

Key Facts

Private Trust Companies and Private Trust Foundations

A Private Trust Company (PTC) or a Private Trust Foundation (PTF) may be used by individuals looking to establish estate planning or asset protection structures.

These types of structures would enable an individual to:

- retain a measure of control in relation to the structure being created
- preserve confidentiality
- ensure that the trustee will have a working knowledge in relation to the assets held within the structure (such as a family business) and will be able to respond speedily whenever commercial decisions need to be taken

A PTC or PTF is a privately owned company or a foundation established to act as the trustee to a family's trust (or group of trusts related to a family). The company or foundation is ultimately controlled by the settlor of the trusts or the family as a whole. Perhaps most notably, family members can sit on the board of the PTC or the council of a PTF.

Both PTCs and PTFs can be established in Jersey, which is chosen by professionals worldwide for its stable economic and political environment, and longstanding reputation as an international financial centre with a reliable, independent and efficient rule of law. Both structures can be established exempt from the registration requirements which apply in relation to financial service business under the Financial Services (Jersey) Law 1998.

The PTC or PTF will engage a professional trust administrator to undertake the administration (e.g., preparation of accounts, organization of meetings, record-keeping) of all the underlying trusts.

Jersey Private Trust Companies Typical Jersey PTC Structure

Jersey Purpose Trust

Jersey Private Trust Company (PTC)

Jersey Trust

Jersey Company

Key Features

A PTC is a privately owned Jersey Company with the sole purpose of acting as trustee of a specific trust or a related group of trusts, most often for a specific family. The PTC is often used by high net worth families seeking to retain control over their assets, since the assets are transferred to the stewardship of their own corporate trustee (the PTC) as trustee of the trusts that have been created to hold the assets, rather than transferring assets to an independent third-party trustee.

- Standard private company memoranda and articles of association can be used, however, for

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the exemption to be available, the PTC's purpose must be only to provide trustee services in respect of trusts.

- The PTC can have "Trust Company" in its name, which enables its identification as a private trust company vehicle.
- The PTC must not solicit from or provide trust company business services to the public. A PTC is restricted to acting as trustee in relation to one or more trusts established for a particular family and cannot provide or market its services to third parties.
- The administration of the PTC must be carried out by an entity which is itself registered under the 1998 Law to carry out trust company business – such as Trident Trust Company Limited.
- The board of directors will typically include one or more directors provided by the registered trust company service provider, as well as members of the family.
- There is no requirement to submit to the Jersey Financial Services Commission copies of documents in relation to the trust or trusts for which the PTC is to act as trustee. There is also no requirement that the constitutional documents of the PTC should name or refer to the trust or trusts which will be involved in the structure.

Advantages

A PTC offers three potential advantages:

- **Transfer of knowledge.** In choosing the board of directors of a PTC, the settlor may appoint family members who will at a future date become beneficiaries of the trust. In this way, the settlor is able to use the PTC as a vehicle to familiarise the family members with the assets and business interests owned by the trusts and instruct them in the management of those assets.
- **Increased understanding of the wishes of the settlor.** One of the benefits of establishing a PTC

is that it should not be necessary for the settlor to provide a letter of wishes to the trustee. Whilst a letter of wishes is a useful guide to independent third-party trustees, it is a poor substitute for a thorough understanding of the needs and wishes of the settlor and beneficiaries. The board of directors of the PTC would normally include family members who are sufficiently close to the settlor and to other family members to be able to ensure that the intentions of the settlor are observed. A PTC may also provide greater comfort for the settlor that his or her objectives in creating the trust will be met.

- **Speed of decision making.** A further benefit of using a PTC (particularly in cases where the underlying assets are invested in private companies that are actively trading) is that a PTC is often better able to react promptly to a request for trustee approval for a major transaction (for example, a sale of an important part of the business owned by the trustees) than an independent institutional trustee.

Ownership of a PTC

Deciding who owns the shares of the PTC will depend largely on the personal circumstances of the settlor and appropriate tax and/or other advice as sought on this in the settlor's own jurisdiction and any other relevant jurisdiction.

It is an option for the settlor to hold the shares personally, although this is rarely a satisfactory solution for tax and succession planning reasons or for clients who are sensitive to confidentiality or asset protection issues. A second option is for the shares to be held in a Jersey charitable or non-charitable purpose trust. In the case of a non-charitable purpose trust, Jersey's Trusts Law requires that an enforcer be appointed, independent of the trustee, whose duty it is to enforce the non-charitable purposes of the trust. A member of the settlor's family or an advisor can take on this role.

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Alternatively an orphan ownership structure could be achieved by using a Jersey foundation to hold the shares in the PTC.

Jersey Private Trust Foundations

A Jersey foundation combines many aspects of both a trust and a body corporate, and has many uses for offshore planning, as well as being of particular interest and appealing to planners from civil law jurisdictions already familiar with foundations.

Typical Jersey PTF Structure



Advantages

A PTF offers the same advantages as a PTC.

The sole purpose of the PTF is to act as trustee of the trusts for the benefit of the individual family and it is run and managed in a very similar way to a PTC, but with the significant advantage that, as an orphan vehicle, it does not have any owners or controllers. As such, the Jersey foundation offers a simple and practical solution for individuals seeking to establish a structure for which direct control is not attributed to them.

Key Features

A PTF has its own legal personality, separate and independent from its founder and any foundation officials. Unlike a company it has no shareholders and it is known as an "orphan entity". The founder can be the patriarch, but does not need to be since any person including a corporate entity can be the founder.

A PTF can have "Trust Foundation" or "Trustees Foundation" in its name, which enables its identification as a private trust foundation vehicle.

The foundation is run by its council in the same way that a company is run by its board of directors. The council may be made up of one or more members whose collective role is to fulfil the aims of the foundation in accordance with Jersey's foundation law, and the charter and regulations of the foundation itself. The council must have at least one "qualified" member (a person registered and licensed with the Jersey Financial Services Commission to carry on trust company business – Trident Trust Company Limited is registered to conduct these activities).

In addition to the qualified member, the council can be made up of any number of persons – such as the founder, trusted family advisers, family members or beneficiaries of the trust. In the same way that family members or advisers can hold the position of directors of the PTC, those individuals can also be council members of a PTF, enabling them to exercise control to ultimately carry out the foundation's objects.

The foundation must also have a guardian whose role is to ensure that the council carries out its functions in accordance with the objects of the foundation. The role of guardian may be carried out additionally by the founder or the qualified person, but no other council member can be the guardian.

Find Out More

Comprehensive information and a Key Facts sheet on Jersey Foundations is available upon request or by accessing our website www.tridenttrust.com.

If you would like to discuss any aspects of the above in more detail, please contact your usual Trident representative or email Trident Jersey directly at jersey@tridenttrust.com.

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