IQEQ

The structure and benefits of Private Trust Companies

FOR FAMILY OFFICES

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Family offices are increasingly preferred stewards of wealth, acting as gateways for (U)HNW families across the globe.

While protecting and growing private wealth, they often act like an institutional player regarding their governance, the tools they use, and the investment firepower they hold in the asset owner space.

Proper structure and governance are needed for the success of any organisation, and family offices are no exception, particularly given their hybrid private and institutional attributes. On that note, inevitable questions arise: how best to structure the family office itself, the underlying investments it oversees, and ensure the two work in harmony?

As a global service provider and partner to family offices worldwide, we have seen the private trust company (PTC) emerging as among the most popular structuring solution globally.

The PTC is a powerful legal framework for preserving and enhancing a family's wealth, linking in family offices, streamlining governance and optimising succession planning strategies. But what exactly is a PTC, and how might it benefit your family office? This guide will explain the nature and benefits of a PTC, including why it is worth considering for your family office structure.

What is a PTC, and why is it so popular?

(U)HNW individuals have been establishing trusts with professional independent trustees (like IQ-EQ) for years, and this remains the most common type of trustee selection. However, a 'hybrid' trustee alternative has emerged: the private trust company (PTC).

A PTC is a corporate entity that provides trust and other fiduciary services to a particular (normally UHNW) family. The PTC combines the structure and benefits of a professional corporate trustee with the flexibility to allow trusted advisors, family office leaders and family members to participate directly in PTC operation and trust governance.

Trusts are certainly nothing new; their origins date back to 12th-century English common law. However, their use has evolved over the years to help single-family offices—and the family assets they oversee—maintain a rigorous structure. Only in the last decade or so have we seen increased use of the PTC structure.

In the PTC structure, an (U)HNW family creates a separate trust company (administered by a professional trust company) to act as trustee solely for trusts established to benefit that particular family, including branches.

Elements of the PTC structure

The PTC structure involves several elements, including regulation, board members, ownership, mobility and the dual purpose of holding and efficiently linking together the family assets and the family office itself.

Holding assets

The PTC doesn't hold assets directly, but instead acts as trustee of family trusts that often hold different types of assets, such as operating companies, investment portfolios, private equity, venture capital, property, art and other luxury assets.

Multiple trusts are normally established to hold and often ring-fence different asset types, and/or to provide separate trusts for individual family members. Each trust will usually have holding companies, which then hold the actual underlying assets.

Linking in the family office

Ownership of the family office entity would rest within a separate trust—of which the PTC is trustee—providing the family with direct line of sight into the family office performance.

The relevant trust (or its underlying holding company or fund) would appoint the family office as investment advisor or manager. In addition, there are often service level-type agreements between the relevant trusts and the family office to provide other wealth stewardship services. We often see the head of the family office also sit on the board of the PTC, as noted below.

Regulation of the PTC

Trustees in most reputable trust jurisdictions are regulated and held to minimum standards of care, skill and governance, as well as adherence to anti-money laundering rules.

While PTCs themselves are generally not directly regulated, most jurisdictions require that a professional regulated trustee serves as the administrator of the PTC and underlying trusts. This requirement helps ensure 'nexus' to the jurisdiction, ensuring in turn that the above regulatory objectives are met.

PTC board members

A mix of PTC board members normally exists to provide different perspectives on the oversight and governance of the PTC—and thus, the trusts for which it acts as trustee.

The board often includes:

- Family members: bringing important insight into family dynamics alongside a means to incorporating younger family members into the family wealth stewardship
- Trusted advisors: ensuring a link into relevant legal, investment or other considerations
- Family office employees: providing a link into the family office itself
- A professional fiduciary: thereby ensuring independence, objectivity and fiduciary expertise and experience at the board table

Of course, care should be undertaken regarding the residency of such board members so as not to inadvertently bring the PTC (or the trusts for which it acts as trustee) into other tax and/or legal regimes.

Ownership of the PTC

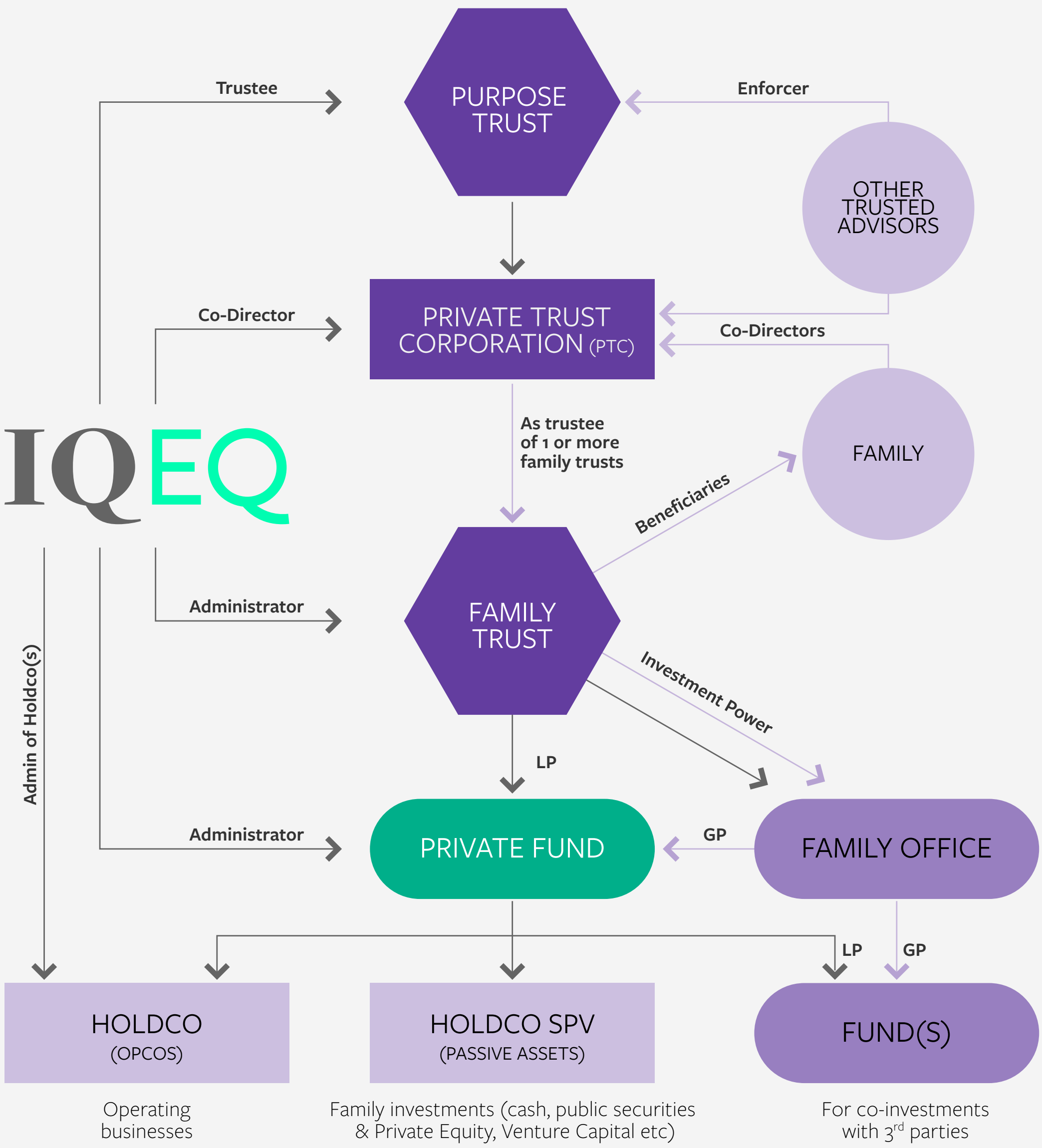
There are a few ways to hold the shares of the PTC, but by far the most common approach is to use a 'purpose' trust. A purpose trust is available in several trust jurisdictions and is designed differently to 'regular' trusts—i.e. it has a stated purpose instead of beneficiaries. In this case, the purpose would be to hold the shares of the PTC.

This effectively 'orphans' the PTC itself, which is in line with the nominal balance sheets of PTCs; all the value is in the underlying trusts of which the PTC acts as trustee and not in the PTC itself. An 'enforcer' is normally required to be appointed to the purpose trust as well. Their role is to change trustees if ever desired. Generally, a professional independent trustee like IQ-EQ acts as trustee of the purpose trust.

Sample PTC structure for a family office

A sample illustration of a PTC structure is included below, showing not only the ownership and governance components, but an example of how to link the family office directly to the management of the underlying assets. In the example below, this link is achieved through a private fund, commonly encountered in the private equity world and increasingly used by (U)HNW families and their family offices.

Note that the example below is just one typical arrangement; a wide variety of variations are possible. For example, in some jurisdictions, instead of a company as the trustee vehicle, a private foundation can be used. This is commonly referred to as a private trust foundation (PTF).



The benefits of using a PTC to hold and oversee a family office

The PTC is quickly emerging as the key structural component of a broader wealth governance picture. The wide range of benefits can be quite attractive to many (U)HNWs and their family offices, which explains the rising popularity of this structure.

Family governance

The PTC structure provides the family office with legal infrastructure and a governance framework—i.e. a clear structure and rules by which family members and trusted advisors govern family affairs and manage the family's wealth.

Properly structured, the PTC enables family members and trusted advisors to participate directly in the decision-making and management of the organisation without compromising the legal validity of the family trusts. When complex family situations arise, this structure enables those with greater knowledge of the family business, financial affairs and individual needs to make appropriate decisions.

Family influence

The PTC allows families to retain more direct influence over their trust(s), and thus underlying assets, instead of relying entirely on a third-party corporate trustee to act on their behalf. Families can select individuals to occupy important roles within the PTC, including the board of directors, the trustee advisory committee and the investment and distribution committees of the family trusts.

Continuity and mobility

Although the PTC is normally administered by a professional trust company due to regulatory, independence and expertise considerations, it is easier to change administration to another provider by simply replacing the director and registered office. More typical trustee arrangements require changing the trustee of the underlying trusts, which involves more work and cost.

Flexibility

There are varying degrees of risk tolerance amongst some professional trustees, including with respect to the types of assets to be held in trust. The PTC is one way to mitigate this concern, as the board of a PTC is often better able to participate in riskier investments if desired. In addition, implementing decisions within a standard trust can be a lengthy process, involving legal and compliance departments. Within a PTC, the trustee can focus solely on the connected trusts, enabling faster decision-making with fewer stakeholders involved.

Third-party guidance

While the family retains an element of control over a PTC, beneficiaries often want the comfort of knowing that the family interests are being managed and monitored by an independent and professional trustee to provide an element of objective oversight. This is especially valuable when there are family disputes. We strongly recommend appointing professional trustees to the PTC board to maintain proper governance.

Engaging the next generation

(U)HNW families often ask us how the next generation can be involved in—and benefit from—the family's wealth. Because PTCs allow families to appoint family members to the board, they can grant representation from different branches or interests of the family. There may be philanthropic trusts or 'passion' investments, like art or classic cars, where advisory panels are established by the family to advise board members of the PTC on particular areas of interest. Therefore, we see PTCs as an ideal structure for families who want to engage younger generations in their wealth management and decision-making.

Common jurisdictions for PTCs

Once you have decided to implement a PTC structure into your family's estate and succession plan, selecting a jurisdiction is a common stumbling block. Lawyers and advisors often have preferred jurisdictions based on their personal experience and knowledge. The most common jurisdictions in which to structure a PTC include:

THE AMERICAS
USA (New Hampshire, South Dakota)

EUROPE
Guernsey
Isle of Man
Jersey
Switzerland

AFRICA
Mauritius

ASIA
Singapore

We recommend making your selection from a combination of criteria, including the jurisdiction's reputation, regulatory oversight, legislation and tax neutrality, among other considerations.

Key contacts

For guidance on how to set up your PTC and select an appropriate domicile, get in touch with our expert team.

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