

# Guernsey private trust companies

September 2020

Guernsey law provides for the establishment and regulation of Private Trust Companies (**PTCs**). A PTC is an entity that is formed for the purpose of being the trustee of one or more trusts, but which is not run as a commercial trust company. PTCs are popular with ultra high net worth families who want to retain significant control over trustee decision-making.

Acting as trustee is a regulated activity in Guernsey, under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended (the **Guernsey Fiduciaries Law**). If a PTC acts as a trustee, *by way of business*, in or from within the Bailiwick of Guernsey or if a Guernsey company acts as a trustee, *by way of business*, in or from anywhere, it must either (i) apply for an exemption; or (ii) apply for a licence under the Guernsey Fiduciaries Law.

In most cases, a PTC will not apply for a licence but will instead seek an exemption. The Guernsey Financial Services Commission (**GFSC**), on receipt of an application, will consider whether to grant a *discretionary* exemption to a PTC. If granted, the PTC will not need to be licensed under the Guernsey Fiduciaries Law. In order to receive a discretionary exemption from licensing, it is necessary for the PTC to meet all of the following requirements:

1. the PTC acts (or will act) as trustee in respect of (i) one specific trust; or (ii) a group of *connected* trusts with a 'common interest'. This would allow, for example, the PTC to act as trustee of a number of trusts established by / for the benefit of a single family;
2. it does not market its services to the public or advertise – this is in keeping with the notion of it being a *private* trust company; and
3. it must be 'administered' by a company licensed under the Guernsey Fiduciaries Law. The question of what amounts to 'administered by' is considered below;

A PTC can only include the words 'trust' or 'trustee' in its name where it has made a separate application (at the same time as the discretionary exemption application) to use those restricted words. However, it can use the words 'PTC' in its name without the need for permission.

## Administered by?

As we noted earlier, a Guernsey PTC must be 'administered by' a fiduciary licensed under the Guernsey Fiduciaries Law.

That licensed fiduciary must confirm to the GFSC, as part of the exemption application, that it will retain sufficient knowledge and information about the PTC's ownership and control structure and about its activities to be satisfied that (i) the PTC is effectively administered and governed, and (ii) the PTC complies with relevant laws and regulatory requirements.

The GFSC's guidance on how this might be achieved suggests that the licensed fiduciary might provide a director to sit on the board of the PTC, and it might provide a company secretary, an authorised signatory, and otherwise engage in 'close monitoring and oversight' of the PTC. The guidance says that that this may be achieved by 'any of or a combination of' these things, so consideration of what is required will depend on the circumstances (and on the licensed fiduciary concerned).

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### By way of business?

The Guernsey Fiduciaries Law only applies where a PTC conducts its activities 'by way of business'. If it does not, its activities are out of regulatory scope. It is therefore important to understand the meaning of this term.

Under the Fiduciaries Law a person who carries on an activity is 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.

A PTC is considered to be acting 'by way of business' even if it is acting as a conduit and paying fees onto a third party.

A PTC which does not act 'by way of business' is not required to apply for exemption or licensing under the Fiduciaries Law.

### Anti-Money Laundering

The GFSC guidance makes it clear that, as a matter of general policy, the GFSC will apply a standard condition on an exempted PTC, requiring it to be administered within the AML/CFT controls of the licensed fiduciary which administers it.

### Private Trust Foundation (PTF)

Following the introduction of Foundations into Guernsey law, it is also possible to set up a foundation which then acts as a trustee, with the benefit of the same discretionary exemption from licensing. When making such an application, the GFSC will apply the same criteria set out about in considering whether to exempt the PTF from the need to be licensed.

The benefits of using a PTF, rather than a PTC, include the ability to make the trustee 'ownerless' to avoid issues relating to succession in its ownership. With a PTC, there will be a shareholder or shareholders. In order to avoid complications on the death of a shareholder, the PTC shares are often owned by a purpose trust, and the purpose trust needs to have a trustee or trustees (normally provided by the licenced fiduciary that is administering the PTC). By using a PTF in place of a PTC, there is some simplification of the structure, which can result in a cost saving.

### Form of application and fees

An application for a PTC to receive a discretionary exemption from regulation must be made using the prescribed form 'Application in Respect of a Discretionary Exemption For Private Trust Company (PTC)'.

The fee payable by a company wishing to be considered for a discretionary exemption is currently £1,071 and there is no annual fee to retain this exemption (but see below on renewing the application).

These fees are in addition to the fees payable to establish and maintain the company that acts as the PTC.

The current GFSC guidance states that within 14 days of receipt of a exemption application the GFSC will advise if the submission is complete or requires further expansion and clarification. If the submission is complete the GFSC will aim to grant or refuse an application within 14 calendar days of receipt of a fully completed application pack.

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Successful applicants will be issued with an exemption by way of a letter. Any conditions imposed will be scheduled in this letter.

If a speculative application has been made before the PTC entity has been incorporated, the GFSC will only provide 'consent in principle'. A full exemption letter will be formally granted once the GFSC is notified that the PTC entity has been incorporated and provided with proof of registration.

### Limitations on exemption

On 1 October 2019 the GFSC published a notice stating that:

1. if there are any material changes to the structure of the PTC, a new application for an exemption must be submitted to the GFSC. A 'material change' will be viewed as any change in activity or parties within the PTC structure; and
2. an exemption will expire three years from the date the exemption is granted, if it has not been revoked beforehand. Where there has been no change to the structure detailed within the original exemption application only a written renewal request will be required to be submitted to the GFSC and no renewal fee is payable. If the renewal date is taken as an opportunity to amend the activities or individuals involved in the PTC structure or there has been a material change without following the required process (mentioned above), a new application form must be submitted for the GFSC's consideration along with an application fee of £1,071.

### Record keeping

The GFSC may request a licensed fiduciary to provide them with information reasonably required for it to perform its functions. A licensed fiduciary which administers a PTC or a PTF should therefore ensure that the records of any PTC or PTF it administers will be made available for inspection by the GFSC upon request. The information that will need to be made available includes:

- beneficial ownership information;
- information on directors and controllers; and
- information on the settlors, beneficiaries and any protector (if relevant) of any trusts for which the PTC / PTF is a trustee.

For more information on setting up a Guernsey PTC or PTF, please contact the contacts listed on this page, or another member of the International Private Client & Trusts Team.

For more information please contact:



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