Regulated vs. Unregulated Private Trust Companies
Willow Street Group, LLC
January 2, 2019

Advisors at Willow Street Group, LLC ("WSG") are often asked whether a client should use a regulated or an unregulated Private Trust Company (PTC), both of which are available in Wyoming. Although we are not in the business of providing legal advice, our answer is often the classic legal answer – it depends! Some jurisdictions only offer regulated PTCs. An increasing number of states, including Nevada, Wyoming, New Hampshire, now allow for unregulated PTCs as well. The decision of whether to use a regulated or unregulated PTC is informed by each family's circumstances and priorities, for example – does the family have a Single Family Office? How is 'Family' defined / who is invited to invest alongside the family? How important is privacy?

In jurisdictions where unregulated PTCs are allowed, they are often the default. This is because unregulated PTCs are typically very efficient, cost effective and afford a high degree of privacy protection. As unregulated PTCs are not subjected to formal regulatory examination, they may tailor internal controls and procedures to meet their circumstances. Note that it is critical to obtain guidance from the family's legal, tax and other advisors to ensure proper compliance is achieved. In a world increasingly fraught with information leaks, clients may find peace and security knowing that disclosure of their personal family and financial data is as limited as possible.

Nevertheless, families may determine that a regulated PTC is better suited to their needs. Typically, this is to comply with SEC regulations for family offices. PTCs which provide investment management services in-house, as opposed to an outsourced family office or other RIA, and which do not satisfy the family office exemption of the Investment Advisers Act, may prefer the oversight of a state banking authority to SEC registration. Families may also take comfort in the additional external oversight and control afforded by a regulated PTC.

Both regulated and unregulated PTCs offer powerful planning tools to situs assets and fiduciary services in a desired jurisdiction. Whereas regulated PTCs are supervised by state banking commissions, the Directors and Officers of an unregulated PTC assume sole responsibility to establish and follow best practices. As a self-regulated entity, it is incumbent on the Directors and Officers to ensure the PTC operates as laid out in its Bylaws or Operating Agreement. Advisors differ on which factors are most important when establishing and maintaining nexus; however, most advisors agree that a resident Director and/or Officer, along with material trust administration within the jurisdiction are most compelling.

As the number of PTCs increases, it is essential to ensure that the PTC remains a viable strategy, not only today, but for generations to come. It is incumbent on families and their advisors to operate their PTC in a manner consistent with best practices, both to avoid undesirable consequences to the family, but also to minimize risk to the PTC as a planning technique. Whether regulated or unregulated, substance and materiality are the primary safeguards against adverse legal or regulatory action.

Survey Questions:

- Do you currently operate a PTC?
    - If so, Regulated or Unregulated?
    - What factors determined your choice?
- If you are considering establishing a PTC, is the ability to choose between regulated and unregulated part of your evaluation? Why or why not?