

INTRODUCTION

Many potential Settlers of trusts find the prospect of relinquishing control or influence over their assets to the trustees daunting.

Result? Several distinct methods of allowing the retention of an acceptable degree of influence have developed.

One such method is the use of what is known as a "Private Trust Company."

Changes to Guernsey Trust Law introduced in the Trusts (Guernsey) Law, 2007 have made Guernsey an attractive jurisdiction in which to site Private Trust Companies.

KEY FEATURES OF A PRIVATE TRUST COMPANY ("PTC")

A PTC does not have a distinct legal form from any 'normal' company. It is formed with the express intention of acting as a corporate trustee for one or more related trusts.

The Board of directors of the PTC will typically consist of majority representation from a licensed fiduciary services provider, such as Guernsey Trust Company Limited but may also include the Settlor and/or other members of the family or other professional advisors, who may well have a longer and more trusted relationship with the settlor than a fiduciary services provider might, at the outset of the relationship.

By allowing Board representation by the family, the Trustee can be better able to understand the needs of the beneficiaries and be aware of and respond to changes within the family unit.

If, as is usual, the PTC does not charge the trusts for which it acts any fees, it is not obliged to obtain a Fiduciary Licence.

Ownership of the PTC can be structured in such a way so as to keep it out of the estate of the Settlor if this is a requirement of the planning.

It is normally a pre-requisite that residence of the PTC for fiscal purposes is retained in a nil or low tax jurisdiction.

WHY GUERNSEY?

PTCs have been in use for a considerable time in other jurisdictions. However, recent changes in trusts legislation in Guernsey have raised Guernsey's profile as a potential host jurisdiction for PTC structures.

Firstly, directors of a corporate trustee of a Guernsey Trust are no longer deemed to be personal guarantors for any damages or costs awarded by the Court against the Trustee in respect of any breach of trust. This was previously a major disincentive to any individual whose appointment to the board of a PTC was proposed (examples: a member of the Settlor's family or a trusted advisor).

Secondly, Guernsey Trust Law now expressly permits the creation of a non-charitable purpose trust, one of the most common vehicles for the ownership of a PTC (see below).

Guernsey remains one of the leading international financial centres and has a very strong base of fiduciary service providers and supporting financial services, such as lawyers, accountants, tax advisors, banks and asset managers.

Guernsey has also developed innovative structures for asset holding, including Protected Cell Companies and Incorporated Cell Companies alongside modern and progressive companies legislation.

OWNERSHIP OF A PTC

Typically, a PTC will be formed as a company limited by shares and one issue that can arise is the most suitable mechanism for holding the shares in the Company.

It is possible for these shares to be retained in the possession of the settlor or in some other family vehicle.

However, often this is not desirable as risks can be attached to the ownership of such shares, such as their potential seizure and a subsequent enforced change in the Board of the PTC.

By forming a non-charitable purpose trust, whose purpose is to hold the shares in the PTC, ownership of the PTC can be removed from any estate.

ALTERNATIVE METHODS OF RETAINING CONTROL

PTCs are not universally seen as the panacea for retention of control/influence and there are alternatives, including the following:

Trusts may be drafted to incorporate a Protector, who may be given a range of active (powers to direct trustees) and/or passive (powers to veto trustees) powers. This role may be fulfilled by the settlor or by a trusted friend or advisor.

The Settlor can retain powers by express provision in the Trust Instrument. Guernsey Trust Law confirms that a trust shall not be invalidated by the reservation of a wide range of powers by the settlor.

Clearly other considerations as to the appropriateness of such reservations of powers must be made, particularly the potential effect on the tax residency of the trust.

POTENTIAL ABUSES AND ATTACKS

As with any situation where the intention is to allow an element of control to remain with the settlor, care is necessary to ensure that only the appropriate level of control is retained and that the whole structure is not essentially a sham.

It is important that majority control is retained by an independent fiduciary and that any other board members are not empowered to act in isolation or from inappropriate locations (such as whilst resident in a high-tax jurisdiction).

Meetings of the Board should be held in Guernsey to evidence Guernsey as the place of management and control (and therefore residence) of the PTC and the underlying trust(s).

GUERNSEY TRUST COMPANY ("GTC")

GTC can advise and assist in the formation, structuring and ongoing administration of a PTC and the underlying trusts.

GTC can also advise and assist in the set up and ongoing administration of the purpose trust (if necessary), as well as the PTC itself.

We have extensive experience in acting as trustees and in trust and corporate management and administration.

Our experienced and professional staff will ensure that the appropriate matters are dealt with in a timely and efficient manner and are well used to dealing with wealthy individuals, their families and their professional advisors.

Our close relationship with Collas Crill, one of the leading legal firms in the Channel Islands, gives us immediate and efficient access to first class legal support.

We are always happy to discuss potential solutions to clients' needs and concerns, whether of a general or specific nature.

For further information or professional advice, please contact:

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