

# Guernsey: 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

Guernsey has strict regulatory requirements for the conduct of trust company business (including acting as trustee of a trust), but provided certain requirements are met, a PTC is able to operate in Guernsey without requiring a licence to provide fiduciary services from the Guernsey Financial Services Commission (GFSC).

A PTC which does not act as a trustee, by way of business, in or from within Guernsey, falls out of scope of the regulatory regime and accordingly is not required to apply for a licence. A PTC will be deemed to act by way of business if it receives any fee or other consideration for acting as a trustee.

Where a PTC acts by way of business, it may nonetheless obtain a discretionary exemption from requiring a licence where:

- the purpose of the PTC is solely to provide trust company business services in respect of one family or group with a shared common interest;
- the PTC does not advertise or market its services in any way (and its name should not include any reference to 'trust' or 'trustee' unless the GFSC has provided permission to do so);
- the administration of the PTC is carried out by an entity licensed by the GFSC to carry out fiduciary services business in Guernsey; and
- the entity that administers the PTC confirms to the GFSC that it will retain sufficient knowledge and information about the PTC's ownership and control structure and about its activities to be satisfied that the PTC is effectively administered and governed and complies with relevant laws and regulatory requirements.

In addition:

- if an exemption is required from the GFSC, an application must be made for such exemption;
- there is no public record of PTCs; and
- the PTC is not required to apply its own anti-money laundering (AML)/combating financing of terrorism (CFT) procedures, appoint a money laundering reporting officer or money laundering compliance officer, or to register with the GFSC for AML/CFT purposes. Reliance is instead placed on the licenced fiduciary services business which provides administration services to the PTC to apply its

AML/CFT procedures and, as a matter of general policy, the GFSC will apply a standard condition to this effect on the exempted PTC.

### Administration

At least one representative from the licensed fiduciary services business that administers the PTC should be appointed to its board of directors. The rest of the board may be constituted by family members (or their trusted advisors) alone. This may be attractive to clients who wish to remain closely involved in their interests, 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 fiduciary businesses will require, as a condition of agreeing to administer the PTC, that they have a representative appointed to the board.

Generally the GFSC will rely upon the Guernsey regulated service provider to ensure the PTC continues to fall outside the remits of requiring an exemption or a licence from the GFSC or to ensure compliance with the terms of the exemption.

### 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 non-charitable purpose trust, the sole purposes of which are to hold those shares and to provide a trustee to the relevant trusts. Alternatively a Guernsey foundation could be used.

An advantage of using a non-charitable purpose trust or foundation as 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.

Another option now being used more frequently is for the PTC to be structured as a Guernsey foundation, which does not need to have any members, so there is no need for there to be a separate non-charitable purpose trust or foundation to hold the shares or other membership interests in the PTC.

We can advise on the suitability of a PTC and its ownership structure, incorporate the company and, where necessary, make the application for exemption on behalf of clients.

### Summary

Type of company	Private
Licensing requirements	None (but see above)
Approval from GFSC	Yes, where acting by way of business
Annual filings	Yes (annual return and fee for the PTC)
External audit	No (unless constitutional documents require)
Guernsey taxation	Zero per cent income tax
Number of directors	Minimum of one
Number of shareholders	Minimum of one
Guernsey resident directors required	No
Guernsey administration required	Yes (by a licenced fiduciary service business)

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Guernsey registered office	Yes
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## Contacts

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