

British Virgin Islands private trust companies

Briefing Summary: Private trust companies ("PTCs") are widely used in international structured finance transactions and are now increasingly used by high net worth private clients. In the latter context, certain families may prefer to establish their own PTC to act as the trustee of the trusts which they plan to create, rather than transferring assets to a corporate service provider's professional trustee company.

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This briefing note considers key issues relating to the creation and use of British Virgin Islands ("BVI") PTCs in the context of private wealth management. BVI PTCs usually operate as trustees, although it is also possible for a BVI PTC to act as a protector or enforcer of a trust, or otherwise provide trust related services to a trust.

Regulation

The Banks and Trust Companies Act 1990 ("BTCA") is the principal piece of legislation relevant to the licensing and regulation of BVI trust companies. Among other things it states that a BVI company may not conduct 'trust business' – the business of acting as a professional trustee, protector or administrator of a trust or settlement or managing or administering a trust or settlement – unless it has a valid licence under the BTCA.

It has always been recognised that BVI companies which provide trust related services, but not as a business (for example those formed by a family for the purpose of acting as trustee of their private family trusts), are exempt from the BTCA's licensing requirement. However, since the Financial Services (Exemptions) Regulations, 2007 (the PTC Regs) came into force on 1 August 2007 it has been possible for a new type of BVI company, the BVI PTC, to conduct trust related services without being subject to the BTCA's licensing requirement or having to register with or be approved by any of the BVI's regulatory authorities.

The PTC Regs

The PTC Regs record the majority of the requirements for a BVI company to be incorporated as, or become, a BVI PTC and state the parameters within which BVI PTCs must operate. These requirements and parameters fall into three main categories: core requirements, conduct requirements and registered agent (RA) requirements.

Core requirements

Every BVI PTC must:

- be a BVI company limited by shares or guarantee which is not struck off or dissolved;
- contain an express statement in its memorandum of association that it is a BVI PTC;
- ensure that its name includes the designation '(PTC)' before its corporate suffix (eg Ltd); and
- except with the approval of the BVI Financial Services Commission (FSC), ensure that its name does not include any restricted words or phrases.

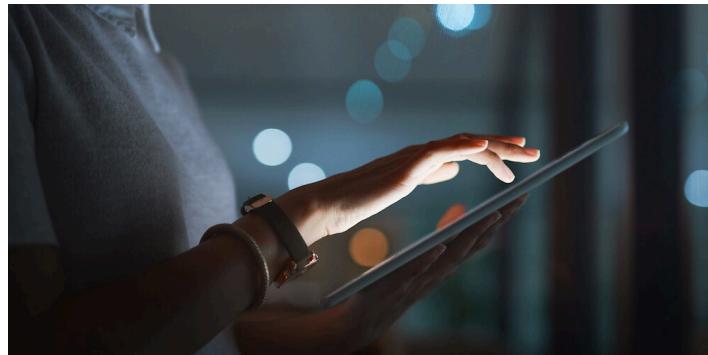
Conduct requirements

BVI PTCs must only conduct 'trust business' which for the purposes of the PTC Regs is acting as trustee, protector or administrator of a trust or settlement or managing or administering a trust or settlement. Unlike the BTCA's definition of trust business, there is no requirement for these activities to be undertaken as part of a business. Instead, a BVI PTC's trust business must be either 'unremunerated' or 'related' and these terms are explained below.

A BVI PTC may not simultaneously conduct unremunerated trust business and

Carey Olsen (BVI) L.P. is registered as a limited partnership in the British Virgin Islands with registered number 1950.

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