

British Virgin Islands Private Trust Companies

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Introduction

A client wishing to create a trust has to come to terms with the requirement to transfer legal ownership of assets to the trustee. In the context of offshore wealth planning, the trustee may be a service provider's professional trust company, likely to be operating in a foreign jurisdiction. If the client is concerned about taking this step, one solution may be the use of a private trust company (PTC). This is a corporate trustee established for the purpose of acting as trustee of a specific trust or trusts. It is often used as an integral part of the private wealth structuring for those seeking to establish a substantial and long lasting structure for their family or family office. The board of directors can include family members, trusted advisors of the family and local professionals.

Regulatory Requirements

The British Virgin Islands (BVI) has strict regulatory requirements for the conduct of trust business, which includes '*acting as a professional trustee, protector or administrator of a trust or settlement*' as well as '*managing or administering any trust or settlement*', but provided certain requirements are met, a PTC is able to operate in the BVI without requiring a trust licence from the BVI Financial Services Commission (the BVIFSC).

The BVIFSC is responsible for the supervision and regulation of trust business in the BVI. Subject to certain exceptions, including one for PTCs, as described more fully below, no trust business may be carried on from within the BVI unless the trust company holds a valid trust licence under the Banks and Trust Companies Act 1990 (as amended) (the **BTCA**).

The Financial Services (Exemptions) Regulations, 2007 (as amended) (the **PTC Regulations**) exempts a PTC from the requirement to obtain a trust licence under the BTCA if:

- it is incorporated in the BVI;
- its memorandum states that it is a PTC; and
- its trust business consists solely of 'related trust business' or 'unremunerated trust business'.

The name of a PTC must end with the designation "(PTC)" placed immediately before the corporate suffix.¹

'Related trust business' is trust business provided in respect of a single 'qualifying trust' or a group of 'related qualifying trusts', where:

- a 'qualifying trust' is a trust where each beneficiary is a person connected to the settlor, a charity or the settlor;

¹ Section 2, BVI Business Companies (Company Names) Regulations (S.I. 49/2007).

- trusts are 'related' if the settlors of those trusts are connected persons and a group of trusts are 'related' where each trust is related to all the other trusts in that group; and
- a person is a 'connected person' in relation to another person if they are in a relationship specified in the PTC Regulations (broadly, any individuals related by blood, adoption or marriage).

'Unremunerated trust business' is trust business carried on by a PTC where no remuneration is payable to or received by the PTC or any person associated with the PTC in consideration for or with respect to the services that constitute the trust business. For this purpose, remuneration payable to or received by a director of the PTC as director is remuneration payable to or received by the PTC, unless it is:

- with respect to director services to the PTC; and
- the director is not otherwise associated with the PTC, whether by virtue of having a direct or indirect beneficial interest in the PTC or otherwise.

Ongoing Requirements

1. A PTC:
 - (a) must not solicit trust business from members of the public;
 - (b) must not carry on any trust business other than unremunerated trust business or related trust business; and
 - (c) must ensure that at all times its registered agent is a person holding a Class I trust licence under the BTCA.
2. The registered agent must take all reasonable steps:
 - (a) on a periodic basis, to satisfy itself that the PTC continues to comply with the requirements not to solicit trust business from the public and to carry on only unremunerated trust business or related trust business;
 - (b) to ensure that up to date copies of the following records are kept at its office in the BVI:
 - the trust deed, or other document creating or evidencing a trust and any deed or document varying the terms of the trust, for each relevant trust; and
 - the documentation and other information on which it has relied to satisfy itself that the PTC complies with paragraph 2(a) above.
3. There is an initial registration fee of US\$1,350 and thereafter an annual fee of US\$1,350.

Administration

There are no requirements either as to who may act as directors of a PTC or that it must be administered by a licensed trust company, although professional administration is usual and normally recommended. The board may therefore be constituted by family members (or their trusted advisors) alone. This may be attractive to clients who wish to remain closely involved, perhaps where a family business is held in the trust. However the presence of an experienced trust practitioner on the board can be an advantage complementing the knowledge of the family directors. In addition, some licenced trust companies will require, as a condition of agreeing to administer the PTC, that they have a representative appointed to the board.

Ownership

The simplest structure is for the client or members of the client's family to own the shares in the PTC and to hold them in their own names. This may, however, not be attractive to clients for a number of reasons, including taxation, confidentiality or asset protection. It also requires thought to be given as to the devolution of the shares in the PTC on the death of the owner and difficulties may also arise on incapacity.

A common alternative is for the shares of the PTC to be held on the terms of a BVI non-charitable purpose trust, typically established under the BVI's VISTA Trust regime.² An advantage of using a purpose trust as

² For more information about BVI purpose trusts and VISTA trusts, see our guide *British Virgin Islands Trusts* or get in touch with one of your usual contacts or one of the contacts listed below.

shareholder is that the client has the comfort of knowing that the ownership of the PTC can be perpetual. This is particularly attractive to a client with dynastic ambitions for family wealth.

Summary

Type of company	BVI Business Company ³
Licensing requirements	None
Approval from BVIFSC	No
Annual filings	Yes (annual fee payable to the BVIFSC)
External audit	No (unless constitutional documents require)
BVI taxation	None
Number of directors	Minimum of one
Number of shareholders	Minimum of one
BVI resident directors required	No
BVI administration required	No
BVI registered office/registered agent	Yes, with a person holding a BVI Class I trust licence.

Contacts

A full list of contacts in our International Trusts & Private Client team who specialise in this area can be found [here](#).

³ For more detailed information on BVI business companies, please see *BVI Companies: A guide* or get in touch with one of your usual contacts or one of the contacts listed below.