

**KEY FACTS**

Over the past two decades the number of international high-net worth (IHNW) families has grown significantly with the increased pace of globalisation<sup>1</sup>. Many of these families employ trusts as part of their international family, asset protection and tax planning. The majority of the families who use trusts appoint a third party institutional trustee (such as Hudson Trust) to act as the trustee of the assets settled on a trust. However, a number of IHNW families prefer, for various reasons, to maintain direct ownership of the trust company which acts as the trustee of the family trust.

Similarly, in the corporate environment, a number of companies employ trusts for purposes that range from employee benefit programmes to off-balance sheet transactions.

In the early 1990s the BVI government responded to the needs of both IHNW families and multinationals with its Private Trust Company (PTC) regime which, through regulatory exemptions introduced in 1991 to the Banks & Trust Companies Act, became widely recommended by international professional advisors<sup>2</sup>.

In August 2007 the BVI government, in response to requests from the private sector for greater legislative certainty governing the operation of PTCs, established a new PTC regime which has been widely welcomed by professional advisors worldwide.

These Key Facts explain the fundamentals of the new PTC legislation and the requirements for a company to qualify as a PTC under the new legislation.

**Summary**

A PTC is a company formed under the BVI Companies Act, 2004<sup>3</sup> which carries on trust business for specified groups of individuals and entities where, generally speaking, the parties are related and the trustee is not compensated for its services. A company that meets these principal requirements and the others explained in these Key Facts, is exempt from obtaining a trust license under the BVI's Banks and Trust Companies Act, 1991. Note: Existing PTCs have until 31 July 2008 to comply with the new rules.

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<sup>1</sup> IHNW families are those persons, who, directly or indirectly (e.g. as beneficiaries), have a beneficial interest in assets located outside of their countries of fiscal residence and/or domicile.

<sup>2</sup> The Banks & Trust Companies (Applications Procedures) Directions, 1991 ("the Directions") listed those circumstances in which a BVI company, although exercising trust functions, would not be deemed to be carrying on "trust" business and, as such, require licensing under the Banks and Trust Companies Act. The new legislation revokes the Directions.

<sup>3</sup> Companies formed under the International Business Companies Act, 1984 and which were voluntarily or automatically re-registered under the BVI Companies Act, 2004 will also qualify as PTCs provided they meet the new requirements.

**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<sup>4</sup>.
- 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 may 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.

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<sup>4</sup> Professional director services are not considered as remuneration for purposes of the definition. Payments made to the PTC to allow it to pay its government and Registered Agent expenses also will not be regarded as remuneration received by the PTC<sup>5</sup> 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).

**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 Trident Trust 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"<sup>5</sup>.

**Government Fees**

The government PTC fees are as follows:

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| • 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. |       |

**Forward Associates Limited Fees**

The fees charged by Forward Associates Limited for assisting with the establishment of a PTC and acting as its Registered Agent.

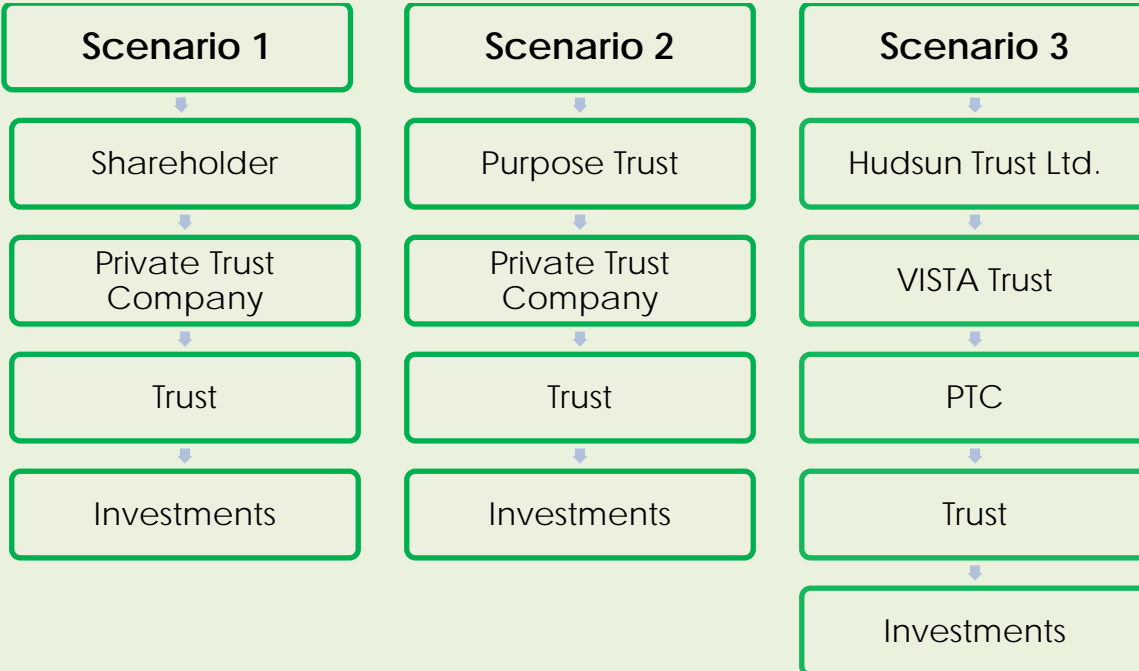
**PTC OWNERSHIP STRUCTURE**

Three possible structures 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 Trident Trust 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.

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<sup>5</sup> 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).



**Notes:**

1. Shares in the PTC are registered in the name of the settlor or held by a nominee on behalf of the settlor.
2. The directors of the PTC can be family members or a professional individual or corporate director.

**Notes:**

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

**Notes:**

1. A trustee of a VISTA Trust must be licenced under the BVI Banks and Trust Companies Act, 1991.
2. The VISTA Trust will have family members as beneficiaries.
3. The "office of director" rules in the VISTA Trust will provide for directorship succession.
4. The director of the PTC can be a family member or a professional individual or corporate director.