The trusted solution in wealth structuring

Private trust companies

One of the challenges that high net worth families have to deal with when they establish a trust structure is to find a way to play an ongoing role in the administration of their trust without compromising the benefits that the trust structure provides. For many such families, the solution to this issue is to establish a private trust company - a PTC - exclusively for their use and benefit.

The PTC that they establish will act as a trustee for the trust – or trusts – connected to the family.

In order to avoid the costs and complexities of regulation, the PTC will not charge a commercial fee for acting as trustee, although it will nonetheless be important to observe the rules that apply in this respect in the relevant jurisdiction. Nerine has experience in negotiating these rules on behalf of clients in numerous jurisdictions.

Why a PTC?

For a trust to be effective, it is critical that the settlor clearly and unambiguously transfers ownership of the assets to be settled into the trust to his trustee. Conceptually, this can be quite a difficult hurdle for the settlor to overcome – the assets often represent the accumulation of a lifetime's effort, and giving them over to an unconnected third party can seem like a daunting prospect. Considering that you are talking about wealth that can be in the tens or hundreds of millions, that is no surprise.

For the ultra-high net worth family, there is a commercial benefit in creating a PTC that they can own and control to act as trustee. Through the constitution and board of the PTC, the family can effectively exercise a degree of control over the PTC as a corporate trustee of the family's trusts.

Influence and control of the structure can be achieved in a number of ways:

- The family will retain the ability to nominate directors of the PTC. Whilst we generally require that we provide at least one of the directors, we are often joined on the board by family members and/or trusted family advisers.
- The trust can include reserved powers, so that the right to make certain decisions is retained by the settlor or someone that he/she nominates.
- The settlor can provide the board of the PTC with guidance on an ad hoc basis and/or through a letter of wishes.
- The family can act as directors of the offshore and/or onshore subsidiaries, and so keep control of day-to-day decisions at that level.

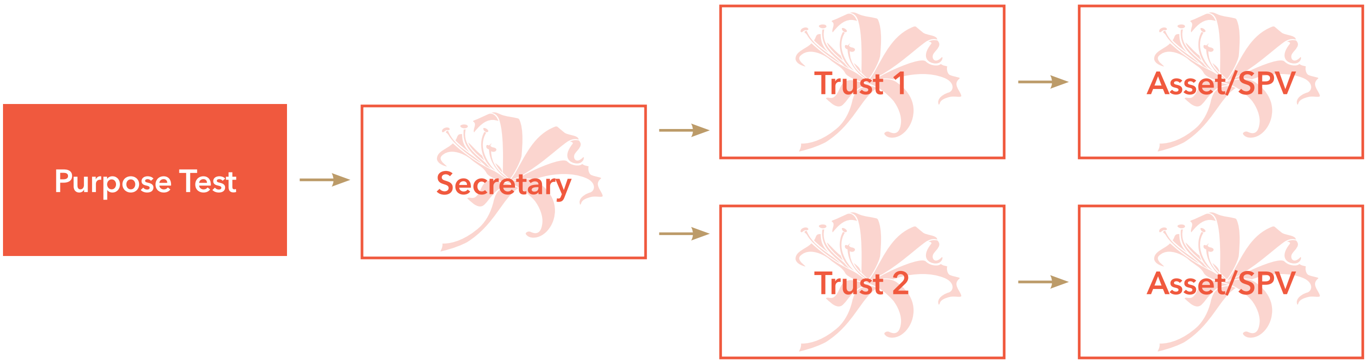
Ownership of a PTC?

This is a crucial point, as the ownership of the PTC needs to be carefully structured. The traditional PTC vehicle is a company – limited either by shares or guarantee. Each of these presents estate planning challenges, as you need to find a way to own the shares or determine how the guarantee members will be replaced.

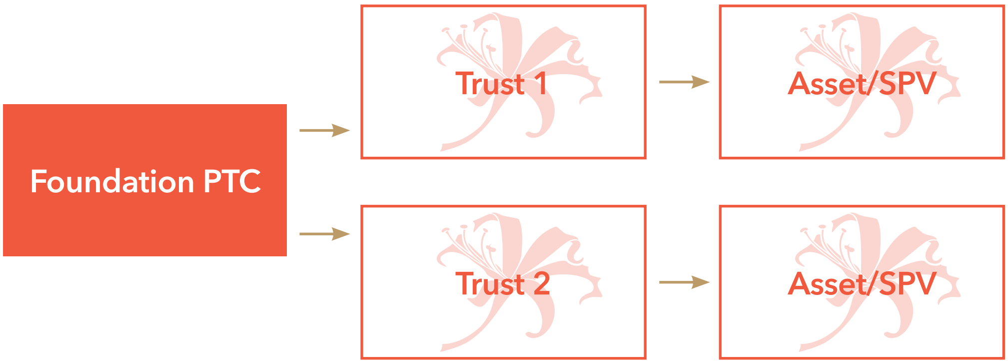
With that in mind, Nerine now offers a solution using a Guernsey foundation to act as the family controlled trustee. This avoids the succession issues noted above, as the foundation can endure indefinitely.

The two alternative structures are shown below.

The traditional PTC structure



The foundation PTC structure



Advantages of a PTC?

- Family members can take board positions
- Consolidation of administration of various family trusts
- Can own separate closely held interests in a family business
- Family having a degree of control
- Transfer of trustee requires just a change in board and administrator (not transfer of trusteeship)