Private Trust Companies in Jersey

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A private trust company (PTC) is a privately owned corporate trustee that is often the vehicle of choice to act as a trustee of a trust or a number of trusts holding the assets of very wealthy families.

Establishing a PTC is often considered to be an integral part of the private wealth structuring process for those seeking to establish a dynasty of private wealth. The corporation itself may be registered in any jurisdiction and the board of directors is often constituted by family members, trusted advisors of the family and professionals working in the jurisdiction of incorporation of the PTC.

Jersey Regulatory Requirements

The conduct of trust company business is regulated by the Financial Services (Jersey) Law 1998 (the '1998 Law') which provides that (1) a Jersey company shall not carry on or hold itself out as carrying on trust company business anywhere in the world and (2) any other person shall not carry on trust company business in or from within Jersey, unless they are registered under the 1998 Law. A company will be considered to be carrying on trust company business when it is involved in the business of providing company administration or trustee or fiduciary services and in so doing provides one or more services which are listed under article 2(4) of the 1998 Law. These services include, inter alia, acting as/or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust.

Private Trust Company Business Exemption

A PTC is able to operate in Jersey without registering under the 1998 Law in accordance with the private trust company business exemption provisions contained within the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 where:

1. the purpose of the PTC is solely to provide trust company business services in respect of a specific trust or trusts;
2. the PTC does not solicit from or provide trust company business services to the public;
3. the administration of the PTC is carried out by a person registered to carry out trust company business; and
4. the name of the PTC is notified to the Commission.

The following should accordingly be noted in relation to the exemption:

- The sole purpose of the PTC must be to provide trust company business services in respect of one or more trusts. If there are multiple trusts it would be expected that they are all linked to the same family.
- As mentioned above the PTC need not be a Jersey company. It may be incorporated in any other jurisdiction in which case this exemption will only be relevant if the PTC operates in or from within Jersey.
- No specific provisions are required in the constitutional documents of the company. A suitable memorandum of association and articles of association can be supplied.
- The registration exemption applies only to the provision of trust company business services in respect of trusts. Services provided to companies are not covered by the exemption.
- There is no formal procedure for the securing of the exemption and importantly there is no public record of PTCs. The name of the PTC must however be notified to the JFSC.
- One advantage of this exemption is that the PTC would no longer be required, as a result of a recent change in Jersey legislation, to apply its own anti-money laundering (AML) procedures, appoint a money laundering reporting officer and money laundering compliance officer, or to register with the JFSC for AML purposes. Reliance is instead placed on the registered trust company business which provides administration services to the PTC to apply its AML procedures.

Administration

A question often asked is what is meant by "administration" as detailed in bullet point c. above for the purposes of the exemption. There is no published guidance from the Jersey Financial Services Commission (JFSC) as to what constitutes "administration" so for example it is not a requirement for the trust company service provider to supply one or more of the directors of the corporate trustee. The entire board may be constituted by family members alone. This may be attractive to wealthy individuals who desire to retain a tight rein on their interests, in particular where an insulated family business constitutes the assets of the trust.

However including experienced trust practitioners on the board ensures proper management within the jurisdiction's regulatory expectations complementing the knowledge of the family directors. It is also important to note that the JFSC would expect the administrator to be in a position to be aware of and understand the activities of the PTC, even if this is achieved without it being represented on the board of the PTC.

Generally the JFSC will rely upon the regulated service provider to ensure compliance with the terms of the exemption.

Owning a private trust company

The simplest structure is for the client or members of the client's family to own the shares in the PTC in their personal names. This is however unattractive to many clients as it may cause issues with taxation, confidentiality and heirship. An alternative is to arrange for the shares of the PTC to be held upon the terms of a charitable or non-charitable purpose trust. If a non-charitable purpose trust is used the client would have the benefit of appointing an enforcer who is commonly a trusted professional family adviser. Alternatively an orphan ownership structure could be achieved by using a Jersey foundation to hold the shares in the PTC.

Another advantage of using the trustee of a charitable trust or non-charitable purpose trust as the shareholder is that the client has the comfort of knowing that the ownership of the PTC need not change for an indefinite period. This is particularly attractive to those clients with dynastic ambitions for family wealth.

Other considerations

Directors of corporate trustees of Jersey trusts were until late 2006 automatically deemed to be guarantors for damages and costs awarded by the Royal Court of Jersey against corporate trustees for breach of trust. The statutory guarantee provision under the Trusts (Jersey) Law, 1984 (Article 56) was repealed by the No 4. Amendment to the Trusts (Jersey) Law which came into effect on 27 October 2006.

The liability of directors of a PTC will accordingly fall to be assessed in accordance with the general principles based on a director's duty of care to a company generally.

Features of a PTC

1. Type of company used - Private, no limit on place of incorporation
2. Licensing requirements - None
3. Registration requirements - None
4. Approval from JFSC - No, simply notify the name
5. Public record of shareholders - Yes, but use of nominees is possible (if Jersey company)
6. Public record of directors - No (if Jersey company)
7. Annual filings - Yes, annual return and fee for the PTC
8. External audit - No, unless constitutional documents specify
9. Jersey taxation - 0% income tax and GST exemption available
10. No. of directors - Minimum of one, if a Jersey company
11. No. of shareholders - Minimum of one, if a Jersey company
12. Jersey resident Directors required? - No
13. Jersey administration required - Yes, by registered service provider
14. Jersey registered office - No, unless a Jersey registered company

Whitmill Trust Company Limited is a fully licensed and regulated service provider in Jersey and has extensive experience of acting for wealthy families in the administration of their affairs.

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