The Attractions of Hong Kong Private Trust Companies for Family Wealth Preservation

Christiaan de Bruyn, Director of Trust Services at Trident Trust in Hong Kong, believes Hong Kong incorporated Private Trust Companies (PTCs) should be carefully considered as a great tool to hold and administer the assets of wealthy families. He knows that in the world of regulation and compliance we now all live in, PTCs are ideal, professionally structured, transparently managed vehicles for holding wealth, for avoiding family conflicts, and for resolving their succession needs. For optimised family governance, he told the audience at the Hubbis Asian Wealth Management Forum, the PTC is, therefore, an excellent option.

PTCS, DE BRUYN STATED ON OPENING his talk, are exceptional vehicles, but only if professionally structured and managed. For example, selecting the right Board of Directors is essential to avoid potential problem scenarios. He told the delegates that in his six-year experience at Trident Trust in Hong Kong, which is a specialist in such structures, he had witnessed first-hand how such vehicles, if properly formed and administered, can be outstanding solutions for family wealth preservation.

He gave two real-life examples. Family A, he said, is well-structured, has robust, well-managed family businesses, has the right vehicles for holding the family wealth, with multi-generational family involvement and empowerment, and therefore appears well on track to maintain appropriate solutions to manage and preserve their wealth.

Family B has similarly sound operational businesses, but all decisions go through the 80-year old founder who appears to dominate the family and who has no succession plan in place. "We saw a group of family members," de Bruyn reported, "all with their

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lawyers present, all preparing for a fight over the money when this person passed away."

Breaking the mould

De Bruyn noted the popular theory that family wealth lasts only three generations. "But you can break that curse through proper structuring, proper family governance," he remarked.

Founded in 1978, Trident Trust is entirely privately owned and independent, and is a global provider of corporate, fiduciary and fund administration services to financial institutions, professional advisors, family offices, international businesses and asset managers. The Group has offices in more than 20 jurisdictions and has a long track record of establishing and administering structures that help preserve wealth from generation to generation.

Its Hong Kong office has been in operation for 26 years and provides trustee and corporate services, serving families with family trusts and serving corporates with pre-IPO trusts, EBTs and company secretarial services. Serving PTCs takes a combination of these skills.

A PTC is a company incorporated to act as trustee of a family trust and acts only for one family. Trustee decisions are taken by the Board of Directors of the PTC, with family members also able to sit on the Board. There is an administration agreement, which de Bruyn noted is easy to design but difficult to get right in practice.

"For most of your clients if they want to have a family trust," he explained to the audience, "we can definitely help them, but for the bigger families, especially the big business families, they want a little bit more."

The benefits

The core benefit of a PTC is that it offers those who want a trust situation but also want to have some control over the trustee decisions and the trust assets. The PTC can hold high-risk investments, like private company shares, that a trust company does not want to hold. The PTC can become a formal 'meeting place' for a wealthy family to take decisions about the family business but also about managing the family wealth and about distributions. This can be a great tool as part of a succession plan.

A PTC is therefore basically a company that is set up for the sole purpose of acting as trustee of the family trust, de Bruyn elucidated. "The key difference," he noted, "is that the family members can be directors of the PTC and therefore have a say in the process of determining what happens to the trust assets."

Setting up properly is essential

It is vital to get the process of managing the underlying companies and assets right from the outset and for that the family charter, the family constitution,

is a key part of the process. Then the other difficult question, de Bruyn added, is who should be the shareholders of the PTC. The most frequently chosen structure he sees is having a purpose trust above the PTC.

De Bruyn further summarised the appeals of a PTC by noting that what makes it different from a commercial trust company is that it only acts for one family and the family members sit on the Board of Directors and they are part of the decision-making process.

He acknowledged that can also sometimes be a problem if the PTC is not professionally administered. "Accordingly," he noted, "what we usually do is have an administration agreement that we sign with the client where they delegate a number of tasks to us."

And he added that a good trustee must have proficiency in legal requirements, knowledge about accounting, investments, tax requirements and lastly, but not least, psychology. How to keep the family together and how to resolve conflicts, he remarked, is really the most difficult skill. "They call this a soft skill, but actually that's the hardest skill of them all," he joked.

Why should families establish PTCs? "Very simple," de Bruyn said, "they want to keep control. However, while that is all well and good, they also need to take the consequences of that control into consideration. And another reason is that PTCs can hold high-risk assets that sometimes a normal trustee would not be able to handle."

Beware residency issues

A key issue, added de Bruyn, is the tax residency of the PTC board. If the majority of them are tax resident in one country, perhaps a high tax country, it may, de facto, make that PTC tax resident in that country. "A knock-on consequence of that," he noted, "is that the tax residence of the PTC determines the tax residence of the family trust. Accordingly, you don't want to have all your family members in a high tax country sitting on the board of the PTC, dragging the PTC into the tax net of that country. So, choose the members of the PTC very carefully."

He also cautioned that how the PTC is classified for FATCA, for CRS, for tax reporting requirements, all of those areas, is also difficult to assess, but he said these were issues to deal with in more detail at a later stage. Additionally, the new Hong Kong licensing regime that became effective in 2018 must be considered. The Trident Trust Group also provides PTC services from other offices, with BVI, Singapore, Jersey and Guernsey being popular. One needs to consider the local administration and directorship and regulatory requirements.

Take advice from the experts

De Bruyn is a CPA registered in Hong Kong, the UK and South Africa. He has grown up in a family business, in the 4th generation. He has worked in financial services for more than 30 years in a career spanning Europe and Asia, including almost 20 years in the trust industry. He holds the STEP Advanced Certificate in Family Business Advising, which he completed with distinction. He can speak English, Afrikaans, Dutch and French.

He closed his presentation by explaining briefly that Trident in its role as PTC administrator can help the family to manage the PTC, as well as administer the underlying trusts. He aims to contribute to keeping the family prosperous and break the 3-generation pattern. ■