PFA

Necessary Family Characteristics for a Private Trust Company

1) Adequate assets, probably at least $250 million, held in trust that require current administration.

2) A family governance structure that allows decisions regarding the management of trust-owned assets to be made and implemented effectively.

3) Acceptance of the fact that some family members will have access to confidential information about other family members and may impact the administration of trusts for their benefit.

4) A funding source to launch the PTC and be available to provide additional funding later if necessary.

5) The ability to hire and manage staff required to operate the PTC, some of whom may also work in the family's family office.

6) Family members who are able and willing to serve in key fiduciary roles and be subject to some level of regulatory oversight.

7) Family member agreement that the benefits outweigh the costs or potential disadvantages.

Benefits of a Private Trust Company

1) Facilitates multi-generational family member control of the management and use of trust-owned assets, rather than depending on commercial trustees or individual trustees who are not family members.

2) Encourages broad family member involvement with the management and use of trust-owned assets, which can reinforce key family values.

3) Enables enhanced flexibility to use trust assets to address the special needs and interests of family members.

4) Provides more privacy, continuity and personal attention than commercial trustees offer.

5) Allows ongoing family control of trust-owned family businesses.

6) Minimizes or avoids court involvement in some situations.

Costs or Potential Disadvantages of a Private Trust Company

1) Requires a significant commitment of time and decision-making by family leaders.

2) Requires the engagement of attorneys and other advisors who have expertise and experience with PTCs, who may not be the same attorneys and other advisors currently used by the family.

3) Involves meaningful expense during the set-up phase, requires initial funding and may result in ongoing costs that exceed the apparent costs of alternatives.

4) Requires some disclosure of confidential family member information to regulatory authorities.

5) Results in some disclosure of confidential family member information to other family members during the trust administration process.

6) May reduce the recourse family members have if they allege a breach of fiduciary duty, including the mismanagement of trust assets.

7) Requires general – but not necessarily unanimous – family member agreement that the benefits outweigh the costs or potential disadvantages.

8) Costly to unwind in financial and family dynamics terms.

Private Trust Company Illustration

PTC Ownership Trust Funded By and Benefitting Family Members That Owns, Funds and Controls the PTC (1)

- Appoint and oversee members of the Board
- Make ownership decisions
- Provide necessary funding

PTC Located in a PTC-Friendly State (2)

- Operate pursuant to state law and regulatory policies and procedures

PTC Board of Directors (3)

- Appoint and oversee officers and committee members
- Approve business plans and budgets

PTC Officers (4)

- Manage business operations
- Support committee activities

Distribution & Discretionary Decisions Committee(s) (5)

- Set or approve trust distributions
- Exercise discretion for other transactions involving trust assets

Investment Committee(s) (6)

- Adopt investment policy statements for each trust
- Oversee the investment of trust assets

Family Business Committee(s) (7)

- Oversee the operations of trust-owned family businesses

See accompanying Notes

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Notes for Private Trust Company Illustration

1) A family trust, such as a GSTT-exempt trust, may be used to own the PTC and profits that accumulate over time may benefit future generations. G-1and G-2 family members may serve as trustees of the PTC ownership trust initially and the PTC may succeed them as trustee. The ownership trust provides initial funding for the PTC and needs adequate financial resources to provide additional funding if that becomes necessary in the future.

2) PTC-friendly states have specific statutes that authorize PTCs and they have developed regulatory structures for overseeing their operation. Some states permit both regulated and unregulated PTCs. As the name implies, an unregulated PTC is subject to lighter regulatory oversight. A regulated PTC is exempt from registration as an investment adviser, but an unregulated PTC is exempt from SEC registration only if it satisfies the SEC's family office exemption from registration.

3) The PTC's Board may consist exclusively of family members, or it may include employees of the family's family office, other non-independent members and independent members. However, the Board will almost always be controlled by family members with a succession plan that ensures that control will continue.

Notes for Private Trust Company Illustration (cont.)

4) PTC officers typically also will be officers of the family's family office, but they may be independent of the family office. If they are independent, they need to coordinate closely with the family office staff as they both work to serve family members. If they also are officers of the family office, they need to carefully balance their family office roles and their PTC responsibilities.

   With Board oversight, PTC officers obtain and manage internal PTC resources and external resources provided by the family office and other firms. If the family office is the investment advisor for trust assets, even if all or most assets are managed by other advisors, use of a profits interest structure can materially enhance after-tax returns.

5) A PTC may have one Distribution and Discretionary Decisions Committees for all trusts it administers or several such Committees, e.g., one for each family line or group of trusts. Each of these Committees needs to have independent members who can authorize discretionary distributions, but it also may include family members who are beneficiaries if their roles are limited to participating in the authorization of distributions to themselves that do not cause trust assets to be included in their estates, e.g., distributions under an ascertainable standard.

   These Committees also will be responsible for approving other transactions involving trust assets, such as sales or exchanges of assets between trusts. All Committee members, and especially beneficiaries who participate in the authorization of distributions to themselves, need to understand and respect the fact that they are acting in a fiduciary capacity. Proper documentation regarding decisions of the Committee(s) needs to be maintained.

Notes for Private Trust Company Illustration (cont.)

6) A PTC may have one or multiple Investment Committees that adopt and monitor the implementation of an investment policy statement for each trust and oversee the investment of trust assets. Beneficiaries can participate fully in Committee decision-making without a risk of estate inclusion, but all Committee members need to understand and respect the fact that they are acting in a fiduciary capacity. Committee members must disclose any conflicts of interest they may have regarding a potential or current investment, and they may need to recuse themselves from decisions regarding an investment with which they have a conflict. Proper documentation regarding decisions of the Committee(s) needs to be maintained.

7) If trusts administered by the PTC have ownership interests – and especially if they are controlling interests – in family-owned businesses, it may be appropriate for those interests to be handled by one or more separate Family Business Committees, which may include members who are not on other PTC committees. These members may be family members who are involved in the operation of the businesses and non-family members who have relevant expertise and experience. Provisions in trust agreements typically absolve members of these Committees from duties of diversification and may even prescribe conditions for retaining the businesses. Proper documentation regarding decisions of the Committee(s) needs to be maintained.