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Private Trust Companies in Jersey

During recent years professional trust advisers in Jersey have noticed a significant increase in the use of private trust companies (PTC) which act as trustee of family trusts, especially in those cases where the settlor of the trust wishes family members to retain a degree of involvement in decisions relating to the trusts.

The sole purpose of a PTC is to act as trustee of a family trust (or of a series of trusts, all for the benefit of different members of the family). The board of directors of a PTC will usually include both members of the family, possibly the settlor of the trust and other immediate family, and trusted family advisers. In this way the family can actively participate in the decisions that need to be taken by the PTC as trustee, including decisions relating to the control and management of companies owned by the trustee.

Whilst Jersey has become renowned as a jurisdiction for wealthy individuals to establish trusts in which they settle some of their wealth for estate, succession and tax planning purposes, there are a large number of people who are not familiar with trusts and who are reluctant to give third-party trustees control over their trust's assets. For these people, a PTC over which they have some degree of control or influence, may be much more acceptable to act as the trustee of their trust.

Benefits of using a PTC

One of the benefits of establishing a PTC is that it should not be necessary for the settlor to provide a letter of wishes to the trustee. Whilst a letter of wishes is a useful guide to independent third-party trustees, it is a poor substitute for a thorough understanding of the needs and wishes of the settlor and beneficiaries. The board of directors of the PTC would normally include family members who are sufficiently close to the settlor and to other family members, to be able to ensure that the intentions of the settlor are observed. A PTC may also provide greater comfort for the settlor that his or her objectives in creating the trust will be met.

In choosing the board of directors of a PTC, the settlor may appoint family members who will at a future date become principal beneficiaries of the trust. In this way, the settlor is able to use the PTC as a vehicle to familiarise the family members with the wealth and business interests owned by the trusts and instruct them in the management of those assets.

There is another benefit of using a PTC that should not be underestimated, particularly in cases where the underlying assets are invested in private companies that are actively trading; a PTC is often better able to react promptly to a request for trustee approval for a major transaction (for example, a sale of an important part of the business owned by the trustees) than an independent, institutional trustee, which will often wish to examine the transaction in detail and probably take legal advice, before giving its approval. This can result in considerable delays to such transactions.

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Directors of a Jersey PTC

One of the benefits of establishing a PTC to act as trustee of a family trust is that it is possible to choose the directors of the PTC; these are the people who will make decisions about how the PTC will exercise its discretionary powers and how it will manage the trust assets. Whilst the settlor may be one of the directors, consideration will need to be given as to whether or not this is desirable, especially if it may adversely affect the fiscal position of the trust; likewise, whilst other beneficiaries and family members may also be appointed to the board of directors, advice should be sought as to whether or not this will affect the tax position of the PTC or cause the trust itself to suffer adverse tax consequences.

Commonly, other family advisers, legal advisers, accountants, tax advisers and so forth, may also be appointed to the board of directors; whilst it is usual to have at least one director from the Jersey trust company which will be responsible for the administration of the PTC.

During 2006, Article 56 of the Trust (Jersey) Law 1984 was revoked. This removes the personal liability of directors of Jersey corporate trustees as guarantors in the event of a breach of trust by the corporate trustee.

Administration from Jersey

Commonly, when the settlor of a trust chooses Jersey law as the proper law of the trust, the intention is that the trustee will be a Jersey person or entity and that the trust will be administered in Jersey. Jersey trustees generally have to be licensed and regulated by the Jersey Financial Services Commission (JFSC), under the provisions of the Financial Services (Jersey) Law 1998; however, if the trustee is a Jersey PTC it may be exempt from the requirement to be licensed and regulated, so long as it falls within the scope of the exemption set out in the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000. This Order provides that the PTC must act as trustee solely of a specific trust or group of trusts; must not solicit or provide trust company business from the public; and must itself be administered by a registered trust company services provider within Jersey.

Minerva is a registered trust company services provider, and therefore authorised to administer a Jersey PTC.

There is no requirement to submit to the JFSC or to any other statutory body in Jersey any reports or accounts of either the PTC itself or of the trusts of which it acts as trustee.

Ownership of a PTC

There are a number of ways in which a PTC may be owned: for example, the settlor may own it directly; or another member of the family may own it. A common solution is to have the shares of the PTC owned by Jersey trustees of a purpose trust, the sole purpose of which is to own the shares of the PTC for the benefit of the settlor and family members.

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The PTC has little or no intrinsic value; its sole purpose is to act as trustee of the family trust and so its value is usually no more than the amount of its paid-up share capital, which may be minimal.

Costs

Whilst the costs of establishing both a PTC and the trust or trusts of which it is to act as trustee, are generally higher than the cost of simply establishing a trust, the on-going costs may be less than the trustee fees that would be charged by an independent third-party trustee, particularly if the trust assets are very substantial, as such independent trustees will often charge fees that reflect the risk element of acting as trustee, a risk that increases as the value of assets increase. Whilst fees and other costs must necessarily be calculated on an individual basis, it is usually the case with substantial trust assets that the benefits of establishing and using a PTC outweigh the costs.

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.

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