# Private Family Trust Company Overview

Willow Street

# Private Family Trust Companies

Private family trust companies — legally referred to as *family trust companies* in Nevada or *private trust companies* in Wyoming (hereafter, "PTCs") are business entities organized by a family to serve as the trustee of their family trusts. In this context, a "family" is broadly defined to include multiple generations and branches of an individual family. The PTC combines the structure and benefits of a corporate trustee with the flexibility of individual key advisors and family members participating in PTC operations and trust governance, as appropriate and consistent with tax objectives.

The PTC is controlled by the family and operated by the family and its trusted advisors, often in conjunction with a family office and an administrative services provider such as Willow Street. The PTC is managed by a board of managers or directors, whose role is to provide oversight to the PTC.

The PTC structure allows families to unbundle the three duties of a trustee — *investing* trust assets, *distributing* assets to beneficiaries, and *administering* the trust — in furtherance of family and financial goals. Unlike directed trusts, where governance occurs on a trust-by-trust basis, PTC governance typically operates at the entity level.

Investment activities are performed by an investment committee, comprised of family members and trusted advisors. Distribution activities are performed by a distribution committee, typically comprised of disinterested family members and trusted advisors. Administrative duties are performed by a family office, an administrative services provider like Willow Street, or a combination thereof, typically via a formal service level agreement (SLA).

The following chart details the primary activities of and typical accountabilities in the PTC structure:

*FIG 1. PTC OVERVIEW*

| ACTIVITY | "OWNER" IN A PTC |
|---|---|
| Fiduciary Liability | PTC |
| Oversight / Compliance | PTC Board and Officers |
| Investment Decisions | Investment Committee |
| Distribution Decisions | Distribution Committee |
| Administration: Bookkeeping, billpay | Family Office / Willow Street |
| Administration: Cash flow management | Family Office / Willow Street |
| Administration: Tax coordination | Family Office / Willow Street |
| Administration: Records management | Willow Street |
| Administration: Signature authority | Willow Street |

# When a PTC May Make Sense

When considering a PTC against other fiduciary solutions, families and advisors often examine the following factors:

### COMPLEXITY

- The PTC board and investment committee can manage complex assets that traditional trustees may find impracticable, such as operating businesses, real property, concentrated positions, or alternative investments
- The PTC structure may more efficiently govern complexity arising from a critical mass of trusts (commonly 10+), separate share trusts, or multiple underlying entities by separating fiduciary responsibilities and allocating them to parties with the requisite relevant expertise

### SUCCESSION PLANNING

- As a business entity, the PTC has a perpetual lifespan, streamlining succession planning by providing continuity of fiduciary administration across generations
- The PTC structure presents an opportunity to involve family members and trusted advisors through board and committee membership, which yields leadership continuity, intergenerational knowledge transfer, and thoughtful long-term stewardship

### CONTROL & ENGAGEMENT

- Families retain meaningful control through the ability to select each member of the PTC structure — including the board, committee members, and officers — with flexibility as to the degree of family participation
- The PTC provides a formal framework for family participation, facilitating opportunities for alignment around purpose and values, intergenerational education, and collaboration with trusted advisors

### JURISDICTIONAL SENSITIVITIES

- The PTC structure may allow family members or trusted advisors in tax-sensitive states to participate in governance roles when otherwise they could not serve as trustee
- Similarly, non-US persons may be able to participate via a US fiduciary when otherwise they could not serve as a powerholder due to tax or regulatory concerns

### COST EFFICIENCY & ECONOMIES OF SCALE

- As the PTC lacks profit motivation and is typically operated at break-even or a de minimis profit, it can benefit from economies of scale and may therefore be more cost effective than a traditional trustee
- Generally, families with trust assets >$200M (sometimes less, if there is significant complexity or other non-financial benefits) are candidates to benefit from a PTC's economies of scale

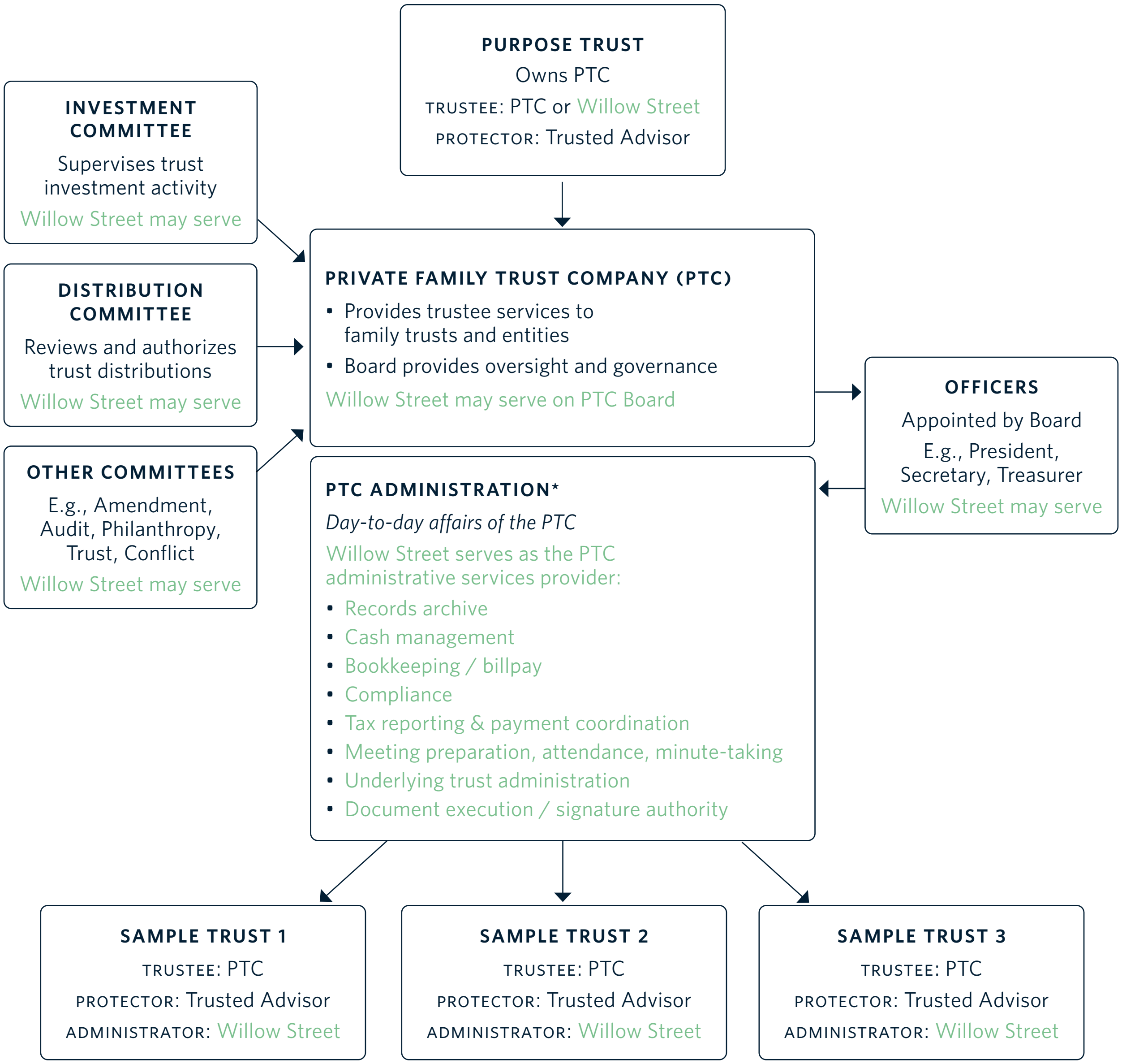
### PRIVACY & CONFIDENTIALITY

- Families may prefer a PTC structure where confidentiality is important, as trust administration can be centralized within a controlled governance framework
- Nevada and Wyoming both permit unregistered or unchartered PTCs that are not subject to regular examination or supervision. In these cases, the PTC board is responsible for oversight and may engage auditors and other professionals to support sound operations and compliance.

### RISK MANAGEMENT

- As a corporate or LLC entity, the PTC may limit personal liability exposure assumed by participants

# Common PTC Structure and Willow Street Roles




*Administration may be provided in conjunction with the client family office or other service provider pursuant to a Service Agreement.

# PTC Board Role and Responsibilities

The business and affairs of a PTC are governed by the board of managers or directors, except for certain decisions delegated to committees (e.g., Investment, Distribution, Amendment). The core administrative areas that a PTC board oversees include, but are not limited to, the following.

### COMMITTEE FORMATION AND OVERSIGHT

- Appoint and remove persons serving on PTC committees, subject to the limitations set forth in the operating agreement
- Create new committees, defining their powers and responsibilities
- Depending on the PTC structure, periodically take reports and ratify decisions made by committees

### OFFICER OVERSIGHT

- Appoint and remove persons serving as officers of the PTC

### FINANCIAL OVERSIGHT

- Develop, adopt, and monitor the PTC's annual budget
- Determine trustee fees charged to underlying trusts
- Retain accountancy, including tax reporting, whether provided by the family office or a third-party provider
- Approve tax returns or delegate duty to a PTC officer or committee
- Implement financial controls, including financial or agreed-upon procedures and audits

### TRUSTEE AND SERVICE PROVIDER OVERSIGHT

- Accept and retain trusteeships
- Select and retain third-party service providers, such as administrative, legal, or accounting advisors for the PTC and underlying trusts

### STRATEGIC FIDUCIARY PLANNING

- Consider and implement strategies as to wealth transfer structures with advice of outside legal and tax counsel (e.g., should trusts or other entities be modified, decanted, terminated)
- Define and adopt PTC governance

### COMPLIANCE OVERSIGHT

- Adopt, implement, and periodically review PTC policies and procedures
- Coordinate with outside legal advisors to ensure policies and procedures reflect requirements and leading practices

# PTC Secretary Role and Responsibilities

## MAINTAIN

**Maintain PTC policies and procedures, books, and records:**

- Make recommendations on PTC policies and procedures; maintain and update policies and procedures manual (PPM)
- Document financial controls and risk management protocols with board approval
- Archive financial reporting for PTC and underlying trusts
- Attend board meetings, draft minutes and maintain minute book
- Serve as authorized signatory
- Execute legal and tax-related documents

## SUPPORT

**Support the PTC board on all fiduciary matters:**

- Oversee trust onboarding and administration
- Engage in regular administrative reviews of trust accounts
- Report to board regarding trust business

## COLLABORATE

**Collaborate with the family's attorneys, accountants, and other key service providers to reasonably ensure a compliant, efficient, and well-organized complement of professional services are provided to the PTC:**

- Coordinate advisor activities to ensure that legal, accountancy, and investment professionals operate with complete information
- Coordinate tax reporting and compliance
- Coordinate and participate in audits and examinations, as appropriate

# Elements of Situs

Some states, including Nevada and Wyoming, permit both regulated and unregulated PTCs: in Nevada, referred to as "licensed family trust companies" and "unlicensed family trust companies," in Wyoming, as "chartered family trust companies" and "single family private trust companies."

The requirements for unregulated/unlicensed PTCs are determined by each state and generally quite flexible. The following chart outlines the elements we most commonly see taking place "in situs" based on our practical experience. Please consult legal counsel for a formal opinion.

*FIG 2. IN-SITUS DETAILS*

| ELEMENT | DESCRIPTION |
|---|---|
| Nevada or Wyoming person serves as Officer or Manager of PTC | • Serve as authorized signatory in Nevada or Wyoming<br>• Execute resolutions and minutes in Nevada or Wyoming<br>• Review relevant documents, tax returns |
| Retain Nevada or Wyoming attorney | • Establish PTC<br>• Draft operating agreement<br>• File articles of incorporation or organization<br>• Draft or review underlying trust agreements for accuracy with respect to Nevada or Wyoming law |
| Retain Nevada or Wyoming CPA | • PTC tax returns<br>• 1041 returns for underlying trusts |
| Nevada or Wyoming bank accounts | • PTC<br>• Underlying trusts |
| Physical presence | • Registered agent<br>• Lease office space*<br>• Nevada or Wyoming PO box* |

*May be required for chartered/licensed PTCs.

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