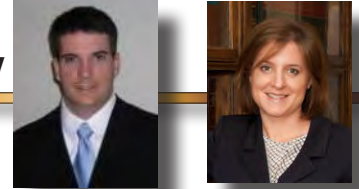




Characteristics and Benefits of a Wyoming Private Trust Company

By: M. Jason Majors, J.D., LL.M. and Tassma A. Powers, J.D.



In certain estate planning cases, clients may have concern over the costs of hiring an Independent Professional Trustee to serve as Trustee of their Trust. The Trustmaker may also be hesitant to turn over control of the Trust's assets and distributions to a Trustee with whom they do not have a past working relationship. In lieu of selecting a Professional Trustee to serve as Trustee, clients may consider establishing a Wyoming Private Trust Company to serve as Trustee.

Characteristics and Requirements of Forming a Wyoming Private Trust Company

Formation. A Wyoming Private Trust Company is either a Limited Liability Company ("LLC") or Corporation formed under the laws of the State of Wyoming, with the specific purpose of serving as Trustee for a Trust or Trusts. A Wyoming Private Trust Company is not regulated by the Wyoming Banking Commission, but is limited to acting as Trustee of Trusts established for the benefit of one particular family.

Owner. The owner of the Private Trust Company is typically the client, or members of the client's family. The Managers, Officers, or Directors of the Private Trust Company ("PTC") are typically members of the client's family or advisors of the family.¹

Committees. Although not required by state statutes, the PTC utilizes committees relating to its operation and the administration of the Trust(s) served. These committees may include an Investment Committee, Distribution Committee, or a Trust Administration Committee. Oftentimes, members of the client's family and family advisors serve on the committees, subject to certain restrictions.

Requirements. The requirements of forming a Wyoming PTC are surprisingly simple. The PTC is formed by filing the respective Articles with the Wyoming Secretary

of State, in the same manner as filing the Articles for a standard Corporation or LLC. The only additional requirements are that:

- The Articles include a provision that the PTC cannot hold itself out to the public at large as offering Trustee services and a provision that the PTC can only serve as Trustee for one family; and
- The name of the PTC is typically in the following format: "*Smith* Family Private Trust Company."

Once the Articles are filed, they are forwarded to the Wyoming Division of Banking for review to ensure the requirements are satisfied. The approval process is quick and then the PTC is recognized in the same manner as other business entities. The Secretary of State filing fee is the same as all other Corporations or LLCs, which is currently \$100.00. There are no additional filing fees, processing fees, or capital requirements. Once the PTC is formed, it can be designated to serve as Trustee of the family's Trust(s).

Operating Agreement/Bylaws. The PTC's Operating Agreement or Bylaws govern the operations. Care must be given to ensure that the governing documents are drafted so that the PTC does not run afoul of any estate tax inclusion issues.² Generally, if the individual is not able to serve as an individual trustee without estate tax inclusion problems, then involvement in the PTC may also cause inclusion problems. Although the advice of a CPA is paramount in this process, an individual concerned about estate tax inclusion issues should avoid serving on the distribution committee or exerting too much control over the PTC.

Service Agreements. The PTC can enter into service agreements for the administration of the trusts with trusted advisors, family offices or a trust company.

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Benefits and Uses of a Wyoming Private Trust Company

Benefits of Wyoming. Wyoming is one of the best jurisdictions to form a PTC, due to the ease of formation and administration, few regulatory requirements, no capital requirements, no state income taxes and low filing fees. Also, due to the favorable trust legislation and potential income tax benefits associated with establishing a Trust in the State of Wyoming, the appointment of a Wyoming Private Trust Company can help to establish a sufficient connection with the state of Wyoming, bringing the Trust under the jurisdiction of the state of Wyoming and its favorable tax and trust laws. Additionally, Wyoming is a jurisdiction of choice for its Domestic Asset Protection Trusts and Dynasty Trusts. A Wyoming Private Trust Company can assist with satisfying requirements that the Trustee be “a corporate trustee” and/or domiciled in Wyoming.

A Wyoming Private Trust Company can be utilized for a variety of estate planning purposes, from clients desiring a low cost Professional Trustee, to clients and attorneys desiring to implement sophisticated estate plans for high net worth families. Many clients may see the benefits of a PTC as Trustee of their trusts. Sample copies of Articles of Incorporation and Bylaws for a Wyoming Private Trust Company can be obtained from Wyoming Trust Company at www.wyotrust.com.

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¹ The scope of this article precludes discussion regarding the implications of the Dodd-Frank Wall Street Reform and Consumer Protection Act for Family Offices and Private Trust Companies.

² The Internal Revenue Service has issued certain Private Letter Rulings and an IRS Notice that provide non-controlling guidance regarding the structure of Private Trust Companies: PLR 200546055, PLR 200548035, PLR 200523003 and IRS Notice 2008-63.