

Jersey: Private Trust Companies and Private Trust Foundations

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Introduction

A client wishing to create a trust has to come to terms with the requirement to transfer legal ownership of assets to the trustee. In the context of offshore wealth planning, the trustee may be a service provider's professional trust company, likely to be operating in a foreign jurisdiction. If the client is concerned about taking this step, one solution may be the use of a private trust company (PTC). This is a corporate trustee established for the purpose of acting as trustee of a specific trust or trusts. It is often used as an integral part of the private wealth structuring for those seeking to establish a substantial and long-lasting structure for their family or family office. The board of directors can include family members, trusted advisors of the family and local professionals.

An alternative to a PTC is a private trust foundation (PTF), which uses just a foundation, rather than the more traditional PTC structure where a company is owned by a purpose trust (see more detail on this below under 'Ownership'). The fact that a PTF is naturally orphaned and can be simpler to administer can make it more attractive to some clients, as it does not need a purpose trust to sit above it.

Regulatory Requirements

Jersey has strict regulatory requirements for the conduct of trust company business (including acting as trustee of a trust), but provided certain requirements are met, a PTC or PTF is able to operate in Jersey exempt from the requirement to be registered to provide trust company business services with the Jersey Financial Services Commission (JFSC).

The requirements for the exemption to apply are:

- the purpose of the PTC or PTF must be solely to provide trust company business services in respect of a specific trust or trusts (for example, trusts for the benefit of the members of one family);
- the PTC or PTF must not solicit from, or provide trust company business services to, the public;
- the administration of the PTC or PTF must be carried out by a person who is regulated by the JFSC to carry out trust company business; and
- the name of the PTC or PTF must be notified to the JFSC (this is normally done in the process of incorporation of the PTC or PTF).

The PTC or PTF is likely, however, to have to register with the JFSC in accordance with Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 for the purposes of anti-money laundering (AML), countering the financing of terrorism (CFT) and countering proliferation financing (CPF). The PTC or PTF will need to meet the AML/CFT/CPF obligations set out in the Money Laundering (Jersey) Order 2008. This will typically involve the appointment of an anti-money laundering services provider (or AMLSP) in Jersey.

Administration

The board of directors of the PTC may be constituted by family members (or their trusted advisors) alone. This may be attractive to clients who wish to remain closely involved in their interests, perhaps where a family business is held in the trust. However, the presence of a professional who is experienced in trusts

and corporate governance on the board can be an advantage in complementing the knowledge of any family directors. In addition, some regulated trust company businesses will require, as a condition of agreeing to administer the PTC, that they have a representative appointed to the board.

The position with PTFs is similar, in that the foundation council may include family members (and trusted advisors) but it must include a qualified person, being a person registered under the Financial Services (Jersey) Law 1998 to conduct financial services business.

Ownership

The simplest structure is for the client or members of the client's family to own the shares in the PTC and to hold them in their own names. This may, however, not be attractive to clients for a number of reasons, including taxation, confidentiality or asset protection. It also requires thought to be given as to the devolution of the shares in the PTC on the death of the owner and difficulties may also arise on incapacity.

A common alternative is for the shares of the PTC to be held on the terms of a non-charitable purpose trust, the sole purpose of which is to hold those shares and to provide a trustee to the relevant trusts. Alternatively a Jersey foundation could be used as the owner of the PTC.

An advantage of using a non-charitable purpose trust or foundation as shareholder is that the client has the comfort of knowing that the ownership of the PTC can be perpetual. This is particularly attractive to a client with dynastic ambitions for family wealth.

If a PTF is used there is no need for there to be a separate non-charitable purpose trust or foundation to hold the shares or other membership interests in the trustee entity. This is because a foundation does not need to have any shareholders or members.

We can advise on the suitability of a PTC or PTF and the pros and cons of different ownership structures.

Summary in respect of PTCs

Type of entity	Private company
Licensing / registration requirements	Schedule 2 likely for AML/CFT/CPF
Approval from JFSC	No (other than for Schedule 2)
Annual filings	Yes (annual confirmation statement and fee for the PTC)
External audit	No (unless constitutional documents require)
Jersey taxation	Zero per cent income tax
Number of directors	Minimum of one
Number of shareholders	Minimum of one
Jersey resident directors required	No
Jersey administration required	Yes (by a regulated trust company business)
Jersey registered office	Yes

Summary in respect of PTFs

Type of entity	Foundation
Licensing / registration requirements	Schedule 2 likely for AML/CFT/CPF
Approval from JFSC	No (other than for Schedule 2)
Annual filings	Yes (annual confirmation statement and fee for the PTF)
External audit	No (unless constitutional documents require)
Jersey taxation	Zero per cent income tax
Number of council members	Minimum of one qualified member
Number of shareholders	None
Jersey resident council members required	Yes (the qualified member)
Jersey administration required	Yes (by a regulated trust company business)
Jersey registered office	Yes

Contacts

A full list of contacts in our International Trusts & Private Client team who specialise in this area can be found [here](#).

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