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PRIVATE TRUST COMPANIES: GLOBAL USE FOR GLOBAL FAMILIES



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Panel Chairs:

Miles C. Padgett
Matthew Tobin

Panel Members:

Craig MacIntyre
Carlos de Serpa Pimentel
Virginie Vallet



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PRIVATE TRUST COMPANIES: GLOBAL USE FOR GLOBAL FAMILIES

Introduction

Why Would a Global Family Pursue a PTC?

Threshold Issues in the Formation Process

Operating a PTC for a Global Family

Complex or Troublesome Operational Issues



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Why would a Family Pursue a Private Trust Company ?

A PTC provides a family with control over decisions regarding the family's wealth



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Why would a Family Pursue a Private Trust Company ?

Alternatively, a PTC can serve as an interim structure on the path towards independent fiduciaries:

- Educational tool
- Governance tool



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Why would a Family Pursue a Private Trust Company ?

A PTC also provides a family with:

- Control over risk
- Liability protection for trusted advisors
- Built-in process for succession



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Threshold Formation Issues

Choice of Entity & Ownership

Licensed or Not?

Internal Organization

Selection of Situs Jurisdiction



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Threshold Issues

Choice of Entity:

- Company limited by shares
- Company limited by guarantee
- Foundation
- LLC

Ownership



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Threshold Issues

Structuring a PTC? – Offshore (1)

- Company Limited by Shares

But who is the shareholder?

- Individual shareholders – but normally better to “orphan” the company
- Foundation, Discretionary Trust, STAR, VISTA, Bahamas Executive Entity
- Purpose Trust or Charitable Trust
 - Licensed Trust Company acts as trustee of purpose trust
 - Purpose Trust has no beneficiaries, rather it is created for the purpose of incorporating and owning the PTC
 - Consider who will act as Enforcer



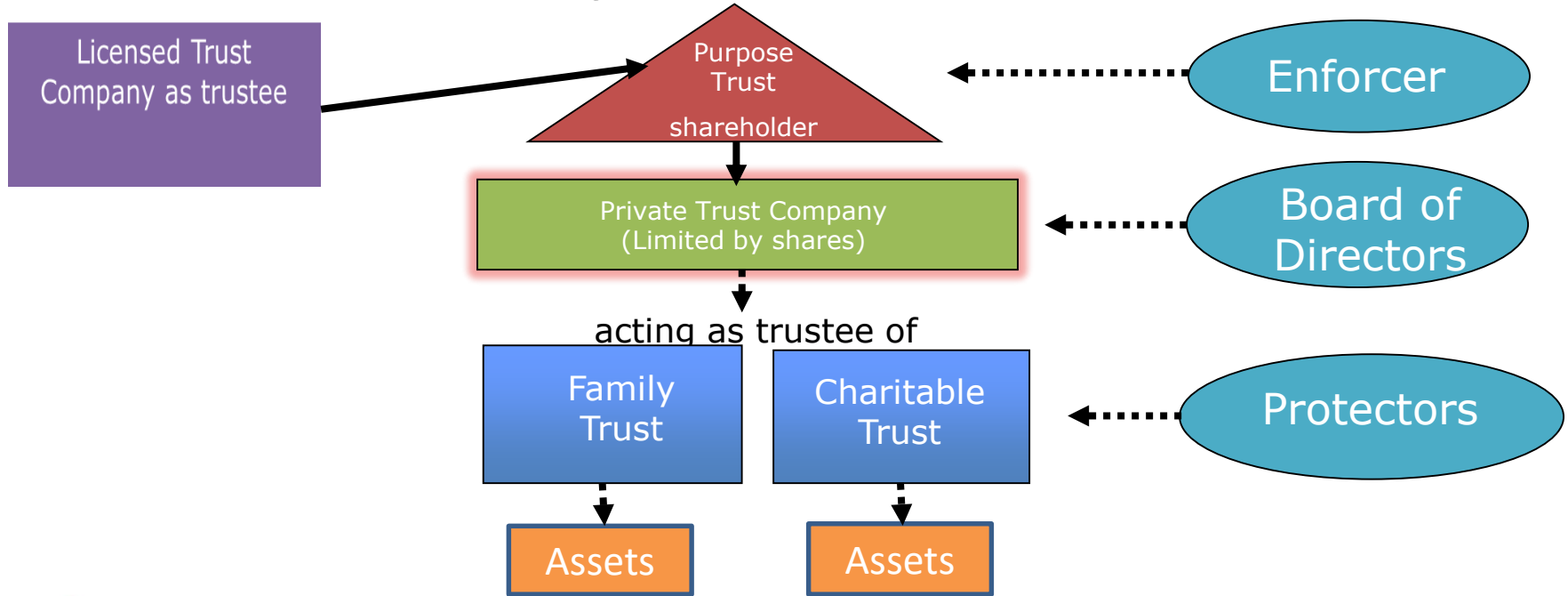
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PTC Limited by Shares – Offshore (1) (cont.)



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Structuring a PTC? – Offshore (2)

- Company Limited by Guarantee
 - No shareholders
 - Liability of members limited by memorandum to a minimal amount
 - Members elect directors (can be the same)
 - Bye-laws set out process for changing members
- LLC's in Bermuda and Cayman Islands
- Foundations?



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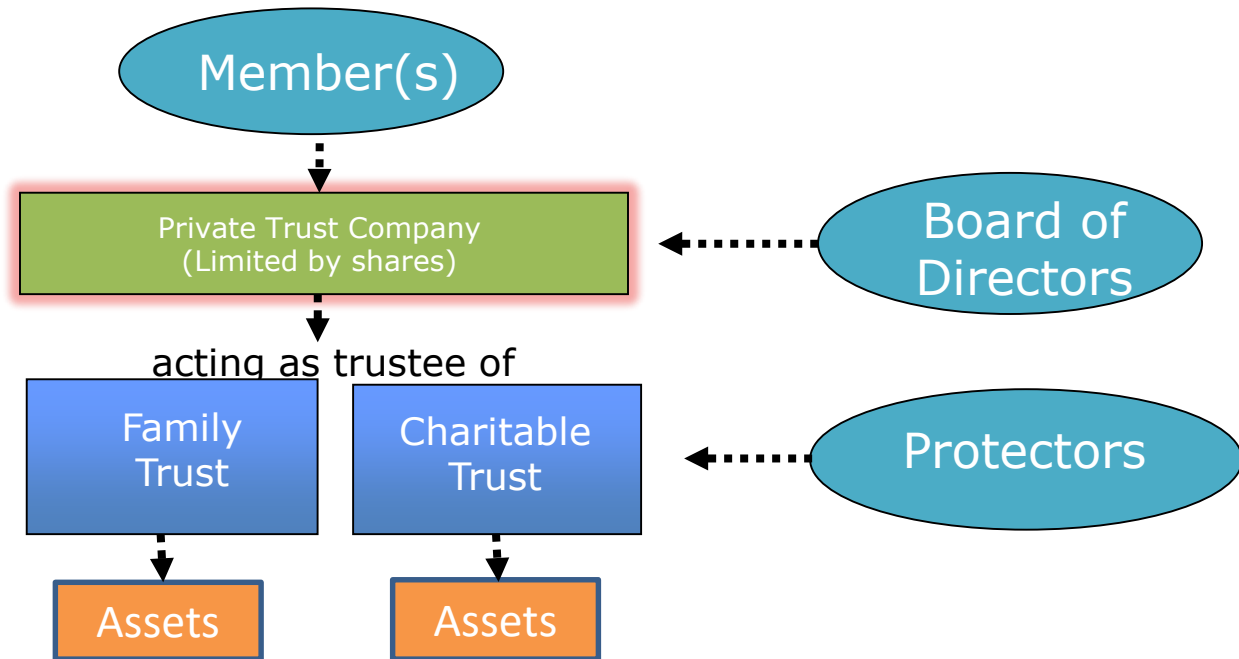
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PTC Limited by Guarantee – Offshore (2)(cont.)



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Threshold Issues

Licensed or Not?



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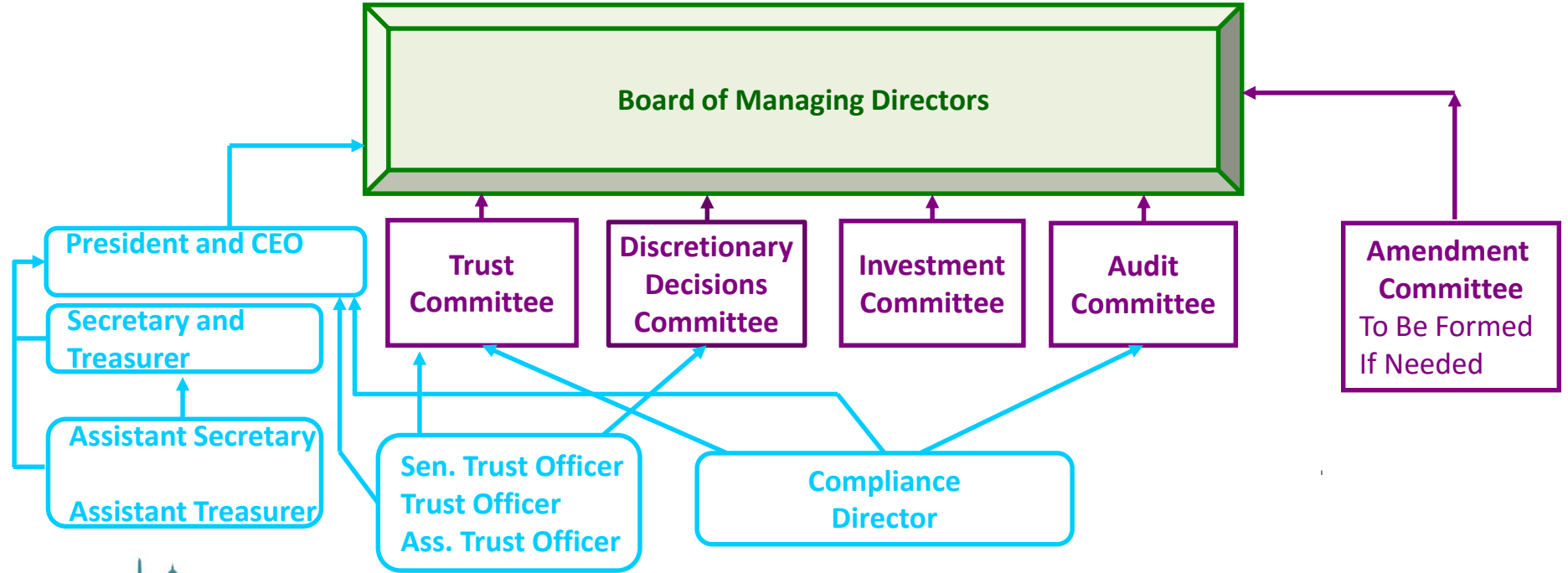
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Common U.S. Internal Organization for PTC



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Threshold Issues – Which Jurisdiction?

Balancing:

- Substantive trust laws
- Statutory and regulatory requirements for formation and operations
- Taxation of the entity and its clients
- Public policy context and judicial environment



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Threshold Issues – Which Jurisdiction?

Balancing Practical Factors:

Geographic convenience

Costs (formation & on-going)

Formation time

Local tax concerns

“Local” bus. licenses

Public records and disclosure



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Threshold Issues – Which Jurisdiction?

Balancing Legal Factors – Trust Laws:

SOLs and trustee protections

Virtual representation

Perpetual trusts & purpose trusts

Directed trusts

Informing beneficiaries

Authority to delegate, including to affiliates

Enforceable arbitration and confidentiality

Duty to diversify trust assets



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Threshold Issues – Which Jurisdiction?

Balancing Legal Factors – Regulatory:

Who can be clients?

Capital requirements and
“investability”

Minimum number of directors

Residency or citizenship of
directors

Minimum meetings at situs

Employee or office required?

Examinations?

Audits?



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Threshold Issues – Which Jurisdiction?

Public Policy Context:

Willingness of local legislature to have competitive laws
Local bar open-minded or parochial
Receptive/cooperative regulator



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Threshold Issues – Which Jurisdiction?

Contact Panel Chairs for comparison of various jurisdictions' laws concerning private trust companies.



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Operational Issues

Fiduciary decision-making process

Decision maker meetings & communications

Decisions:

- Recording
- Implementing



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Operational Issues

Communications with beneficiaries

Compliance:

- KYC/CRS
- AML (SARs, CTRs)
- FATCA & 3520A

Service provider functions and dealing with
3rd parties



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Complex Issues:

Standards of conduct and exoneration

Special objects and bye-laws

Evolving family



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Standards of Conduct & Exoneration

Exculpation of licensed trust companies, especially offshore, will typically be encompassing

PTC allows for customized standards of conduct



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Standards of Conduct & Exoneration

Trustee vis-a-vi trust beneficiaries

Trust company vis-a-vi 3rd party service providers



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Special Objects and Bye-Laws

- Requirements for objects; ring-fence trusteeship and what other details?
- Classes of directors: family directors and outside directors and voting rights
- Founder's rights



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Evolving Families

Relationships and mentoring

Problematic beneficiary requests



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Questions



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Craig W. MacIntyre is a Director in the Private Client & Trust department in the Bermuda office of Conyers Dill & Pearman. Craig joined Conyers in 1997. Craig's practice has an international focus and includes establishing trusts, companies and other entities for use in private business and family transactions, philanthropy, succession, asset protection and trusts in commercial transactions.



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Miles is a partner in the firm's Chicago and Washington, D.C., offices. Miles focuses on tax, business and regulatory planning for family offices and their family member clients and on the chartering and management of private and retail trust companies for highly successful, strategic families and domestic and international financial institutions. Miles routinely writes and speaks on the topics of family governance, wealth management, and structuring and regulatory matters.



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Carlos de Serpa Pimentel

Carlos specializes in all aspects of Cayman Islands trust law advice and trust litigation. He regularly advises trustees and ultra-high net worth individuals on the establishment, restructuring and administration of trusts, and the use of private trust companies as well as providing advice to Protectors and beneficiaries on a variety of trust related matters. He also advises on estate planning and administration of estate issues for high net worth individuals. Carlos has substantial experience in relation to Cayman Islands and BVI trust litigation matters, acting on behalf of trustees, beneficiaries and Protectors in Court proceedings. He regularly appears in Court on their behalf as counsel.

- Carlos de Serpa Pimentel is a partner and Global Group Head of the Private Client and Trusts department across the Appleby Group, which was recently presented with the 'International Legal Team of the Year 2014/15' award at the *STEP Private Client Awards* ceremony.
- Most recently, Carlos was recognized by *Chambers Global 2016* with clients describing him as having a "calm, relaxed and authoritative" working style. One source observed that "He is always highly commercially focused in his advice, as well as being very pleasant and a genuinely nice guy."
- In 2015 by *Chambers Global*, Carlos was recognized for being one of the most well-known trust litigators on the island, and a leader in Appleby's private client and trusts department. Carlos was ranked Band 1 against other lawyers in his field and clients have said to have thought "really highly of him" and are always "very impressed with him." In addition, *Citywealth Leaders List* described Carlos as "one of the very best practitioners in the offshore world, widely regarded as being at the top of his game."
- He was also recognized in 2014 *Chambers Caribbean*, where an interviewee enthused: "It is hard to find an offshore litigator with the type of trust experience that he has." Carlos was ranked as a 'Leading Individual' in the *Chambers Global 2013*, where he has been consistently since 2007. He was described as being "one of the most highly respected trust litigators on the island." He has also been described by sources as: "The shining beacon, and probably one of the most client-friendly trust partners on the island. His manner in dealing with clients and his knowledge of trusts is excellent." The 2013 *Legal 500 Caribbean* ranking also highly rated Carlos. Carlos was also recognized in the 2013 *Citywealth Leaders List*. This annual list aims to highlight the best of those individuals working in the wealth management sector.
- He has presented at numerous international trust conferences and is a regular contributor to trust law journals including *Trusts & Trustees*, *Trusts & Estates* and the *STEP Journal*. Carlos is a member of *STEP* and served as Chairman of *STEP* Cayman Islands from 2009 to 2012 and prior to that as Secretary from 2006 to 2009. He is also a member of the Association of Contentious Trust and Probate Specialists, the ITPA, and the Cayman Islands Law Society. He has been a panel member of experts judging the prestigious *STEP Private Client Awards* since 2007.
- Carlos was called to the Bar of England and Wales (now non-practicing) in 1990, and practiced at the Chancery Bar in London for approximately ten years in the Chambers of G.C. Vos QC, 3 Stone Buildings, Lincoln's Inn. He was called to the Cayman Islands Bar in 2001. Carlos worked for two years at Maples and Calder in the Cayman Islands, and then joined Appleby in 2003. He was called to the British Virgin Islands Bar in 2004.
- Carlos speaks French and Portuguese.

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Born in Aix en Provence, Virginie Vallet was educated in France and England. After achieving a postgraduate degree (Master II) in Contract Law at the University of Paris Sud, France, and an LLM in European Business Law at the University of Exeter, England, she became a French “avocat” in 2010. During her studies, Virginie worked as Parliamentary Attaché of a French Senator in Paris, and as Trainee for the banking department of Lovells LLP in Paris. Since August 2010, Virginie has served as Legal Counsel at SETE in Geneva, working on complex international commercial and financial transactions.



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