

Brief - Private Trust Company

Background

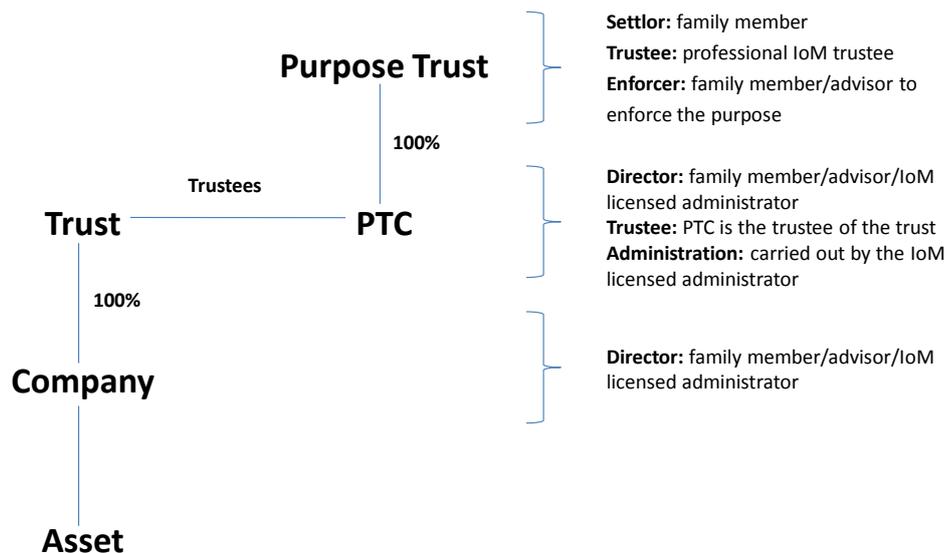
This briefing note is intended to provide essential information on the Isle of Man Private Trust Company ('PTC') and outline how a typical PTC structure works and is used in practice.

What is an Isle of Man PTC?

An Isle of Man PTC is a privately owned company that is incorporated specifically to act as trustee of a single trust or group of family trusts and is not permitted to offer trustee services to the public generally. PTC structures offer an opportunity for ultra-high-net-worth individuals to establish and manage, often with the assistance of their trusted advisors, their own trust company.

What does a typical PTC structure look like?

Below is what can be described as a 'typical' PTC structure. However, the structure is very flexible and can be modified in a variety of ways to accommodate a client's particular needs.



Elements of a typical structure

Purpose trust

A purpose trust is a particular type of trust which, unlike a conventional trust, can be formed to hold assets for a purpose without conferring a benefit on any person. In the case of a PTC, the express purpose of the trust would be to hold the shares in the PTC. The purpose trust is in itself an orphan vehicle which has no shares, so there are no ownership issues with the purpose trust.

Whilst the settlor can own the shares of the PTC, it is generally recommended that the settlor should not have any link with the PTCs' ownership, whether for tax, disclosure or some other reason. There



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may also be confidentiality issues and, if the trust fund consists of family assets, concerns that one person in the family is perceived to be in control of those assets. The preferred option is often for a purpose trust to own the shares in the PTC. The advantage of using a purpose trust is that there are no registration or disclosure requirements of such trusts under Isle of Man law. Therefore the ownership of the PTC will be 'confidential'. There is also the advantage that the shares in the PTC should be immune from an attack on the settlor.

Parties to the purpose trust include:

- The settlor (a family member).
- The trustee (normally a professional external trustee, licensed by the Isle of Man Financial Supervision Commission ('IoMFSC')).
- An enforcer (required under Isle of Man law as someone who can enforce the 'purpose' of the trust by holding the trustees to account).
- A trust committee is an 'option' as a way of the settlor trying to retain an element of control. He may opt to have a trust committee comprising family members/advisors, and provide such committee with a statement of purpose setting out how he would like the committee to act with regard to, for example:
 - appointment and removal of the enforcer
 - appointment and removal of trustees
 - directing trustees to appoint /remove directors of a PTC

The PTC

The incorporation procedure for a PTC is the same as for any Isle of Man company. An application is made to the Isle of Man registry by an authorised corporate services provider. On incorporation, one will need to file with the registry various application forms and a copy of the memorandum and articles of association.

Trusts and companies

The PTC becomes the trustee of the trusts, which in turn owns companies which often own underlying assets.

Administration

Board of directors

PTCs are run by the board of directors. Careful thought needs to be given to the choice of directors to ensure that the PTC, and ultimately the underlying trusts are run properly whilst avoiding potential pitfalls regarding management and control.

As the residency of a trust normally depends on where the trust is administered and where the majority of the trustees are resident, it is important that the PTC is not inadvertently resident in another jurisdiction.

Having a majority of its directors resident in that jurisdiction may result in the PTC being 'controlled' and 'managed' in such jurisdiction and, as a consequence, the trust being exposed to potentially adverse tax consequences.



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In addition to having the majority of the directors in the jurisdiction where the PTC has its registered office, the directors must be seen to be properly discharging their duties, understanding what they are doing, meeting to discuss and being aware of the company's business as opposed to acting as mere 'rubber stamps'.

The administration/management of the PTC and underlying trusts

This will normally be carried out by a licensed administrator in the Isle of Man. There will therefore need to be a management agreement in place between the PTC and the administrator setting out the terms of such agreement.

Licensing of PTC

In the Isle of Man, a PTC will only need to be licensed by the IoMFSC if it is receiving income, a fee, or other monetary consideration. Even though PTCs are often run on a non-profit basis, the PTC will have to charge fees, some of which will be valid trust expenses and others not. Where such fees are charged, it may be possible to apply to the IoMFSC for an exemption to regulation. Normally the IoMFSC will require various pieces of information including details of the name of the PTC, the directors, secretary and registered office, whether it will be charging a fee, confirmation that it is only acting as trustee of one or more trusts for one family and who will be administering the PTC.

What are the benefits of using PTCs?

Family control

Because PTCs offer ultra-high-net-worth individuals the possibility to compose the board of directors of the comprised of the settlor, family members and trusted friends/advisors who have a heightened knowledge of the family's business and financial affairs and are empathetic to the needs of the beneficiaries. It is possible for the board of the PTC to make decisions that are following the intention of the family, as their role as trustees of the underlying trusts.

As a result, family participation can:

- Allow the board of the PTC can make quick and informed decisions concerning the trust assets due to the board having an intimate knowledge of the settlor's reasons for the investment.
- Allow the PTC to deal with sensitive family issues more freely.
- Increase the speed and flexibility of dealing with trust assets.
- Enable the PTC to make confidential philanthropic payments. PTCs (and trust(s) for which the PTC acts as trustee) will usually be administered by a licensed administrator which will validly be represented on the board of the PTC. The benefits to the professional trustee are that it provides administration of underlying trusts as agent for the PTC and therefore is not liable as trustee.

Careful thought needs to be given to the composition of the board of a PTC and also who is to have the power to appoint and remove its directors, for example, a trust committee of the purpose trust, consisting of family members and advisors.



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Flexibility to change trustee

Having a PTC as trustee of family trusts there is little requirement to change the trustee, as it is comprised of the family members. If a change of licensed administrator is needed it is a quick and easy process.

Confidentiality

Ownership of the structure can remain confidential when structured with the use of a purpose trust.

Taxation of trusts in Isle of Man

Isle of Man income tax is the only local tax that may be applicable to trust structures. Where there is an Isle of Man trust with an Isle of Man resident beneficiary, undistributed income within the trust is taxed at 18%. In the Isle of Man, there is no capital gains tax, inheritance tax or gift or estate taxes. For beneficiaries who live internationally, there is no Isle of Man tax applied.

Why the Isle of Man

The Isle of Man has a significant number of different types of trust and other structures, each of which might be suitable for use in a different set of circumstances. In addition, the legal system is strong and has been extensively tested since the Trustee Act was passed in 1961 and as a result many clients take confidence in the Isle of Man as a trust jurisdiction of choice.