater flexibility in the way in which family trusts and affairs are run.

WILL A PRIVATE TRUST COMPANY BE REGULATED OR NOT?

Acting as a trustee will usually be a regulated activity. If the fiduciary carries on activities “by way of business in or from the Bailiwick of Guernsey, or by a company incorporated in the Bailiwick ...”³, a fiduciary licence will be needed. If, as is usual (but not always the case), the PTC is for one particular family or a specified group of trusts and there is no intention of undertaking a trustee business from which a profit is derived, then the PTC can seek an exemption from the Regulations. Alternatively, if the PTC can demonstrate that its arrangements fall outside the scope of the Regulations, then it can simply opt out. Advice should be sought prior to a PTC being established as there is no formal process or prescribed criteria. Guernsey has not introduced specific PTC legislation as other jurisdictions have, as it is not treated as a “product” but rather a reflection of the particular requirements of the individual situation. This approach provides much greater flexibility.

OFFICERS OF THE PRIVATE TRUST COMPANY AND PHYSICAL PRESENCE IN GUERNSEY

Company Law⁴ requires all Guernsey companies to have a registered office and local agent in Guernsey. There is no requirement to have Guernsey resident directors or a Guernsey resident company secretary, albeit it would be unusual not to have any Guernsey officers involved in the running or the maintenance of the PTC. Company law permits individual or corporate directors. Typically, however, the PTC’s board is made up of Guernsey professionals or a mix of family members, trusted advisers or friends and third party Guernsey service providers. The board’s make up will clearly depend upon the family’s dynamics and their wishes regarding the administration of the underlying trusts. There is no requirement to hold board meetings in Guernsey, albeit advice will normally be sought as to where the management and control and “seat” of the company ought to be (typically driven by tax considerations). Otherwise, the corporate governance aspects can be driven by the family and it is possible to create various committees that will advise the board, typically in respect of investment or audit requirements etc. The role of the company secretary should not be overlooked, as it will be key to ensure that the company remains compliant in respect of the Regulations, the Company Law and various other legal or legislative requirements. Often this role is reserved for the Guernsey resident service provider.

WHO USES PRIVATE TRUST COMPANIES?

There are numerous roles that a PTC can fulfil. They are commonly used by wealthy families as a replacement for overseas institutional trust companies as part of their overall succession and wealth management planning.

A PTC will often be formed to act as family trustee for one or more trusts which may own some or all of the family’s principal assets. The number and type of trusts will depend on the individual family requirements and trusts may be set up for individual family units or members which may own some assets through specific underlying corporate vehicles. As a consequence, certain types of assets can be ring-fenced in terms of potential future liabilities, whilst retaining centralised control and ownership. PTCs can also be used to act as trustee of commercial trusts, e.g. acting as trustee of an employee benefit trust which might have a portion of family company shares held for management incentive purposes. Another commercial use is to act as trustee of the family’s own or “in-house” collective investment schemes, unit trusts or mutual funds.

³ Section 1 (1) of the Regulations. Section 2 sets out those activities which will be treated as regulated.

⁴ Companies (Guernsey) Law 2008

OWNERSHIP OF THE PRIVATE TRUST COMPANY

Typically, the PTC will have no value of its own as it will be undertaking its responsibility as “trustee” of the various family trusts and holding those assets in its capacity as trustee rather than in its own right. Nevertheless, the PTC, as trustee, wields the ultimate power and therefore care must be taken with its ultimate ownership.

It is also generally considered to be undesirable that the ownership should have a direct link with the settlor or principal beneficiaries of the trusts which it administers. In order to sever this link, therefore, a PTC often will be “orphaned” by having its shares owned by one of (i) a charitable trust, or (ii) a purpose trust or a company limited by guarantee (i.e. a company without share capital). With the introduction of Foundations¹ in Guernsey, it is now possible to establish a Foundation to act as a PTC. As a Foundation itself is not “owned” by anyone, its use obviates the need to have any other overlying ownership structure.

CONCLUSION

In global planning terms for wealthy families, PTCs provide a very attractive proposition to allow the family to consolidate the principal family assets under a flexible structure which the family can influence and develop in line with its own corporate governance principles.

Trust Corporation of the Channel Islands Limited is able to assist in all aspects of PTC establishment and management, both in Guernsey and elsewhere.

Michael Betley
Chairman

Trust Corporation International
PO Box 665, Roseneath
The Grange
St Peter Port
Guernsey
GY1 3SJ

Tel +44 1481 730430 / Fax +44 1481 730460
Email: michael.betley@trustcorpci.com
www.trustcorpci.com