

Private Trust Company

This note provides some basic information about Jersey private trust companies and their characteristics.

Overview

When it comes to exercising greater control, rapid decision-making, security and lower costs, the Private Trust Company (“PTC”) is often the structure of choice for ultra high net worth families, as opposed to appointing a professional trust company to act as trustee.

A PTC is a company formed for the specific purpose of acting as a trustee of a single trust or group of related trusts. A PTC is an ideal structure, which provides a means by which a settlor (or his/her family) can retain a greater degree of control over their trust affairs without compromising the validity of the trust structure.

The composition of the board of directors is often made up of the beneficiaries, the settlor, the members of the settlor’s family, professional trustees and/or advisers, and this provides an opportunity to create a round-table forum. A PTC enables family participation and can lead to the start of a “family office”, where all the client’s financial affairs may be centralised.

Jersey Legislation and Regulation of the PTC:

A PTC operates in Jersey without being required to be licensed and regulated by the Jersey Financial Services Commission (the “JFSC”).

Trust company business in Jersey, is regulated by the Financial Services (Jersey) Law 1998 (the “Law”). The Law provides that trust company business will be carried on if by way of business (1) a person carries on business that involves the provision of company administration services, trustee or fiduciary services, or services to foundations; and (2) in doing so, provides any of the services which are listed in sub-clause (4) of Article 2 of the Law. According to the Law no person shall carry out Trust Company Business in or from within Jersey, unless they are registered under the Law.

A PTC, on the other hand, can rely on the exemption provided for in the Financial Services (Trust Company Business Exemptions) (Jersey) Order 2000, which states that a PTC shall be exempted from licensing and regulation under the Law, where:-

- the PTC is established for the sole purpose of providing trust company business services in respect of a specific trust or trusts (if there are multiple trusts it would be expected that they are all linked to the same family);
- the PTC does not solicit from or provide trust company business services to the public;
- the administration of the PTC is carried out by a person registered to carry out trust company business (“TCB”) services; and
- the name of the PTC is notified to the JFSC.

It should be noted that the registration exemption applies only to the provision of TCB services in respect of trusts.

Administration:

Administration of the PTC is carried out by a professional TCB. The TCB appointed to carry out the administration services may also provide a director to the board, although this is not a requirement. An added advantage of having experienced professionals on the board is that it ensures that there is enough knowledge and experience with regard to the proper management within the jurisdiction's regulatory expectations, which in turn could complement the knowledge of the family.

The JFSC still expects the administrator to be in a position to understand the activities of the PTC, even where it is not represented on the board, and it will generally rely upon the TCB to ensure compliance with the terms of the exemption. An administration agreement will need to be put in place between the PTC and the administrator setting out the terms of such agreement.

Ownership:

There are various options regarding the ownership, which includes a purpose trust, a charitable trust or a foundation. It is possible for the client or any members of their family to own the shares directly in the PTC, although the benefit of using, for example, the purpose trust is so that such shares can then be held for an unlimited duration and it will not form part of the settlor's (or other individual's) personal estate.

Advantages:

Apart from the apparent advantage that no registration is needed there are additional benefits, which include:

- possibility of rapid decision making, ensuring that transactions can proceed as swiftly as possible with momentum not being lost or hampered;
- the settlor or family can retain greater control and influence;
- future generations of the family can join the board of the PTC which will provide them with a platform from which they may take part in the family business and gain valuable information on the workings of such business;
- no formal procedure to qualify for the exemption, requirement to submit accounts or reports to the JFSC, and importantly, no public record of the PTC, ensuring a degree of confidentiality;
- avoiding the use of professional trustees to act as trustee, who may be mindful of their potential liability first, before taking any strategic decisions in respect of certain high risk transactions (which may well be in the best interest of the trust);
- a dedicated board of the PTC should have a superior understanding of the family's needs and requirements;
- avoidance of future changes in trusteeship of the trust; and
- avoidance of onerous indemnities intended to protect the professional (regulated) trustee.

Summary:

The PTC is an evolution from the traditional trustee, and provides a flexible structure for ultra high net worth individuals seeking flexibility and greater influence of control over their assets.

Should a PTC be required, Hatstone Lawyers will prepare the instruments of trust, whether that is under Jersey or English Law, depending on the client's preference. We will also assist with the preparation of the articles of association of the PTC and the administration agreement.

About Hatstone

Hatstone is a leading boutique multi-jurisdictional law firm with offices in Jersey, London, Panama and South Africa.

Our philosophy revolves around a Partner-led client service.

We believe that the right people will attract the best work and we have put in place a first class team to assist you. The team has been carefully chosen to ensure that there is experience and strength-in-depth.

- **Partner-led:** Our Partners each have a wealth of experience in banking and finance, the establishment and maintenance of investment funds, corporate and commercial, acquisitions and mergers, private equity and venture capital, structured finance, financial services and regulatory law, trusts and foundations. We believe that our clients benefit from having their affairs overseen by senior staff with the necessary experience.
- **Client Focus:** We are dedicated to providing a client focused services. Knowing our clients and understanding what drives their businesses is fundamental to us. We enjoy a very strong rapport with our clients whom have access to our lawyers 24/7 through the latest technology. Our principal aim is to help clients achieve their objectives by offering them pragmatic advice and solutions.
- **Transparency:** We are happy to work on a fixed fee basis (in most circumstances) and are transparent about our fees.

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