

# BRITISH VIRGIN ISLANDS - REGULATIONS ENABLING PRIVATE TRUST COMPANIES TO OPERATE WITH LICENCING EXEMPTION

New regulations introduced clarify the status of private trust companies under BVI law. These are likely to require immediate action in the case of existing companies.

## INTRODUCTION

It has been possible for some time to operate a private trust company ("PTC") in the British Virgin Islands without the need to obtain a Licence under the Banks and Trust Companies Act. The narrow exemptions in the relevant regulations which permitted this were considered by some to be lacking clarity and now new regulations have increased the attractiveness of the BVI for this growing business.

The use of a private trust company has many advantages for some clients and their families, eg it allows:

- Greater involvement in trust administration through board representation.
- Trusts to hold more non-traditional assets considered onerous by institutional trustees, eg private family trading companies, high risk portfolios, unusual assets.

The Financial Services (Exemptions) Regulations, 2007 ("the Regulations") now make it very clear how to qualify for the exemption:

1. The PTC must be a BVI company fully compliant with the BVI Business Companies Act and its Memorandum must state that the company is acting as a PTC;
2. The company name must include "PTC" before "Limited", "Inc" or other permitted designation chosen;
3. The Registered Agent for the PTC must hold a Class I General Trust Licence (Rawlinson & Hunter Limited holds such a Licence);
4. The PTC must not carry on any business other than acting as trustee (or protector) and it must not solicit trust business from the public;
5. The PTC must only conduct "unremunerated" and/or "related" trust business.

"Unremunerated" means that neither the PTC nor any person associated with it (eg Directors and Officers) may earn any remuneration from the services provided by the PTC. There are exemptions available for arms length professional directors and to allow for the recovery of legitimate expenses.

"Related" trust business means that all the beneficiaries must be related (as defined in the Regulations) to the Settlor, and, in the case of multiple trusts, the Settlers must be so related to each other and to the beneficiaries. Charitable beneficiaries are permitted.

There is no requirement that any of the directors of the PTC be resident in the BVI.

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## RESPONSIBILITY OF THE REGISTERED AGENT

Every BVI company must have a local Registered Agent. As noted above the Registered Agent for a PTC must hold a Class I General Trust Licence. As the exemption is available without application to the BVI Regulators, the Regulations do require that the Registered Agent, upon the establishment of the PTC, satisfy themselves that the necessary conditions outlined above are met. Periodically the Registered Agent must take whatever steps they deem necessary to satisfy themselves that the PTC is still eligible for the exemption from licencing.

The Registered Agent is also obliged to hold in its own files a copy of the trust agreement and any subsequent amendments. It is important to note these documents will remain confidential and there is absolutely no public filing required for any trust.

## OWNING A PTC

There must be an ownership structure for the PTC and the solution will not be the same in each case. Some present difficulties:

- The Settlor may own the PTC directly (this may give rise to succession issues).
- Other family members may own the PTC (control issues arise).

A more common solution is to have the shares of the PTC owned by a BVI Purpose Trust, the purpose of which is to own the shares of the PTC for the benefit of the family members although of course it is likely that the PTC will have little value. There is no minimum capital requirement and therefore no need for the PTC to maintain substantial balances or assets.

Another possibility is the use of a BVI VISTA Trust to hold the shares of the PTC. The VISTA trust law prevents the trustee of the VISTA Trust from intervening in the management of the underlying company (in this case, the PTC) and therefore the directors are in full control. The VISTA Trust would typically incorporate rules for the PTC ensuring a pre-determined succession plan for its directors.

More detailed information on VISTA is available in a separate paper.

## COSTS

The government fee payable upon incorporation of a PTC is US\$750 (rather than the normal US\$350) and the annual fee is also US\$750. If the PTC is required for some reason to issue more than 50,000 shares these fees increase to US\$1500.

## TRANSITION

Clients who have BVI companies relying on the old regulations (which have now been rescinded) should take immediate steps to become compliant with the new Regulations. Rawlinson & Hunter Limited can assist with this process as required.

*This Note is intended as a guide only to private trust companies. Enquiries on specific circumstances are welcome and more detailed advice can be offered.*

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