KEY POINTS

What is the issue?
The COVID-19 pandemic is the latest in a series of global events that have resulted in a renewed sense of urgency around succession and legacy planning. Global families are increasingly focused on establishing governance structures that provide flexibility in an uncertain world.

What does it mean for me?
For many families, the US-based private trust company (PTC) has become central to solving multinational, multigenerational fiduciary needs.

What can I take away?
In the context of our current global environment, the PTC can provide an important framework to accomplish these varied goals provided families carefully consider its structure to ensure it provides the intended result.

A powerful strategic tool

DOMINIC LAWTON-SMITH AND SCOTT WEAVER DETAIL THE EVOLUTION OF THE US-*SITUS* PRIVATE TRUST COMPANY

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STRUCTURE

In the US, several states allow families to form and operate their own PTC. A board of directors or managers governs the PTC and officers implement and document decisions. However, the majority of activity takes place within a committee structure. At a minimum, PTCs generally have investment, discretionary distribution and amendment committees. Families may add additional committees to address their particular circumstances; for example, some families opt to segment decision-making along family branches or add conflict, education or philanthropy committees.

Typically, a mix of family members, trusted advisors and service providers operate a PTC; these parties work together to deliver trustee services to family trusts and underlying structures.

Families considering a PTC may have existing infrastructure in place through either a dedicated family office (FO), a multi-family office or a constellation of advisory relationships. The PTC can operate as a practical and complementary structure to existing FO infrastructure or as the hub of activity in the absence of a separate FO.

Where a separate FO exists, by leveraging specific skill sets and areas of expertise, an integrated PTC and FO yields efficiencies through the appropriate division of labour. Service-level agreements often document the delivery of services to a PTC. For example, FOs typically provide asset management, tax reporting and preparation, and financial reporting. Families contract fiduciary service providers within the state in which the PTC is established to provide trust administration, coordination and other services. The PTC governance structure may incorporate FO professionals as directors, officers or committee members. Legal considerations as to nexus and tax compliance inform the delegation of responsibilities between the PTC and the FO, as well as the respective capabilities of the parties involved.

The benefits of the PTC include that it may:

- serve as a mechanism to alleviate tension points over control and governance;
- provide a forum for education and knowledge transfer;
- formalise and perpetuate core values; and
- help families advance their shared agenda.

PTCs offer two additional pragmatic benefits. As a business entity with the potential for perpetual duration, PTCs may serve as trustee for many generations, with streamlined fiduciary succession by changing the underlying management rather than the trustee itself. In addition, PTCs formed as limited liability business entities offer enhanced fiduciary liability protection for participating family members and advisors.

COMPLIANCE

Legal compliance is a key consideration for US PTCs, particularly regarding tax law and US Securities and Exchange Commission (SEC) regulation. The education, succession and legacy-planning benefits of the PTC presume engaged participation by multiple stakeholders from multiple generations in a collaborative environment. In practice, however, the participation of certain parties may be limited owing to certain tax law requirements. The composition of the PTC committees, and the distribution committee in particular, must be carefully analysed in the context of the laws of the relevant jurisdictions; states and countries may impose income or transfer taxes based on the residency and relationships of the committee members.

A second compliance issue often arises regarding SEC registration. Self-regulated PTCs typically rely on the FO exemption; those that are unable to qualify for the exemption often elect to obtain a charter and operate under the supervision of the appropriate state banking regulator. Families should take advice on specific matters of tax and regulatory compliance to ensure that they organise structures to meet their objectives and fulfil all legal requirements.

FAMILY GOVERNANCE AND THE PTC

The responsible stewardship of wealth is a common core value for ultra-high-net-worth families. Twenty-first century macroeconomic and societal trends are affecting these families in unique ways. As younger family members take greater ownership of their futures relative to past generations, there is also a combined impact of geographic migration, multiculturalism and increased expectations for independence.

Succession planning entails both preparing the rising generation and keeping the family together to its desired extent. As with any transition, it may either be a time of uncertainty or a time of great hope and a vision for a bright future. A family's human and intellectual capital is its greatest wealth. Successful families embrace the individuality and adaptability of their members. In this context, the PTC's value is the role it plays in perpetuating family resiliency across generations.

> 'PTC governance is founded on an appreciation and respect for fiduciary duties and constructed through policies and procedures tailored by each family to reflect its culture and complexities'

It is important to acknowledge that dynamics among family members impact their behaviours with one another and with their advisory team. The PTC framework is founded on a family's agreement to flexible yet managed behaviour among its members, coupled with joint decision-making.

Components include:

- family values;
- defining family wealth as more than financial assets;
- establishing rules for involvement (or not) in the family business;
- policies aimed at career development;
- skills and capacity assessments;
- leadership criteria;
- keeping the system open and inclusive;
- how and by what means to communicate;
- educating family members;
- distinguishing between family organisation and individual rights; and
- allowing a review process so that future generations have their say.

There is no question that relationships with wealth affect personality, behaviours and character. Finding the balance between wealth and one's purpose in life is challenging, but the governance process can help pre-empt entropy.

Considering the above factors, the PTC can serve as a flexible and inclusive vehicle for accomplishing several common objectives, such as:

- optimising control and flexibility over investment mandates and asset composition;
- maintaining privacy, confidentiality and personal safety; and
- identifying and grooming the next generation of family leaders.

Despite the flexibility afforded by the PTC, it is critical that families respect the formalities of the structure to ensure the complete understanding of (and preparation for) tax, reporting and other consequences. In addition, PTC governance is founded on an appreciation and respect for fiduciary duties and constructed through policies and procedures tailored by each family to reflect its culture and complexities. For the PTC to be successful, there must be an alignment of interests, transparent communication and respect among PTC leadership and family members to ensure healthy and constructive interpersonal relationships so that the PTC remains efficient and effective. Importantly, trust should be the foundation of the family's relationship with the PTC administrator, as they will work closely together.

It is worth bearing in mind that, while the PTC is an excellent tool, it is often best utilised by families with multiple trusts that create significant complexity. It is therefore important for families to consider the options available to help best fulfil their particular needs. There are many families, for instance, with meaningful assets where a traditional or directed corporate trustee might be a more efficient solution.

Transparency and clear communication are the foundations of family governance; families can cultivate these principles through the education of beneficiaries to build trust, self-esteem and confidence. Many families are opting to employ a chief learning officer (CLO) to lead this endeavour. The CLO's primary objective is to help beneficiaries understand their roles and functions, benefits and responsibilities to both family and society. The CLO may be a member of the PTC, the FO or independent.

CONCLUSION

When families align their interests and approach governance, reporting and communications in a positive way, PTCs can provide a useful solution to multigenerational fiduciary challenges. More strategically, they are a powerful tool for the advancement of the family's values through enhanced control, opportunities for family involvement and collaborative decision-making.

#FAMILY OFFICE #ESTATE PLANNING #COMPANIES