Corporate Services

Private Trust Companies (PTCs)

Fiduchi has a team specifically dedicated to establishing and administering private trust companies ("PTCs") for international families or for other groups that have a common interest.

Private trust companies are now widely used in international finance structuring and are increasingly being set up by high net-worth private clients. These clients, for varying reasons, have decided to establish their own PTC to act as the trustee of the trust (or group of trusts) they wish to create, rather than transferring assets to a professional trustee company.

This summary considers key issues relating to the establishment and use of a Jersey PTC in the context of private wealth management.

Why use a PTC?

A PTC's only purpose is to act as trustee of the family's trust structure. Typically, clients seek to use PTCs to take advantage of the possible benefits they offer over a professionally managed trust in terms of privacy, control and cost. PTCs also allow families or groups to structure their affairs in such a way as to allow for as much or as little participation by members as they wish, which can assist with getting different generations to participate in the interests of the family, or with ensuring that such participation is more strictly controlled.

Structure

PTCs offer many advantages for the modern-day high net-worth settlor, but in order to be effective, care must be taken at the outset to establish the structure properly and identify who within the structure will be responsible for what. This is important from a regulatory viewpoint, as well as from a tax and legal perspective.

In addition, where several family members are involved with the activities of a PTC, care must be taken to highlight and manage any conflicts of interest. This is something that can be addressed from the outset under the terms of the constitutional documents, for example by introducing investment committees or setting specific voting rights.

Ownership of the PTC is clearly a key issue for most UBOs. The shares in a Jersey PTC can be held in a number of ways, but tax advice must be taken in this respect particularly if there is a requirement for a UBO to divest himself of control in order to satisfy tax requirements in his home jurisdiction.

It is possible for an individual to hold the shares of the PTC personally. This could be done by, for example, the settlor or another family member. However, holding the shares personally could create probate concerns both within Jersey and in the individual's home jurisdiction. Shares of Jersey companies do form a part of an individual's Jersey estate upon that individual's death. There is no inheritance tax in Jersey, but shares so held will require a grant of probate upon the death of the holder and Jersey stamp duty of up to 0.75% of the value of the shares will become chargeable (note that shares held jointly, e.g. by a spouse, will pass to the survivor without the need for probate).

In addition, where shares are personally held, a UBO must take into consideration who those shares will pass to upon his death and whether that will have an adverse impact on his wishes for the long term running of the PTC.

Traditionally, shares in a Jersey PTC have been held via a purpose trust, which can be charitable or non-charitable. Where non-charitable, a Jersey purpose trust must have an enforcer. An enforcer is an individual appointed to enforce the terms of the purpose trust. Typically, a UBO will appoint a trusted family advisor to this role.

Increasingly, PTCs are being owned by foundations. A Jersey foundation is an incorporated entity with a separate legal entity. However, as with a purpose trust, the Jersey foundation is an 'orphan' vehicle. It does not have shareholders, beneficiaries or any other type of owner. This, coupled with the fact that it can exist in perpetuity, means that succession planning is much easier and the risk of probate issues is mitigated.

Aside from ownership, another core issue to consider when structuring the PTC is the composition of the board of directors. The UBO may wish to be on the board, or may want to appoint a team of trusted advisors, or he may simply wish to be able to exercise a veto over such matters. It is possible for the UBO to exercise considerable control over this aspect of a Jersey PTC, but the usual considerations must be given to the tax and privacy rules of the UBO's home jurisdiction and those of the proposed directors. For example, great care must be taken if one of the directors is resident in an unfavourable jurisdiction and is deemed, under the rules of that jurisdiction, to be managing and controlling the PTC.

Control of the board can be designed into the constitutional documents of the structure at the outset, for example by requiring under the terms of the trust that the trustee is required to seek the approval of the settlor or enforcer when appointing/removing directors of the PTC. Alternatively, the articles of the PTC may include various requirements, such as an obligation on directors to abstain where there are conflicts of interest.

When administering a PTC, Fiduchi will always require representation on the board of the PTC. This ensures that the PTC is able to evidence experience of trust management on its board and allows for family appointed directors to rely on Jersey trust and regulatory expertise.

Regulation

Under the relevant Jersey legislation, any person who carries out trust company business in the Island must be registered by the Jersey Financial Services Commission. PTCs are exempt from this requirement provided that the PTC (in general terms):

- only provides trust company business services in respect of a specific trust or trusts;
- does not solicit from or provide trust company business services to the public; and
- has its administration carried out by a person registered to carry out trust company business.

Once a Jersey PTC satisfies the above requirements, it is subject to relatively light touch regulation compared both to regulated Jersey trust companies and to PTCs in some other jurisdictions. For example, a Jersey PTC:

- does not need to seek express exemption from regulation by the JFSC (the JFSC require only a letter to notify them of the existence of the PTC;
- does not have to submit an annual filing or pay any annual fee over and above the usual company returns;
- does not specifically require management by a regulated service provider.

Conclusion

PTCs offer high net worth families an attractive planning alternative to the traditional professionally managed trust. The possible uses are extensive and can simultaneously involve both commercial and philanthropic objectives. A PTC can be used to consolidate the administration of serval family trusts, thereby conveniently managing and preserving family wealth and allowing the settlor to actively plan both his succession and the future ownership of family assets.
A PTC can allow families to maintain greater control over its trusts and those trusts' underlying interests. Additionally, the PTC structure can have a dynastic influence, allowing and encouraging the introduction of different generations into the management of the family's affairs in a meaningful but strictly controlled way.

In order for a PTC to be effective it is important that the settlor's wishes are understood at the outset and that these are consistently communicated to the relevant members of the family and the management of the structure. Bespoke trust deeds and company articles or other governing documents are used in order that each PTC structure can be set up precisely how each client wishes. However, communicating this to families, especially after the settlor's death, is not always straightforward. Consideration must be given to this from the beginning and one established way of creating family awareness and acceptance is to agree a family charter, which sets out the principles and intentions of the settlor at the establishment of the PTC. These charters can be as informal as a family wishes and individual families can arrange them in whatever manner they choose, thereby reducing the chances of future disputes regarding the management of the PTC.

If you would like to know more about Fiduchi or if you want to discuss further PTC's, please contact one of our team below.

Robert Ayliffe
Executive Director
+44 (0) 1534 755 124
+44 (0) 7700 349 750
robert.ayliffe@fiduchi.com

Terry Northcott
Associate Director
+44 (0) 1534 755 178
+44 (0) 7797 715 421
terry.northcott@fiduchi.com

Annabelle Bishop
Manager
+44 (0) 1534 755 135
+44 (0) 7797 966 270
annabelle.bishop@fiduchi.com

Rachel Akers
Assistant Manager
+44 (0) 1534 755 127
rachel.akers@fiduchi.com