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Private Trust Companies

The question of who should act as the trustee of a trust is a fundamental and preliminary question in any trust structuring, the options typically being either a professional trust company or a private trust company which is incorporated specifically to act as a trustee. Conyers is able to provide legal advice and a comprehensive range of corporate, fiduciary and administrative services in connection with the establishment and ongoing administration of a PTC incorporated in either Bermuda, the British Virgin Islands or the Cayman Islands.

What is a PTC?

A private trust company (“**PTC**”) is a company established and structured with the sole purpose of acting as trustee for a specific trust or a related group of trusts, such as trusts established by the same settlor or family group. PTCs are exempt from the licensing requirements otherwise applicable to companies seeking to provide trustee services under banking and trusts legislation, provided that the PTC complies the applicable regulations restricting the trusts to which they can provide services. PTCs would not usually charge trustee fees unlike a professional trustee.

Many high net worth individuals and families use a PTC when looking to structure their family wealth. Where the person establishing a trust (generally referred to as the “settlor”) is reluctant to relinquish control over the assets transferred to a trust, a PTC may be a suitable option for settlors and family members to retain a certain degree of control and involvement without prejudicing the legal validity of the overall trust structure. The board of directors of the PTC can include family members and their trusted advisors, as well as any local professionals thereby allowing a greater degree of control and familiarity with the decision-makers of the trustee.

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Benefits of using a PTC

There are many benefits to using a PTC. Not only do they allow for the direct involvement of family members in the decision-making process, they also:

allow for familiarity and continuity within the structure as family members will be more familiar with the assets of the trust as well as more likely to stay on the board of the PTC for a longer duration, whereas using an institutional trustee which may have ongoing staff movement or turnover is likely to cause disruption within the structure;

provide flexibility as the Articles of Association of the Company can be tailored to suit the settlor's intentions and the scope of its role and powers as trustee can be fine-tuned accordingly;

provide a structured forum for overall family education and governance which can enhance the education of the beneficiaries so they understand how the family's assets are managed and, where appropriate, can contribute to the decision making of the trustee; and

provide a more cost-effective structure as the annual service and regulatory fees associated with a professional licenced trust company are often higher than that of a PTC.

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Structure of a PTC

The simplest structure for the ownership of a PTC's shares is that the settlor or members of the settlor's family hold the shares personally. However, this is often not desirable as it may give rise to tax or probate issues noting that the shares fall within the individual shareholder's estate which may lead to disruptions or an undesirable outcome in the event of the shareholder's passing.

Therefore, it is common for a purpose trust to hold the PTC shares. The purpose trust is established for objects only (i.e. it does not have any named or individual beneficiaries), its purpose broadly being to hold the shares and facilitate the management of the PTC. This means that the "parent" of the PTC is a licensed trust company (such as the Conyers Group of Trustees) which holds the shares of the PTC in its capacity as trustee for the corresponding purpose trust. The trustee's role is relatively passive such that the management and administration of the PTC is left to its board of directors, which would ordinarily comprise of the persons nominated by the settlor and their family.

Cayman Foundation Company as PTC

Another option available in the Cayman Islands and which allows for more simplified structuring is for a Foundation Company to act as the PTC. A Foundation Company operates like a hybrid between a company and a trust meaning that while it has many of the same features as an ordinary company, including separate legal personality, it can cease to have any members or owners and can therefore exist solely for objects. This is an attractive feature for PTCs which are not necessarily designed with 'ownership' at the forefront (as a PTC will not usually generate profit on its own account as it is acting on a gratuitous basis). The settlor or family group is still able to exercise control over the PTC and the composition of its board, but will not have an ownership interest. This may overcome any tax or probate issues without the need for an additional purpose trust to hold the shares of the PTC.

“The Conyers team is knowledgeable and responsive, and covers a wide range of offshore jurisdictions and legal areas.”

— Legal 500, 2024

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Why Conyers?

With nearly 40 years in Asia, the Hong Kong office of Conyers continues to lead the way in providing offshore legal advice to many of Asia's largest and most innovative corporate and private clients. Conyers' private client practice consistently maintains top-tier rankings and has a long-standing history of advising some of the world's wealthiest individuals and groups, including in various high-profile and contentious matters.

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Through our affiliated Conyers Client Services, an international network of licensed trust and corporate services providers, we provide a broad scope of trustee, fiduciary and related administration services meaning we are able to deliver a comprehensive and complete service to clients seeking to establish a PTC.