

# CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, viewed from a low angle. The building is partially obscured by a semi-transparent blue overlay containing text. The foreground shows a paved plaza with a pattern of light and dark tiles.

## **British Virgin Islands Private Trust Companies**

## Preface

This Publication has been prepared for the assistance of those who are considering the formation of a Private Trust Companies in the British Virgin Islands (“**BVI**”). It deals in broad terms with the requirements of BVI law for the establishment and operation of such entities. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients.

We recommend that our clients and prospective clients seek legal advice in the BVI on their specific proposals before taking steps to implement them.

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## 1. INTRODUCTION

A private trust company (“**PTC**”) may be incorporated in the BVI and will have a limited business purpose to act as a trustee for a specific trust or a related group of related trusts.

The Financial Services (Exemptions) Regulations 2007 (the “**Regulations**”) exempt a PTC from regulation and licensing under the Banks and Trust Companies Act 1990 (“**BTCA**”) provided that the PTC carries on either unremunerated trust business or related trust business and no other business.

The general rule under the BTCA is that no company may carry on the business of acting as trustee from within the BVI without possessing a trust licence issued by the BVI Financial Services Commission (“**FSC**”).

## 2. RATIONALE FOR ESTABLISHING A PTC

### 2.1. Control

Settlers of trusts may be reluctant to relinquish complete control over and involvement with the assets settled into trust. Where tax and other considerations permit, and provided the PTC is administered properly by observing all correct formalities, a settlor and his family may retain a certain degree of control and involvement without prejudicing the legal validity of the trust structure.

### 2.2. Familiarity and Continuity

Settlers expect the trustee to be knowledgeable of and sensitive to their family's circumstances and to administer the trust accordingly. Through the involvement of family members and/or close family advisers on the board of directors, a PTC will be more familiar with the settlor's family than an institutional trustee.

Furthermore, a PTC is less likely to experience the disruption caused by the potential turnover of staff often seen in institutional trustees.

### 2.3. Flexibility

A PTC may be tailored to suit the settlor's intentions and the scope of its role and powers as trustee can be fine-tuned accordingly. In particular, use of a PTC will be designed to co-ordinate administration with the family's independent investment advisers and any family office, thus streamlining and simplifying administration.

### 2.4. Cost

The annual fees of institutional trustees are often calculated on an ad valorem basis and can be considerable where assets of significant value are placed in trust. By comparison, the costs of incorporating and running a PTC can be subject to client control and may be less expensive for large trusts.

### 2.5. Family Education and Governance

As a family "owned" company, a PTC provides a structured forum which can enhance the education of beneficiaries who will inherit large fortunes. It will be important that such beneficiaries understand how

the family's assets are managed and, where appropriate, to contribute to the decision making of the trustee.

## 2.6. Professional Liability

Institutional trustees, increasingly concerned about their potential liability and the risk of being sued, can be reluctant to take on ownership of assets with perceived higher risks (e.g. high-risk capital investments, companies operating business assets such as ships, aircraft and commercial real estate). In these circumstances, a professional or bank trustee will often be more agreeable to administer a private trustee company and provide directors rather than acting as trustee itself.

## 2.7. Individual Liability

If, given a choice of acting as a trustee directly or as a director of a PTC, an individual would be well advised to choose the latter since this will enable him to avoid the risk of personal unlimited liability which flows from individual trusteeship.

## 3. THE PTC

A PTC is a company incorporated in the BVI and will have a limited business purpose to act as a trustee for a specific trust or a related group of related trusts. It is not permitted to solicit trust business from members of the public.

A PTC will not be required to obtain a trust licence under the BTCA where its trust business consists solely of either:

- unremunerated trust business; or
- related trust business.

**“Unremunerated trust business”** is carried on where no remuneration is payable or received by the PTC or any person associated with the PTC in consideration for providing trust services.

The provision of professional director services does not breach this rule provided that it is paid or received with respect to professional director services provided to the PTC, and the director is not otherwise associated with the PTC, for example as a beneficiary of the trust.

**“Related trust business”** means providing trust business to either a single qualifying trust or a group of related qualifying trusts. To be a qualifying trust, each beneficiary of the trust must either be connected to the settlor (as defined in the Regulations) or a charity. Related trusts are defined as trusts the settlors of which are connected to each other.

A PTC will be treated as carrying on “related trust business” if it acts as trustee of:

- (a) a single trust, all the beneficiaries of which are charities or are related to the settlor by blood, marriage or adoption, or is the settlor; or

- (b) more than one trust, each of the settlor of which are related by blood marriage or adoption and all of the beneficiaries of which have those relationships to the settlors of the trusts, or are the settlors (or are charities).

#### **4. INCORPORATION**

The name of a BVI PTC must end with the designation “PTC” placed immediately before the Limited or Ltd.

The memorandum of association must state that it is a private trust company. No governmental approval is required to set up a business company in the BVI. The incorporation process for a business company requires the filing of its Memorandum and Articles of Association with a certificate from its first registered agent and incorporation can usually be completed within 24 hours, subject to completion of KYC procedures.

#### **5. REGISTERED AGENT**

The PTC is required to have a registered agent holding a Class 1 trust licence issued under the BCTA and must ensure that the PTC meets and continues to meet the requirements for exemption.

The registered agent of a PTC must:

- satisfy itself that the company complies with the requirements of the Regulations;
- ensure that up-to-date records in respect of the company and the trust(s) are kept at the registered agent’s office in the BVI; and
- immediately notify the FSC in writing if at any time the registered agent is of the opinion that the company has failed to comply with the requirements of the Regulations.

#### **6. VISTA TRUSTS**

At least one of the trustees of a BVI VISTA trust must be a BVI company licensed under the Banks and Trust Companies Act, or a BVI PTC. Individuals or non-BVI companies may be co-trustees of VISTA trusts.

For more information, please refer to Conyers Dill & Pearman’s Publication “[British Virgin Islands VISTA Trusts](#)”.

#### **7. RECORDS AND PRIVACY**

In the BVI, the PTC’s certification of incorporation, memorandum and articles of association, and name and address of the registered office and registered agent are available to the public. Trust documents, copies of which must be held by the registered agent (referred to above) and internal correspondence and records are confidential and not open to public scrutiny.

The Memorandum and Articles of Association do not need to include the names of the directors or shareholders of the PTC. Such information is retained separately by the registered agent of the PTC and while shareholder names are not a matter of public record in the BVI, a list of the names of current directors is available to the public upon payment of a fee.

## **8. COMPANY AND DIRECTOR LIABILITY**

### **8.1. Liability of the Company**

A BVI PTC owes the same fiduciary and statutory duties to act in the best interests of beneficiaries as any other trustee (subject to any exclusion in the trust instrument). The directors of the PTC must act in the best interests of the company and are subject to certain statutory duties as well as fiduciary duties and duties of skill and care at common law.

### **8.2. Liability of Directors and Officers**

The duties and responsibilities of directors derive from the company's memorandum and articles of association, common law and statute. There are two main categories of directors' duties:

- fiduciary duties, imposed by common law, which include the obligation to act honestly and in good faith in the best interests of the company; and
- duties of skill and care which impose an obligation to ensure that the director's actions are performed with the degree of skill and care which would reasonably be expected from a person of like knowledge and experience.

Directors' duties are owed by each director individually and are generally owed to the company and not to individual shareholders nor to beneficiaries of an underlying trust. There are a number of offences for failure to comply with the requirements of the BVI's Business Companies Act.

## **9. TAXATION**

The BVI has no form of income tax, withholding tax, capital gains tax, estate duty or inheritance tax referable to companies, trusts or private individuals.

*This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

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