



## KEY FACTS

Due to ever-increasing increasing globalisation, the number of international high-net worth families (IHNW) has increased considerably. The demand for safe and accountable management of family assets has led to these families employing trust funds with a third party institutional trustee (such as Osiris) to act as the trustee of the assets settled on a trust. There are some families, however, that prefer to maintain direct ownership of the trust company which acts as the trustee of the family trust. Thus a Private Trust Company (PTC) is formed.

Similarly, there is a demand for PTCs from a number of multinational companies who wish to employ trusts for purposes that range from employee benefit programmes to off-balance sheet transactions.

In the early 1990s, the BVI government introduced "the Directions". "The Directions" allowed a BVI company to perform the functions of trusts without being deemed a trust business. As a result, many IHNWs and multi-nationals were advised to take advantage of the BVI PTC regime.

Later, in August 2007, the legislation regarding PTCs was changed to allow, amongst other things, unlicensed (PTCs to form. "The Directions" were revoked and a new PTC regime began which was welcomed by the private sector and professional advisors worldwide. As of 31 July 2008, any existing PTCs either fell within the Regulations or obtained a trust licence under the Banks and Trust Companies Act, 1990.

Today, a PTC is defined as a business that can carry out unremunerated trust functions for specified groups of individuals and entities, provided they do not solicit their services to the public. The PTC is not remunerated for its services, however, there are provisos such as payments to indemnify against costs and expenses allowed and a "professional director" is allowed remuneration.

### Notes:

An IHNW family is defined as a person or entity which has assets located outside their countries of fiscal residence and/or domicile.

## KEY FACTS

### ESTABLISHMENT REQUIREMENTS

- A BVI PTC does not require any government approval prior to incorporation.
- The PTC is incorporated by filing the Memorandum & Articles of Association of a BVI Business Company with the Registrar together with a certificate from its first Registered Agent.
- The Memorandum of Association must state that the company is a private trust company.
- The PTC's name must appear in the Memorandum & Articles of Association and include the designation of ("PTC") as part of its official name; for example, (i) "ABC Services Limited (PTC)", (ii) "ABC Services (PTC) Limited".

### BUSINESS ACTIVITY REQUIREMENTS

A PTC must satisfy the following activity requirements:

- It cannot carry on any business other than that of being the trustee, protector or administrator of trusts.
- It cannot solicit trust business from members of the public.
- It can only engage in "unremunerated trust business" or "related trust business".
- "Unremunerated trust business" means that no compensation may be payable to, or received by, the PTC, or any person associated with it, in consideration for, or with respect to, the trust services provided by the PTC.
- A PTC will be treated as carrying on "related trust business" if it acts as trustee of (i) a single trust, all the beneficiaries of which are charities or have certain specified blood, marital or adopted relationships to the settlor, or (ii) more than one trust, each of the settlors of which have those relationships to each other and all the beneficiaries of which have those relationships to the settlors of the trusts (or are charities).

### SHARE CAPITAL & ACCOUNTS

- There is no prescribed minimum authorised or issued share capital for a PTC.
- Fractional shares may be issued as shares without par value.
- Bearer Shares may be issued but the shares must be logged with an authorised or licensed custodian.
- There is no requirement for either an annual audit or the appointment of an auditor to the PTC.

### DIRECTORS

- A PTC must have at least one Director but there is no requirement that any of the Directors be a BVI resident. Corporate directors are permitted.
- Meetings of Directors can be held anywhere in the world.
- A director or officer may be indemnified where that person has acted honestly and in good faith with a view to the best interests of the PTC and, in the case of criminal proceedings, a director or officer had no reasonable cause to believe that his/her conduct was unlawful.

### Notes

As mentioned earlier, professional director services are not considered as remuneration for purposes of the definition, as well as certain costs and expenses.

## KEY FACTS

### PUBLIC FILINGS

The PTC's Memorandum & Articles of Association are the only records of the company available for inspection by the public. The PTC can elect to submit the following records to the BVI Registrar of Corporate Affairs for registration and make them available for public inspection.

- Register of Members
- Register of Directors
- Register of Mortgages, Charge and Other Incumbencies.

### REGISTERED AGENT

- A PTC must have a licensed Registered Agent who holds a Class 1 trust license (such as Osiris Company (BVI) Limited).
- The Registered Agent is required to satisfy itself that the PTC is meeting the requirements of the statute both on its formation and on an ongoing basis. If the Registered Agent forms the opinion that the PTC is not in compliance with the statutory requirements governing PTCs it is required to report such non-compliance to the BVI Financial Services Commission.
- The Registered Agent is required to ensure that up to date copies of the following records are kept at its offices in the BVI in relation to each PTC for which it acts as Registered Agent:
  - The trust deed or any document creating or evidencing the trust (and any deed or document varying its terms); and
  - The documentation on which it has relied to satisfy itself that the PTC has not solicited trust business from the public, is only carrying on "unremunerated trust business" or "related trust business".

### GOVERNMENT FEES

The government PTC fees are as follows:

- Change of name of an existing BVI company to become a PTC \$425
- Incorporation of a new PTC (authorised to issue no more than 50,000 shares) \$750
- Annual Renewal fee \$750
- The incorporation and annual renewal fee increases to \$1,500 if the PTC is authorised to issue more than 50,000 shares.

### OSIRIS INTERNATIONAL TRUSTEES LTD

The fees charged by Osiris International Trustees Limited for assisting with the establishment of a PTC and acting as its Registered Agent are available from any Osiris office.

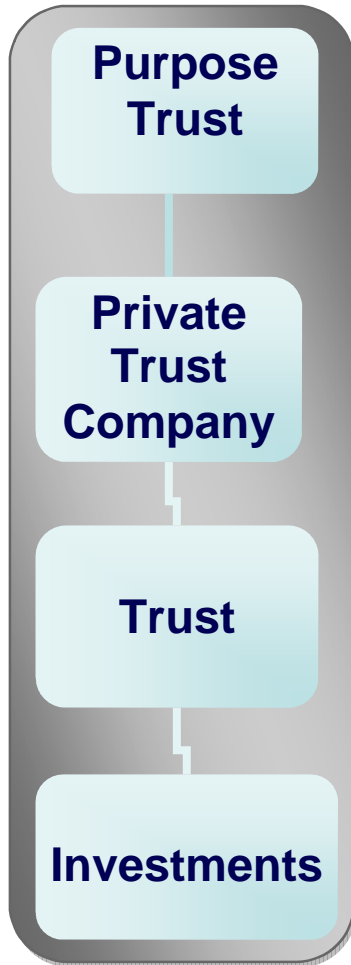
### PTC OWNERSHIP STRUCTURE

One possible structure for the ownership and operation of a PTC are illustrated on the following page:

- This memorandum has been prepared on the basis of the law and practice as at April 2008. Clients are advised to contact Osiris International Trustees Ltd in the BVI prior to the establishment of a PTC in the event that there has been a change in the law subsequent to the date of this memorandum.
- Clients are also advised to seek appropriate professional advice in their countries of residence and/or domicile before the establishment of a PTC.

*\*The Registered Agent of the PTC also is required to keep at its office the PTC's registers of shareholders and directors (or a copy of them).*

KEY FACTS



**Notes:**

1. The Special Purpose Trust is established under the provisions of the BVI Trustee Act, 1961 (as amended).

Please contact any of the Osiris offices worldwide for further information. Office contact details are included on the following page.

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