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The trusted solution in wealth structuring

## British Virgin Islands private trust companies

**A Private Trust Company ("PTC") is a limited liability company that has the primary function of acting as the trustee of a specific trust or related trusts. In the past, trustee services were often provided by individuals, but in the offshore environment this role is usually undertaken by professional trustees. For many reasons, PTCs are becoming increasingly popular.**

### Why a PTC

There are several advantages to a PTC over either an individual or professional trustee.

The role of trustee is particularly onerous, as trustees must act in accordance with the express provisions of the trust deed and in accordance with their fiduciary responsibilities to the beneficiaries of the trust. As a result of the decision in *Bartlett vs. Barclays Bank Trust Co. Ltd.* in 1980, trustees also have duties to monitor and supervise the activities of any underlying companies. This creates very considerable liabilities, in an age of increased trust litigation.

PTCs are usually established by family members to act as trustee to one or more family trusts. Instead of contracting with an independent trustee, a PTC is established to act as the trustee.

A PTC has the benefits of limited liability, and as it is a company that operates within the framework of BVI company law, its ongoing operation and administration is easily understood by family members.

Assuming that family members are willing to and capable of serving in that capacity (see section below on structuring), family members may choose to serve as directors of the PTC. This allows for greater control of the trust assets within the family, increased confidentiality, flexibility and increased speed of decision-making. As an example, family members will likely to be more familiar with the company assets, and have greater expertise in running a family trading company than a professional trustee.

All of the above will be possible, as day-to-day matters will not need to be referred to independent professional trustees, which will also lead to reduced running costs. If the services of professional trustees are required, this would be possible either through a professional trustee acting as a director of the PTC, or through the provision of administration or accounting services.

### PTC structuring

Once a trust structure has been established, a PTC cannot simply be left to be struck off the BVI register as it will have primary responsibilities to the beneficiaries of the trust.

Therefore, prior to establishing any such structures, we strongly recommend that clients obtain appropriate legal and tax advice to fit their circumstances and to fully understand what they are entering into.

The composition of the board of directors of the PTC should be carefully considered. As explained above, it is likely that family members will wish to serve as directors of the PTC. However, any adverse tax consequences should be considered, and the possibility of directors' personal liability, although remote, cannot be discarded entirely.

Director services by professional trustees may be required or desired, although it is unlikely that family members will wish to be in a minority on the PTC board.

The Shareholders of the PTC should also be carefully considered as they will have the power to remove the PTC directors, and this is an aspect that is often overlooked.

It is not generally advisable that the shares of the PTC are owned by a family member, due to potential probate and succession issues on the death of that family member. An alternative and more robust option is to have the shares of the PTC held by a trust, either a VISTA trust or a purpose trust (in both cases a licensed BVI trustee would be required), or by a company limited by guarantee.

## The BVI Legislation

The Financial Services (Exemptions) Amendment Regulations, ("the PTC Regulations"), were introduced on 2 August 2007, and amended on 27 December 2007, replacing the Banks & Trust Companies (Application Procedures) Directions, 1991.

The PTC Regulations further clarified the BVI's legislation for private trust companies, and confirmed it as an excellent jurisdiction in which to establish PTC structures.

## The procedures

To qualify as a PTC under the PTC Regulations, and thus be exempt from any approval or licensing process, the company must be incorporated or re-registered under the BVI Business Companies Act 2004. A clause in the memorandum of association of the company must state that it is a PTC, and the company must include "PTC" in its name.

In order for the PTC to remain exempt, the company must either (a) receive no direct or indirect remuneration for trustee services, (the remuneration of professional directors and payments made to meet costs do not constitute remuneration); and/or (b) carry on "related trust business" (i.e. only act as trustee of one of more trusts of which the beneficiaries have a specified family relationship to a single settlor or to related settlors).

In addition, the PTC must carry on no business other than trust business, as per (a) &/or (b) above, and must not solicit business from the public.

If all requirements are met, as above, then exemption is automatic and no approval is required from the BVI Regulator.

The PTC Regulations confer a significant obligation on the BVI registered agent to ensure compliance at incorporation and periodically thereafter. The registered agent must retain a copy of the trust deed and any deed or document that varies the trust, and must on a periodic basis take all reasonable steps to ensure that the PTC continues to comply with the PTC Regulations.

Nerine can provide draft Memorandum & Articles of Association for PTCs, and incorporate and administer them going forward. Independent legal advice should be taken, however, regarding the drafting of trust deeds.

## Conclusion

We believe that the BVI PTC Regulations provide a clear, efficient and cost-effective regime for the incorporation of PTCs and ensure that the BVI remains an excellent jurisdiction for such structures.