

# Guide to BVI Private Trust Companies

A Private Trust Company (**PTC**) is, in straightforward terms, a company which is established for the purpose of acting as trustee of a trust, or a group of family trusts. Generally, when an off-shore trust is established, whether in the British Virgin Islands or elsewhere, a trustee resident in that off-shore jurisdiction will be appointed, usually a professional trustee company, such as Harneys Trustees Limited.

PTCs have become increasingly popular, especially amongst high net worth families and business owners, who are hesitant about the prospect of transferring substantial wealth or control of the family business to an independent third party trustee when establishing a trust. A PTC allows the settlor of the trust to retain effective ownership and control over the assets settled in the trust.

A PTC is managed by its director or directors, who in their capacity as such administer the trust. The settlor himself may be sole director of the PTC, or a board of directors might be made up of family members, family advisors and those familiar with the family business. The board of a PTC is likely to be more familiar with the dynamics of the family and their investment culture and more proactive than a third party professional trustee. The board's attitude to risk, for example in terms of investment decisions, may well be less conservative than a professional trustee and so more appropriate where the nature of the business held in the trust involves a level of inherent risk.

[Note: The settlor and any other proposed members of the board need to take tax advice in their home jurisdictions prior to being appointed as directors of the PTC to ensure that there are no adverse implications from their personal perspectives.]

## General requirements and restrictions

A BVI PTC must:

- Be a BVI company, limited by shares or guarantee
- Contain an express statement in its memorandum of association that it is a PTC

- End with the designation "(PTC)" before the corporate suffix. In addition, the name cannot include the word 'trust' or derivatives thereof
- Have a registered agent (see below)

PTCs can only act as trustee, and cannot conduct any other business, nor solicit trust business from members of the public. The trustee services provided by a PTC must be '*unremunerated*' or '*related*'.

If a BVI PTC is conducting '*unremunerated*' trust business, then no remuneration can be paid to the PTC or to any person associated with it. A person is associated with a PTC if he or she has a legal or beneficial interest in the PTC and so would include the directors and shareholders. Professional directors of PTCs can, however, receive remuneration for the services they provide on a professional basis. There is no restriction on the number of trusts to which a PTC can provide unremunerated trustee services, and the trusts can be entirely unconnected.

If a BVI PTC is conducting '*related*' trust business, then it can receive remuneration, but can only provide trustee services to a '*qualifying trust*' or a '*group of qualifying trusts*'. Broadly, a '*qualifying trust*' is one where the beneficiaries are all connected to the settlor. A '*group of qualifying trusts*' is a group of trusts all created by the same or by connected settlors.

Harneys Fiduciary can incorporate PTCs and our legal team can assist with the appointment of the PTC as trustee. Harneys can also provide tailored advice on complying with the applicable Regulations.

## The Registered Agent

The registered agent of a PTC must itself hold a Class 1 Trust License in the BVI. The registered agent is responsible for ensuring that the PTC remains compliant with the applicable Regulations. As a result, the registered agent is required to conduct periodic reviews of the actings of the PTC.

The registered agent is also required to hold copies of the trust deeds.

Harneys Fiduciary can provide registered agent services to PTCs.

## Ownership of PTCs

Although the shares in a PTC will not themselves be of any significant financial value, they will be of strategic importance to a family.

If the PTC shares are owned by an individual outright, it will be necessary to obtain a grant of probate or letters in administration from the BVI court on the death of a shareholder. This can cause delay and expense. Further, if the shareholder does not specifically provide for succession to the shares under his Will, or if he dies intestate, then the person or persons who inherit the shares (and with them control of the PTC and the trust) may not be at all appropriate. Accordingly, it is common for the shares in PTCs to be held in standalone purpose trust. Harneys can advise on options regarding the ownership of shares in a PTC and the establishment of trusts for this purpose.

## Duties of PTCs

It is important that the PTC properly discharges itself of its fiduciary duties as trustee and administers the trust to the requisite standard of care. Failure to do so may open the door to breach of trust claims by the beneficiaries of the trust in future. Harneys can advise on trustee duties and responsibilities and assist the PTC in fulfilling these.



For more information and key contacts please visit [harneys.com](http://harneys.com)

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