

Private Trust Companies

A private trust company (“PTC”) is a company that acts as a trustee to a specific trust or a group of connected trusts, often for one family.

In Guernsey, acting as trustee is a regulated fiduciary activity for which a full fiduciary licence is required if it is done “by way of business”.

“by way of business” is defined under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (“the Fiduciaries Law”). For the purpose of the Fiduciaries Law, a person who carries on any activity shall be deemed to do so by way of business if he receives any income, fee, emolument or other consideration in money or money's worth for doing so. For the avoidance of doubt, a PTC may be acting by way of business even if it is merely acting as a conduit and paying fees onto a third party.

However, under section 3(1)(y) of the Fiduciaries Law, it is possible for a PTC that is operating by way of business to seek a discretionary exemption from licensing. The Commission recognises the potentially disproportionate burden of requiring a full fiduciary licence for essentially one business relationship. Therefore the Commission may, where it thinks appropriate having given consideration to the specific circumstances, on application by the PTC, exempt it from the requirement to obtain a licence, provided that certain criteria are met.

Application for a Discretionary Exemption

Criteria and consideration

A PTC that fulfils all of the following criteria may apply for a discretionary exemption:

- The PTC acts as a trustee to a specific trust or a group of connected trusts, often for one family.
- The PTC does not advertise or market its services to the public in any way.
- Its name should not include any reference to “trust” or “trustee”, however “PTC” is recommended.
- The PTC is administered by a company licensed under the Fiduciaries Law.
- At least one representative from the licensed fiduciary that administers the PTC should be appointed to its board. This representative, as an individual who is a professional fiduciary practitioner, can provide valuable experience and expertise on trust matters for the rest of the board as well as providing the administering licensed fiduciary with knowledge of the PTC activities.
- In any case where the applicant deems that it would not be practical to have a natural person(s) as the representative(s) of the administrator and believes that a corporate director would be able to fulfill the same objectives as set out above, the Commission would expect the applicant to clearly provide the rationale for this along with name(s) of the individual(s) who will sit on the board of the PTC. In this regard, the corporate director should be a joint licensee of the PTC’s administrator.

The granting of a discretionary exemption will depend on the facts and circumstances of each individual case. For example, the Commission will also need to be satisfied that it has no concerns in respect of the individuals, parties or activities associated with the PTC.

As a matter of general policy, the Commission will apply a standard condition on the exempted PTC requiring it to be administered within the AML/CFT controls of the licensed fiduciary which administers it.

An application for a discretionary exemption should be submitted for the attention of Authorisations using the application form [here](#) and should be accompanied by the applicable fee which can be found using the following link [here](#).

Application for a Full Fiduciary licence.

There may be cases where a PTC may prefer to seek a full fiduciary licence. This may be because a PTC considers that it has sufficient expertise as well as an appropriate AML/CFT framework in place not to require an existing full fiduciary licensee to assist it in administering its business. It may also not want to have a representative from the administering licensed fiduciary to be appointed to its board.

Holding a full fiduciary licence may provide comfort to the beneficiary family group and third parties such as bankers or insurance companies as the PTC is subject to the supervision of the Commission. However, as a full fiduciary licensee is normally permitted to undertake a full range of regulated activities, it may be appropriate for a PTC's licence to be issued subject to conditions that limit the activities that may be carried on.

For further information on the criteria, procedures and fees required to apply for a full fiduciary licence please refer to the following Commission website pages.

<http://www.gfsc.gg/Fiduciary/Pages/Applications.aspx>

<http://www.gfsc.gg/Fiduciary/Fees/Pages/default.aspx>

Disclaimer

Whilst the Commission has taken all reasonable steps to ensure that the information set out herein is accurate the Commission does not accept any responsibility for errors or inaccuracies and notes sections 22 and 23 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, and the Financial Services Commission (Limitation of Liability) Ordinance, 1990.

The materials in this note do not constitute financial or other professional advice. You should consult your professional adviser if you require advice.