Private trust companies

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Purpose and structure

A private trust company (PTC) is a company formed to act as trustee for the trusts of one family. Its shares are usually held by a purpose trust, a foundation or a holding trust with a professional trustee, while its board is composed of family members, trusted advisers and independent directors. The PTC allows the family to take part in decisions about the trust, including distributions, without reserving powers to the settlor personally. The board of the PTC exercises those powers as trustee and owes fiduciary duties to the beneficiaries, which gives the family influence within a framework of accountability.

The advantages lie in governance and continuity. Family members who sit on the board learn the business of trusteeship and can be prepared to take over from the founder. Advisers who know the family can be appointed. Because the family controls its own trustee, a change in the ownership of a professional trust company no longer threatens the structure. The disadvantages are cost and liability. A PTC needs its own board meetings, minutes, accounts and compliance, while directors who are family members can be held personally liable for breaches of trust that a professional trustee would have avoided.

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The exemption and its condition

Singapore law permits PTCs and exempts them from licensing, so that a PTC need not register with MAS. It must, however, engage a licensed trust company to carry out its anti-money laundering compliance. MAS states the condition plainly: private trust companies "must engage a licensed trust company to meet AML/CFT requirements".[1]

This condition defines the Singapore model. The family keeps the trustee decisions, while a regulated institution carries out the customer due diligence, monitors transactions and reports suspicions. Supervision reaches the PTC indirectly through the licensed trust company that serves it. The model resembles the practice of Jersey and Guernsey, where an exempt PTC is administered by a licensed fiduciary. Hong Kong offers no specific framework, so Hong Kong families usually establish their PTCs in other jurisdictions.[2]

Who holds the PTC?

The ownership of the PTC raises a problem that Singapore law cannot solve on its own. If the family holds the shares directly, they form part of the family members' personal assets and estates, which exposes the PTC to their creditors and to succession disputes. The usual solution is a non-charitable purpose trust or a foundation that holds the shares for the sole purpose of owning the PTC. Singapore law permits neither a non-charitable purpose trust nor a private foundation. Families therefore hold their Singapore PTC through a Jersey, Guernsey, Cayman or British Virgin Islands purpose trust, or through a foundation established under the law of Liechtenstein, Jersey or Panama.

The result is a structure with an offshore top layer and a Singapore operating layer. Practitioners regard it as workable, although it adds cost and a second set of advisers. It also means that a Singapore structure cannot always be explained to a regulator, a bank or a court by reference to Singapore law alone. The critics quoted above see the absence of purpose trusts as the main reason why Singapore has not yet become a complete trust centre in its own right.

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When a PTC is the right choice

A PTC suits families with substantial and complex assets, typically an operating business, several trusts and relatives willing to take part in governance. It suits less well a family whose assets consist of a portfolio of bank accounts, for whom a licensed trust company acting as trustee offers the same protection at a lower cost. In practice, many PTCs in Singapore sit alongside a single family office that manages the investments of the trusts. The family office regime, examined in Chapter III of this Part, often requires a fund vehicle for those investments. That vehicle is increasingly the Variable Capital Company.

Notes

1. Bedell Cristin, "Jurisdictional Comparison" (August 2020), cited above, item (17): Trust Companies (Exemptions) Regulations and the Trust Companies Act; no requirement to be registered with MAS, but the PTC must engage a licensed trust company to carry out anti-money laundering services. MAS, "Licensed Trust Companies", cited above. ↩
2. Bedell Cristin, "Jurisdictional Comparison" (August 2020), cited above, items (17) and (21): an exempt Jersey PTC must be administered by a person licensed to carry out trust company business; an exempt Guernsey PTC must be administered by a company licensed under the Fiduciaries Law; Hong Kong has no specific legislation, and PTCs for Hong Kong structures are typically set up in alternative offshore jurisdictions. ↩

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