

## PRIVATE TRUST COMPANIES IN JERSEY

### What is a Private Trust Company?

The Private Trust Company's (PTC) sole purpose is to act as trustee of a specific trust or a related group of trusts for a specific family. In an environment where providers of trust services are regulated, a Jersey incorporated and/or administered PTC is exempt from the licensing requirements under the Financial Services (Jersey) Law 1998 (the 1998 Law) so long as it only provides trustee services for a specific trust or trusts; it does not solicit from or offer such services to the public, and; the administration of the PTC is carried on by a person registered to carry on trust business in Jersey. The flexibility of the PTC arrangement has led to an increase in its popularity during the past several years.

### Advantages in establishing a private trust company

PTCs are used in a variety of situations and may prove most useful where a family is looking to create one or more trusts for different purposes, which might include the ownership of real estate, aircraft, yachts or separate closely held interests in a family business. The PTC is also highly effective when consolidating the administration of various family trusts and the structuring of interests in private family mutual funds or private equity investments.

With trust settlors often reluctant to relinquish total control over and involvement with assets settled into trust, where tax considerations permit and provided the PTC is administered properly, a settlor and his or her family may retain a material degree of control and involvement without prejudicing the validity of the subject trusts. The use of a PTC can also provide a framework within which a settlor, family members, chosen professional advisors and even certain key employees who have a close working knowledge of the family's particular business might be appointed as a director of the PTC and participate in the various fiduciary decision-making processes. The trustee (through the board of the PTC) can, therefore, remain highly knowledgeable of and sensitive to a family's circumstances, the inclusive arrangement fostering greater familiarity. Naturally, when undertaking the responsibility of acting as directors of the PTC, all relevant individuals shall be obliged to fulfil the legal obligations associated with such a role but the composition of the board should allow commercial decisions to be made swiftly.

Whilst a PTC can offer significant benefits, it is necessary to bear in mind that if it is not seen to be acting in a truly independent manner, it may increase the possibility of the trust being challenged.

Recognised by most as a key to preserving wealth across generations, the education of beneficiaries can be comprehensively undertaken within the forum of a PTC arrangement. The board can form advisory and sub-committees, so that various family members can sit on these committees in order that they might become familiar with the management of the family's financial assets and, where appropriate, contribute to deliberations underlying the exercise of the trustee's dispositive and other powers.

### Owning a private trust company

Ownership of the issued shares in the PTC is an important consideration for a client and his or her advisors. The particular dynamics and tax situation of the client family will strongly influence any thinking in this regard, but decisions will still have to be made relating to the succession of the shares and whether, perhaps, different classes of shares should be created. Whilst an entrepreneurial patriarch might want to take the issued shares in his own name or in the name of a nominee, this may give rise to unfavourable tax consequences and even compromise the degree of confidentiality provided by the structure. Further concerns might also exist among family members not included as shareholders themselves. For these and several other reasons, the common alternative ownership arrangement involves the use of a Jersey (non-charitable) purpose trust or Jersey Foundation.

### **Creating a private trust company**

The Jersey PTC can normally be incorporated within three to four business days of the delivery of the application for its corporation. Although, by paying an additional fee of £200 to the local authorities, it is possible to arrange for same day incorporation.

There is no prescribed minimum where the capitalisation of a Jersey company is concerned. In this respect, it is accepted that a PTC might be created with an authorised share capital consistent with its particular requirements and an issued share capital appropriate for the circumstances of its ownership. For example, it is now permissible under the Companies (Jersey) Law 1991 (as amended) to have a single shareholder such as the trustee of the overlying purpose trust. There is no ongoing requirement to submit to the Jersey Financial Services Commission (the 'JFSC') any financial statements in respect of the PTC or any of the trusts for which it acts as trustee, nor is there any formal application procedure for exemption from registration under the 1998 Law; all that is stipulated is that the name of the PTC is notified to the JFSC.

As there will be no Jersey resident shareholders, the Jersey PTC would not be subject to paying tax in Jersey on its worldwide income and bank deposit interest paid by Jersey banks. To take advantage of the preferential tax regime, the PTC would be an International Service Entity (this effectively has replaced the old 'Exempt' company) and would be subject to an annual fee of £100. The same preferential tax treatment would apply to all underlying trusts, however, no annual fee is payable.

With its customised flexibility the Jersey PTC continues to represent a useful structuring option in the arena of high net worth private client wealth planning.

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This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact either Kathy Gillen or Paul Camara:

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