

Private Trust Companies

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Introduction

Private trust companies (PTCs) are established with the sole purpose of acting as a corporate trustee to a trust or a number of trusts, provided those trusts are "connected".

PTCs are commonly used by high net worth (HNW) families in their wealth structuring, for a number of reasons. They protect confidentiality, they provide a comprehensive framework under which family members can be involved in decision making (by being on the board of the PTC) and they can avoid the complications of succession when used in conjunction with a STAR Trust (explained below).

The speed at which a PTC can be established, and the relatively low cost of operation have made PTCs extremely attractive to HNW families and their advisors.

Background

PTCs have existed in the offshore world for a number of decades. Originally they were a key part of employee benefit trust planning, but their popularity in private wealth planning has increased exponentially over the last 15 years or so.

In Cayman, PTCs were first introduced in 2008, via the Trust Companies Regulations, 2008 (the Regulations). The Regulations introduced a new type of Trust Company, which did not require a Restricted Trust Licence to be maintained with the Cayman Islands Monetary Authority. This significantly reduced the cost, compliance burden and delay involved in setting up a Trust Company under the old law. PTCs are the trustee of choice for many settlors of Cayman Islands trusts.

A PTC can be established in as little as 1 or 2 days in most cases. This is considerably quicker than establishing a Trust Company with a Restricted Trust Licence, where the process can take several weeks to complete.

Qualifying Requirements of Private Trust Company

The Regulations prescribe a number of conditions which the PTC needs to meet in order to be exempt from the requirement to hold a Restricted Trust Licence. They are:

- The PTC needs to be incorporated in the Cayman Islands (generally as an exempted company, limited by shares)
- To maintain a registered office in the Cayman Islands (at the office of a company that holds a Trust Licence under the Banks and Trust Companies Law)
- That the name of the company includes the words "Private Trust Company" or the letters "PTC"
- That the PTC conducts only "connected trust business" (explained below).

It ultimately falls to the Trust Licence Holder to ensure that all due diligence requirements are

met in relation to the PTC.

What is "connected trust business"?

"Connected trust business" is trust business where the contributors of funds to the trusts are all "connected persons" in relation to each other. The term "connected person" is then defined within the Regulations. The Regulations broadly look at degree of family connection, and connections via groups of companies. We are able to advise, in any given situation, as to whether the trusts would be connected for the purpose of the Regulations.

The Benefits of Using a PTC

Amongst the benefits of using a PTC as trustee are:

- Confidentiality can be maintained by using a PTC, rather than a large and highly regulated international financial institution as trustee.
- PTCs allow trusteeships to be harmonised among a group of trusts (even those governed by different laws).
- PTCs facilitate the direct involvement of family members (and trusted advisors) in the decision making processes.
- Succession issues are reduced by structuring for the owner of the PTC to be a STAR Trust.
- PTCs can be set up quickly and at much lower cost than establishing a Trust Company with Restricted Trust Licence.

Ownership of the PTC - Using STAR Trusts

Additional benefits arise when a PTC is utilised in a structure along with another Cayman Islands innovation, the STAR Trust. A STAR Trust is a trust which is established for the benefit of persons, purposes or both. It is not limited by a perpetuity period (and so can effectively continue indefinitely). The rights of enforcement of a STAR Trust are granted to, or reserved by, an Enforcer.

STAR Trusts were introduced into Cayman Islands Law under the Special Trusts (Alternative Regime) Law 1997, which is now found within Part VIII of the Trusts Law. One of the major innovations of the STAR Law was the departure from the notion of the beneficiaries of a trust having "beneficial ownership" of the trust assets.

By using a STAR Trust to hold the shares in a PTC it is possible to create a corporate trustee whose shares are not in the beneficial ownership of any person. The STAR Trust's purpose is then to hold the shares in the PTC and to facilitate the PTC acting as trustee on a trust or trusts, in compliance with the Regulations.

Utilisation of the PTC / STAR structure avoids the problems of ownership of the PTC, particularly in the event of deaths occurring within a family. Without this structure, if the owner of shares in a PTC dies, the shares in the PTC form part of that person's estate and will pass according to the provisions of his or her will. This may lead to unfortunate results and can be the cause of trust disputes and litigation.

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