ARIFA
CORPORATE SERVICES

Private Trust Companies (PTCs)

A BVI PTC is a company formed under the BVI Companies Act, 2004, that carries on trust business for a specified group of individuals and entities where, generally speaking, the parties are related and the trustee is not compensated for its services. A BVI PTC is used by families to structure and consolidate ownership of their wealth through a trust, while maintaining direct control over the administration of the trust and the company.

Since the BVI's Financial Services (Exemptions) Regulations, 2007 (as amended, the "PTC Regulations") came into effect, the BVI has become the jurisdiction of choice for private trust companies. The PTC Regulations were amended in 2021 in order to clarify certain conditions with which a BVI PTC has to comply, mainly related to "unremunerated trust business" and carrying only the "trust business".

British Virgin Islands PTC establishment requirements

A BVI PTC is incorporated by filing the Memorandum & Articles of Association of a BVI Business Company with the Registrar, together with a certificate from its first Registered Agent.

The Memorandum of Association must state that the company is a private trust company.

The PTC's name must appear in the Memorandum & Articles of Association and include the designation of ("PTC") as part of its official name before the corporate suffix (Limited, Ltd., Corporation, Corp.) Also, the name cannot include the words "trust", "trust company" or "fiduciary".

A BVI PTC must satisfy the following activity requirements:

It cannot carry on any business other than that of being the trustee, protector or administrator of trusts.

It cannot solicit trust business from members of the public.

It can only engage in "unremunerated trust business" or "related trust business".

"Unremunerated trust business" means that no compensation may be payable to –or received by—the PTC, any person associated with it, in consideration for, or with respect to, the trust services provided by the PTC.

The amended PTC Regulations clarify that it is no longer a requirement that a director of an otherwise unremunerated BVI PTC cannot receive remuneration as a condition for eligibility for the unremunerated trust business head of the exemption. It does not, however, follow from this reform that directors who are regarded as being "associated" with the BVI PTC (within the meaning of the PTC Regulations), such as those with a legal or beneficial interest in its shares or employees, will be able to receive direct or indirect remuneration without jeopardising the PTC's eligibility under the unremunerated trust business head of the exemption.

A PTC will be treated as carrying on **“related trust business”** if it acts as trustee of :

A single trust: all the beneficiaries of which are charities or have certain specified blood, marital or adopted relationships to the settlor, or

More than one trust: each of the settlors of which have those relationships to each other and all the beneficiaries of which have those relationships to the settlors of the trusts (or are charities).

A PTC must have at least one Director, but there is no requirement that any of the Directors to be a BVI resident; corporate directors are permitted and only professional directors may be remunerated. No person associated with the PTC is to be remunerated in consideration of services provided by the PTC.

Prior to recent amendments, the PTC Regulations provided that a BVI PTC was prohibited from carrying on any business that is not trust business. It was considered that this restriction created an element of uncertainty in relation to what a PTC could and could not do.

The restriction has therefore been repealed in its entirety, so that is now quite clear that a BVI PCT can undertake ancillary activities such as opening bank accounts (on its own account), purchasing trust property, and acting as enforcers of non-charitable purpose trusts and as council members of civil law foundations.

As a result, it is now clear that BVI PTCs are capable of having all the powers of a BVI business company in addition to being able to act as protector or trustee.

Obligations of the Registered Agent

A PTC must have a licensed Registered Agent who holds a Class 1 trust license, and who is required to satisfy that the PTC is meeting the requirements of the statute, both on its formation and on an ongoing basis.

The PTC must have the following records at its registered office in the BVI:

The trust deed or any document creating or evidencing the trust (and any deed or document varying its – terms);

Register of directors; and

Register of members; and (d) any documentation to satisfy that the PTC has not solicited trust business from – the public and is only carrying on “unremunerated trust business” or “related trust business.