



Private Wealth

Managing Wealth with Control and Confidentiality

By Zac Lucas and Sjoerd Koster

In this age of unprecedented growth in wealth, individuals and their families are becoming more and more international, not only because of overseas residence, employment or education, but also due to ownership of assets and investments situated abroad. As a result clients are now increasingly looking at offshore legal structures, beyond a simple offshore holding company, to consolidate ownership of their various international assets and to provide a means by which those assets may be held and managed for future generations.

A trust established and managed in the British Virgin Islands has traditionally proved to be the most effective and flexible means by which assets may be held and managed for future generations. However, for some families use of a BVI corporate service provider to administer their family trust (i.e. to act as trustee of their trust) was not an attractive option, as the family wished to manage their own affairs and only use a professional service provider where necessary. In response to demand, the BVI has now enacted new rules (the “PTC Regulations”) to permit individuals and families to incorporate a “Private Trust Company” (“PTC”) specifically to administer their family trust.

A PTC is a BVI Business Company that is specifically incorporated or adapted for use in administering a single or group of trusts. The PTC Regulations require the company to comply with a simple list of requirements:

The company must be incorporated in the BVI; the company must be limited by shares or guarantee; the company’s memorandum of association must state that the company is a “private

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trust company”; and the company name must include the designation “(PTC)”.

Note, that an existing BVI Business Company limited by shares or guarantee may be converted to a PTC by complying with the above requirements.

The PTC Regulations contain a number of restrictions on the use of a PTC, in particular the PTC may not conduct or be used for any other business activity other than as trustee of a trust, so for instance a PTC cannot also be used as a trading company or to hold investments separately to its function as trustee.

A PTC is able to be paid for acting as trustee provided that the trust is either for exclusively charitable purposes, or is a trust for the benefit of family members, excluding the person that created the trust, known as the “settlor”. If the settlor wishes to benefit from the trust then the PTC cannot be paid for providing its services to the trust.

Any person may be a director of a PTC, and may be paid provided that the PTC is acting as trustee of a trust which is for exclusively charitable purposes, or is a trust for the benefit of family members, as explained above. However, where the PTC acts as trustee of a family trust that includes the settlor as a beneficiary then neither the PTC nor its directors may be paid for providing their services. Note, this restriction does not apply to an unconnected professional service provided that acts as a “Professional Director” of a PTC, and so in this way families are able to utilize professional help in the administration of their PTC without restriction.

The principal advantage in using a PTC is that it facilitates greater family control over the trust, the decision as to whether or not to confer a benefit on a family member is not then left to a professional service provider that may know very little about the family or its circumstances. Equally, a PTC allows the family to control investment and management of the assets held in the trust without risk of interference from an outside professional services provider; certain clients are not comfortable transferring legal ownership of their assets to an offshore-based trust company, particularly if this includes the family trading business. In these cases, a client may be more inclined to have their assets owned by their PTC, which they have created and control themselves.

Many high-wealth families are concerned about their privacy and disclosure of confidential information regarding their assets and the family. By making use of a PTC they can get a greater degree of control over the information regarding their activities to ensure privacy in their financial affairs. The need for confidentiality often directly relates to the clients personal safety.

Finally, a PTC is cost effective in set-up and administration. Unlike in many other jurisdictions, there is no need to appoint local officers or resident representatives. Furthermore, there is no need for an expensive licensing process and the annual government fees are very modest.

One of the key decisions, which will have to be made in the early stages of setting up a PTC, is the

means by which directors will be appointed and removed from the PTC and allied to this the ownership structure of the shares in the PTC.

The means by which a director is appointed and removed from a PTC is an important issue, as the directors will after all be responsible for the management of the PTC and therefore administration of the underlying trust. It is often the case that clients want to control who will be directors of their PTC, even after their death or earlier incapacity.


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The ownership structure adopted for the shares in the PTC will determine whether the client will be able to exercise control over the directors after their death or incapacity. If the shares are held by the client personally then on their death the shares will pass to their heirs who will then be free to appoint or remove the directors of the PTC, the client will therefore have lost control.

However, one of the most attractive solutions is to place the shares in the PTC into a trust governed by the Virgin Islands Special Trusts Act, 2003 ("VISTA").

Under a VISTA trust the shares in the PTC will be held by a professional service provider on trust to retain the shares so long as the PTC is required to act as trustee of the family trust, and crucially VISTA allows for rules to be included that determine who will be the director of the PTC and in what circumstances should the directors be removed, for example some client wish their children to be appointed directors of the PTC only if they work fully time for the family company held in the trust, or only if they are over 25 years of age and have passed a Master of Business Arts course at a designated university, the options are flexible and can be tailored to specific family circumstances.

Under a VISTA trust the professional service provider that acts as trustee is not allowed to interfere in the management of the PTC company, and cannot be a director of the PTC company.

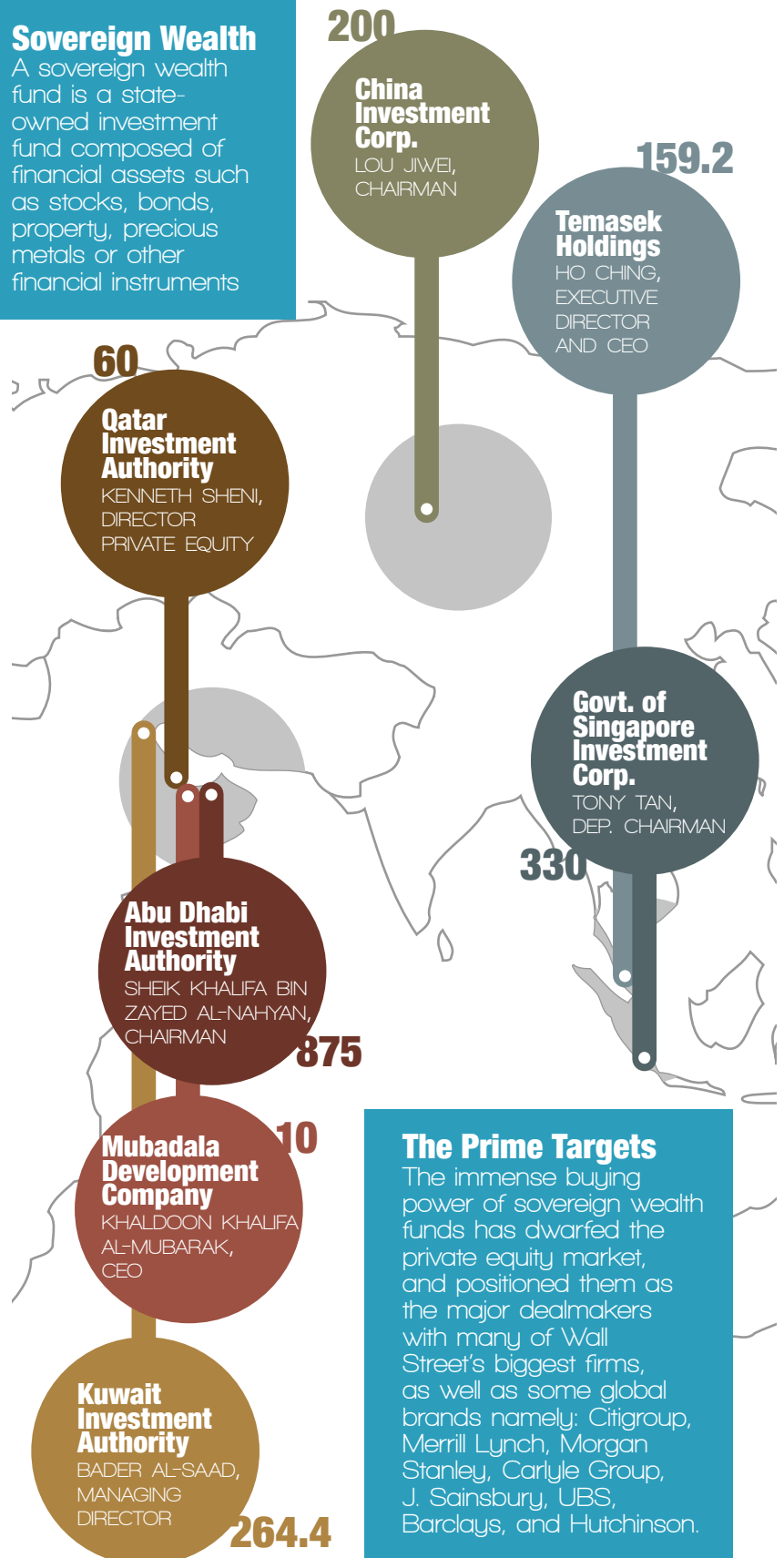
The British Virgin Islands is a very popular jurisdiction for the establishment of PTCs. They can provide the perfect structure for families and their wealth planning needs as it affords the family additional control and confidentiality over their assets. The use of a PTC combined with a VISTA trust has proven to be very attractive for those wishing to establish a family trusts structure as it provides a transparent and effective succession solution for directorships in PTCs. Careful consideration should however be given to the incorporation of the PTC and its overall structure. It is therefore recommend obtaining legal advice from qualified legal advisors in the relevant jurisdictions to assist in the structuring of the company. 

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