

# ARTEMIS

The Value of Independence

PTC's and PTF's share the same objective – to bring together and structure family assets for protection and growth. The Guernsey Trust Law was first codified in 1989. The island's proactive stance on regulation and AML compliance is matched by the fiduciary expertise found in Guernsey and its flexible approach to the ever-changing international finance laws.

The PTC is a common tool in private wealth and the more recent introduction of Foundations in Guernsey offers an additional, and simpler, alternative. Both PTCs and PTFs offer flexibility and continuity but how they are structured differs, and that in turn brings advantages and limitations which will work for different circumstances.

The sole purpose of a PTC is to act as a trustee to a trust (or group of trusts). Typically the use of a PTC is to achieve confidentiality, control and influence and to improve protection from fiduciary risk.

The PTC offers many benefits such as the ability for the settlor or his/her trusted advisers to be closely involved with the structure as well as in-house specialist knowledge and expertise. Continuity, flexibility and potential cost efficiencies are also advantages of the PTC.

In Guernsey, a PTC does not need a fiduciary license if the PTC is not remunerated for its services as a trustee. If the PTC is remunerated it may apply for a discretionary exemption by the GFSC and failing that, it would need a fiduciary license.

A PTC requires a shareholder and it is usual to form a purpose trust to simply be the shareholder and undertake no other role.

As an alternate to the typical PTC double structure (PTC and purpose trust above it), a PTF can be used to replace both the PTC and the purpose trust. Foundations originated from a civil law position and are self-governing legal entities. A PTF can be established for the sole purpose of acting as a trustee. Unlike the PTC, a foundation has no members or shareholders and is therefore already an orphaned structure. This means there is no need to establish a trust or other holding vehicle to deal with issues arising from ownership and control.

The establishment of a PTF may be a useful alternative to the PTC and its benefits would include the avoidance of the complexity and cost required by the double company and trust required for the typical PTC structure.

A PTC is an attractive component in wealth succession planning due to its flexibility and ability to fit a family's personal and financial circumstances;

A PTC can enable the family and trusted adviser to be involved in the trust decision-making process, allowing for direct control and influence;

A PTC will be established to act as the trustee of one or several trusts, each of which will hold part of the family wealth for the benefit of family members;

The classic PTC structure needs careful consideration given to the ownership which can create tax as well as succession issues which can be avoided by holding shares through a "purpose trust".

In Guernsey, a PTC can obtain exemption from requiring a fiduciary licence if the PTC is not remunerated for its services as a trustee and can only act for one family.

The Guernsey Financial Services Commission requires, in these circumstances that the board of the PTC includes at least one corporate director holding a full fiduciary licence and that the local licensee is ordinarily responsible for the administration of the PTC.

An alternative to the typical PTC structure is to establish a private trust foundation as a trustee. It is an “orphan vehicle” – no members, shareholders or beneficiaries – with its own legal personality and independent of the founder and its officials;

A foundation is established for the purpose of acting as trustee of trusts for the benefit of a family and is a simple, practical and attractive solution which combines the best of both trusts and foundations;

A foundation is run by its council (just as a company is run by directors). A guardian is required when there are no beneficiaries or when the beneficiaries are disenfranchised. The guardian and has the power to appoint and remove councillors. A disenfranchised beneficiary has no right to foundation information such as a copy of the constitution, records and accounts. The guardian’s duty is to therefore enforce the purposes of the foundation. It follows that a guardian is also obligatory if a foundation has only a purpose with no individual beneficiaries e.g. a charitable foundation;

Like a PTC, a PTF will not require a licence if it does not receive any payment for its services as trustee and can only act for one family;

The establishment of a PTF can be a useful alternative to the customary PTC, avoiding the additional administration associated with a PTC and overlying purpose trust arrangement.