

**GOVERNANCE FOR FAMILY TRUSTS AND TRUST COMPANIES – DECIDING WHAT YOU WANT AND
BUYING WHAT YOU NEED**

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Chronology of the Parable Family

1925 Founder (John) dies at age 52, leaving a wife and two teenage sons and a younger daughter age 10, and a will with dynasty trust for his company stock; named trustee (Peter Steward) elects himself President of the company

1930 Trustee/President agrees to appointment of local bank as co-trustee and refrains from voting on matters involving conflict of interest

1933 Bank trustee fails, Peter Steward resigns and leaves the company, children now in their 20's, take over the almost worthless company and become trustees

1937 Surviving spouse dies and company is merged into a Chicago airplane instrument manufacturer, and children move to Chicago

1941 U.S. enters WWII and demand for company's products skyrockets, company expands and prospers during the war years

1945 WWII ends, and children now in their 30's decide to divide trust into three equal trusts, one for each child and respective family branch, youngest child and only daughter Sarah's trust (at her urging) sells her stock back to the company. Her brothers head west to Southern California, where the company relocates and becomes very successful as a ground floor participant in the growth of the commercial aviation and aerospace industry. Sarah begins a new career in an investment firm as a research assistant.

Fast forward to 2000

Sarah has been quite successful, eventually founding and later selling her own investment firm. She used part of her trust to start the business and she still retains a small piece that would be redeemed on her death. Now living in Florida and enjoying life at age 85, she has a husband, three children spread around the East Coast, and many grandchildren, and one great-grandchild just born.

Paine and Abel, now over 90 years old, have been retired for several years, Paine in the L.A. area and Abel in Nevada. They sold their company in the 1960's. After the sale, they lost quite a bit in cyclical downturns of the 70's, 80's and 90's, but managed to do well enough on balance so that their families are still wealthy.

Abel has tried to help his children create new businesses from time to time, and Paine fell in love with commercial real estate as an asset class and he still owns several major partnerships.

Paine lost his wife a few years back, a Hollywood actress, but he is close to his step-children, who help him in his real estate operations and want him to fund a family foundation. His Parable Trust will pass to the other branches at his death, since he has no descendants.

The Parable of the Parable Family

A Bit of History

Four generations ago in Wisconsin, John Parable executed a will that established trusts to hold his stock in the small manufacturing company he had founded. He expected that his assets would be more than enough to provide for his wife and teenage children in the event of his premature death. He hoped that the trust would preserve the company intact for generations of his family and for the local community. Accordingly the trust was written to last as long as possible under Wisconsin law. He died unexpectedly in 1925 at age 52. Today we would call the trust a dynasty trust.

The will named Peter Steward as the trustee. He had become a key executive in the business and had already earned a small stock grant. Now, by voting the shares in John's trust, he elected himself President and steered the business through a difficult transition. Soon the company began to grow again and he felt justified in creating a substantial bonus plan for the executives, including himself, and, voting the stock in trust, he approved a new stock purchase plan for himself alone.

John's surviving widow Ruth was quite satisfied with Peter's work despite his wearing two hats, but outside legal counsel voiced concern that Peter's decisions could be challenged due to the conflict of interest. With everyone's consent, a local bank trust department was named as co-trustee in 1929 and Peter stopped voting on conflicted matters as a trustee. The bank trustee expressly ratified all prior trustee votes. All was well.

The next year, however, the Depression hit, and by 1932 the local economy and the company's business were in free fall. The local bank failed, leaving Peter as sole trustee. Peter, a contemporary of the founder, felt he was too old to work through another crisis. He resigned all his positions and virtually surrendered his stock back to the company. Paine and Abel, the founder's two sons (now in their thirties), took over and held on, and their younger sister Sarah followed their lead. All three children became trustees, since no one else was interested. When their mother died in 1937, they all moved to Chicago and merged the company into another struggling manufacturer, a maker of airplane instruments for the U.S. mail fleet.

Fortunately, WWII greatly increased demand for instruments and other airplane parts, and the company expanded and prospered beyond anyone's expectations. Dividends flowed into the trust, and the trustees hired a Chicago investment house to advise them on how to reinvest the cash in the public markets. But the three trustees soon began to disagree about how much to reinvest and how much to distribute, and on the dividend policy of the company.

As WWII came to an end, Sarah Parable, the youngest child and only daughter, accepted a plan proposed by her brothers. She had never enjoyed working in the company and disagreed with her brothers over trust and company decisions, so she was willing to agree to divide the trust into three equal trusts, one for each of them, and have the company redeem all the stock in her trust. Her brothers were then free to take the company west to Southern California. For her part, Sarah joined a Chicago investment house as a research assistant, in order to pursue her intellectual interest in public markets.

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As Sarah learned the business of investing, her brothers were able to exploit a ground floor opportunity to grow the company as the U.S. became a global leader in commercial aviation and aerospace. Later, in the 1960's, their business was sold for a pot of cash.

Fast forward to the year 2000

Paine and Abel are now in their early 90's. Sarah is 85 years old.

All three branches of the family now have other trusts they funded or will fund at death, so they call their ancestral trusts by the family name "Parable." Since each Parable Trust has contingent cross-remainders that would benefit the other two branches of the family, the three siblings share Parable Trust investment information from time to time, disclosing how the investments are spread among various categories and referring to the three trusts as Paine's Parable, Sarah's Parable and Abel's Parable. They do not share information on the total dollar value, or any information at all about their personal wealth outside the Parable Trusts.

Paine still lives outside L.A. in Orange County. Over the years he has become heavily committed to investments in real estate operating partnerships, initially backed by guarantees and lending by his Parable Trust. He was married to an actress, who died a few years ago (despite being 30 years younger than him). They had no children of their own but he is close to her children from a former marriage. At the suggestion of his step-children, who help him with his real estate investments now that he is older, this family branch wants to start a family foundation.

Sarah founded the first woman-owned investment banking boutique 30 years earlier, using her trust for mezzanine debt financing. It was a roaring success and she sold most of her interest a few years ago. She then retired with her husband and children to Florida, but kept a passive interest in the business. Her three children live up and down the East Coast, and she has several grandchildren and one great-grandchild. Her trust holds a diversified marketable securities portfolio and several private equity investments managed by others.

Abel retired to Nevada and spends time supporting the efforts of his children, who are spread around the country. Though his children want very much to start new ventures so they can retire early from professional life, thus far success has been elusive. But one child is now working on a very promising new idea.

Governance Choices on the Table

Sarah, Paine and Abel have each separately consulted their advisors and their families about how to arrange the governance of their trusts for the future, including the Parable Trust of each. Below we summarize their thinking and the recommendations of their advisors.

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Paine's Branch:

Paine favors individual family trustees since that has worked well enough in the past. Let's keep it simple, and not let "perfect be the enemy of good." He wants to avoid complex trust management structures, even if the detailed operations could be handled by in-house staff or outside firms. In his world view, you don't take responsibility by adopting rules and hiring other people to follow them. External trappings don't make for better decisions. And his step-children look to him as a role model, not a rule monger.

He recognizes that, upon his death, his Parable Trust will pass for the benefit of his nieces and nephews since he has no descendants. He intends to pass his own assets into trust for his step-children, with a remote contingent remainder to charity, and with a small share passing to a family foundation immediately at this death. He expects to soldier on in life for many years to come, however, and believes his views on trust management should be respected when the Parable Trust passes to other branches at his death. He also wants to start funding the family foundation now.

1. Direct Participation by Family

Paine feels that, while his past performance as trustee was a bit spotty, he did as well if not better than a typical bank trustee over those years, and he was able to coordinate his personal goals and the trust's investments much more easily than would be possible with a third party, particularly someone who does not truly know his family or personally share its values.

He also believes that his family should continue its culture of personal responsibility and "hands on" management. When you're wealthy, it comes with the territory. Direct management experience breeds confidence and enhances decision-making skills. It "tests your mettle" as he puts it. If some of his step-children are still on the steep end of the learning curve, they need to be motivated to take responsibility, and maybe his nieces and nephews and siblings can help them.

Besides, the goal of setting up and running a successful family foundation should also be treated as a "hands on" responsibility. Far better, he thinks, to get your hands on the wheel than to dump the decisions off to some outside institution, consultant or advisor. Besides he objects to the use of institutional trustees, at least those that seem to spend so much money on marketing and fancy offices, pushing up their fees, especially if they are owned by public companies that need to meet Wall Street's profit expectations.

And he sees a family-owned trust company as an elitist bureaucratic bauble, just like those fancy family offices, an indication that your family (or advisors) lack ego strength and seek shelter in the apparent sophistication of others. It's just not that hard to be a trustee, and complying with extra regulation would simply lead to too many boring meetings with attorneys and accountants and regulators and hired hands, a kind of quibble club. Being rich was supposed to be fun, and it has been for him.

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2. Trustee Succession: Availability, Suitability, Liability

Certainly he wants one of his step-children to take over his control of the operating real estate, in the event of his death or incapacity. Admittedly he is a bit challenged on how to create a succession of individual trustees. His step-children still need grooming, even at age 45 to 50. If he resigned tomorrow as trustee, he would not be entirely confident in turning over all of the authority to any one or more of his step-children, i.e., if they were to serve directly as full trustees on all issues. After all, he needs someone who knows trust management issues to some extent, and his step-children lack that working knowledge now. His attorney and accountant are near retirement age so that path is not clear, unless the more junior people in their offices joined in as co-trustees with one of two step-children, assuming a willingness to take on the risk. He also wants family members in the other branches to step into his shoes as individual trustees of the Paine Parable Trust upon his death.

Thus, it looks like his plan cannot follow a simple line of succession. He also hasn't faced up to the possibility of creeping incapacity – what if he wants to weigh in on the big decisions as trustee, but can't manage the details anymore, and the “details” are becoming too important to leave solely to his administrative assistant?

3. Suitable Assets, Investment Style, Regulation

In Paine's view, individual trustees are clearly needed for the real estate businesses, which he would pass in trust to his step-children and their children. Clearly a bank would not want to hold all of the properties, since many are not investment grade and the package represents an over-concentration in real estate. The investment diversification requirement has been waived in the language of all of his own trusts, but this may not be enough to satisfy a bank as a practical matter. (He has been told that he can't change the diversification standard for the Parable Trust, and therefore he has kept his Parable Trust much more diversified.)

As for investment pooling and regulation issues, Paine understands that the securities regulation issues raised by the Investment Adviser's Act (Adviser's Act) and the 40 Act (Company Act) can be dealt with effectively even with a growing number of trusts and “clients” (i.e., his step-children). If he does not centralize investment decision-making, then each person can receive advice from registered advisors on marketable securities, and no family member becomes an unregistered advisor to others. Pooling assets when needed can be done in general partnerships, so everyone still takes individual responsibility.

Pooling the family foundation with other family members may represent a challenge under the “private foundation rules.” His advisors, however, see a solution under a new IRS ruling policy, if the charity receives most-favored-nation status on fee allocations and expenses within the family pool.

4. Federal Tax Issues

Paine understands that he has been losing some tax deductions by hiring separate investment advisors to help him when he runs marketable securities, but a new junior accountant working on

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his file says he could file a “Schedule C” and start deducting those fees as an expense of the trade or business of being an individual trustee. Also, he understands his personal trusteeship helps him avoid full passive loss treatment on his real estate.

As for family-owned trust companies, his advisors warn that the IRS will scrutinize a family trust company structure, raising some estate tax issues having to do with vote-swapping or reciprocal trusts or may require IRS approval of restrictive voting procedures.

5. Low-Tax Neutral Site with Good Trust Law – Easy Choices

Since Paine has paid personal state income taxes in California for a long time, he has grown accustomed to the status quo. In any event, he does not understand how a trust could leave California and avoid state income taxes. No one has advised him that in the future there may be reason to avoid having California trustees for this reason, particularly if there are no California beneficiaries.

Paine does not believe that differences in trust law matter. His advisors say that the trust law has been changing over the last decade, but now there seems to be a convergence around some version of the Uniform Trust Code, which incidentally was originally based on the California Trust Code. The revolution is over and the law will settle down now.

No one has told him that there are differences in the trust codes, even in the different enactments of the “uniform” code, such as in how much information must be disclosed to beneficiaries and in how easy it is to amend a trust. Also, no one has mentioned to him that some states make it more difficult for creditors to enforce separate claims against a beneficiary’s trust interest, or for a divorced spouse of a beneficiary to intervene in how discretionary distribution decisions are made by a trustee, or that family foundations in California are subject to more regulation (or soon could be).

6. Family Coordination – Some Benefit

Paine believes that family coordination could help a great deal in providing for a succession of individual trustees. He and his step-children would also be more than willing to offer suggestions on real estate investments to other family branches, at least to help in the review of REITS, real estate operating companies and private equity funds.

7. Recommendation for Paine by His Advisors

Paine is determined to keep it simple, and therefore he prefers to keep using individual trustees who make their own direct investment decisions with the advice of investment advisors on marketable securities. They can then choose to participate, or not, as general partners in family-based securities investment pools with other family members and trusts if that is needed to address certain asset classes. In other words, the step-children could get together and engage an investment consulting house for advice on marketable securities and hedge funds, and continue to manage operating real estate together in partnerships and LLC’s, much as they do now. If desired, his step-children could rely on shared administrative services (achieving efficiencies of scale),

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whether through a family office or third-party providers. He just needs help on trustee succession, to find someone to step up to the plate who is fully qualified now to be a trustee over his trusts and his Parable Trust if he were to drop dead tomorrow.

One of his advisors, however, has suggested that Paine may be underestimating the issues raised by trustee succession – how can he assume that there will always be individuals who are ready, willing and able to take on the personal responsibility, and liability risk, of managing trusts when his family line has gaps in succession? Is personal indemnification from the trusts enough protection? What if his family tends to overlook gaps in succession and talent because they meet difficulty in finding suitable individuals?

Sarah's Branch:

Sarah is looking for professionalism, relying on third party service-providers, with bundled services, with opens architecture for some asset classes.

She believes in skill sets to fit the need. For example, few entrepreneurs (if any) can market and sell their own company, which is why she became a successful investment banker to do that for them. Similarly, trustees require, in her view, distinct skills (such as patience and attention to detail) and access to special resources (such as specialized accounting and tax expertise) that are not readily available to individual trustees.

Thus, she is looking for an institutional solution -- a bank or trust company for trustee functions, coupled with a separate investment advisor for certain asset classes, subject to the oversight of a family-run Protector company. In the Protector Company, the family members, and their lawyers and accountants, can take on a more suitable role for their skill set and resources.

As compared to Paine, she also has special concerns about privacy and believes the future is not all that predictable.

1. Direct Participation by Family as Managers – Avoid

Sarah and her advisors and family do not thirst for “hands on” management in the future. In her view, most of what trustees need to do consists of fairly mundane tasks, and she does not believe her children and grandchildren want to be occupied, or should be occupied, with seeing that these things are done, much less doing them directly. Individual trustees could of course employ assistants and agents, and purchase support services, but that leads to higher costs and a division of responsibility among several providers that must be managed. She doesn't see how her family could or would want such an unbundled arrangement in her absence, and she isn't interested herself in spending her own time on such matters today.

Her children would prefer to use an institutional trustee in the traditional mold, and Sarah's open architecture approach seems to her to be a modest variation on that model. Sarah believes she has the contacts and expertise to choose wisely among third-party trustees and investment advisors, but she is not sure her children will ever have the interest or talent to do the same, since they are all working in unrelated fields. Nevertheless, the quality of advice and assistance that is available

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from financial institutions and advisors has improved greatly in her view over the last 10 years, and she expects that trend to continue, pushed by the competitive economy. She has concluded that relying on outsiders will work. Moreover, in her hierarchy of values, managing your own money does not rank especially high as a fruitful or noble activity. If her descendants aren't interested in direct participation, that's fine with her, if they spend their time instead on their own pursuits, whether striving for recognition and excellence in professions, coaching their kid's sports teams or serving on the local school board.

One issue has not been resolved to her satisfaction. She would prefer that her closest advisors assist the family by participating in the process for selecting trustees and investment advisors in the future, and sometimes even overseeing distribution policies, but she is not sure they are willing unless they are fully protected from nettlesome disputes and claims by errant family members. The Protector company hopefully will solve this issue.

3. Suitable Assets, Investment Style, Regulation

Sarah does not own special assets such as real estate or angel investments (although she does hold a passive interest in her former firm that will be redeemed at her death). Sarah feels that issues surrounding the Adviser's and Company Act are becoming increasingly relevant, however, as her family grows larger.

Sarah understands that use of individual trustees or use of a family owned trust company may raise registration or compliance issues. The Adviser's Act may require trustees or the family owned trust company to register as an investment adviser if too many trusts and individuals are involved. The Company Act could require registration of a pooled family investment vehicle as a regulated investment company. According to her advisor, hiring professionals may be a way to bypass those issues, as compared to using individual trustees (which is in keeping with Sarah's preference to rely on outside professionals for trustee and investment services).

4. Federal Tax Issues

Sarah understands that the open architecture approach may cause the loss of a federal income tax deduction, or the imposition of the alternative minimum tax (AMT), on the fee costs of the separate investment advisors but believes it is worth it. After all, her accountant has priced it as a 15% increase in those costs, more or less, assuming the expense is funded from capital gains and dividends taxed at 15%. If the trusts are in a jurisdiction with little or no state income tax, that is the total cost increase.

5. Low-Tax Neutral Site with Good Trust Law – Easy Choices

For this branch of the Parable Family, Delaware trustees are at the top of their list because none of the family lives in Delaware, so the trust would not be subject to state income taxation (other than potentially on state-sourced income). Delaware would also represent a neutral location for what is essentially an East Coast family. This branch has been advised, however, that there are several places in the United States where the trust law and taxes are favorable. They have been told that

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trying to move some part of the decision-making offshore, that is, outside the United States, would create tax complications.

They have been advised that Wisconsin and Illinois would not seek to tax trusts that have moved to Delaware and severed all connections with the earlier jurisdiction. Florida has no income tax and will soon have no intangibles tax, so Florida won't be trying to find where the trusts have moved.

6. Family Coordination – Some Benefit

Sarah believes the other branches of the family, particularly Abel's children, could help her branch in choosing trustees, investment professionals and other advisors in the future. Since Sarah believes she will easily outlive her brothers and will remain active throughout the next 10 years, she would be willing and able in the future to assist Abel with his children's ventures, particularly the latest one, which shows promise and could benefit from her introduction to equity capital investors and advisors.

Also, she is acutely aware of the advantages of the economies of scale if the three branches bundled their assets in some way to negotiate with the financial services industry.

5. Privacy Issues – A Complex Picture

Thus Sarah is not against coordinating with the other two branches of the family but a recombination of the Parable Trusts would bring back memories of the difficulties the three siblings had when they managed one trust together in the 1940's.

She recognizes the privacy advantages of family-based management because she is concerned about "leaks" in large financial institutions and about feeling captive when the institutional trustee knows "too much" and is looking to maintain and grow profit opportunities.

On the other hand, a professional third-party trustee would help her preserve her own intra-family privacy. Distribution decisions, particularly when made by family trustees from other branches of the family, can raise sensitive privacy concerns. In her case, it would lead to the disclosure of certain health, behavior and marital difficulties among her children and grandchildren that she would prefer to keep confidential.

Third party "objective" trustees can also take family conflicts out of distribution decisions, so that those young people who are denied anything they ask for cannot complain that the "family" is cramping their style. Discussion about budgets can take place on a professional level.

Moreover, Sarah harbors some concern about jealousy from the other branches. She suspects her branch of the family is the wealthiest by far because her own investment decisions and business success have produced double-digit returns for decades without interruption, far outstripping the inconsistent returns her brothers seemed to complain about in the past.

She also may want to empower the trustee to keep at least one of her trusts secret, or at least private to some degree, so the primary beneficiary of the trust, a troubled grandchild, does not have

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uncontrolled access to information. She understands that is an issue of whether the governing state law will allow what has been called a “quiet trust,” and that locating that trust in a special jurisdiction may be necessary.

6. Sarah’s Crystal Ball

Sarah is less clear as to where the future will take the youngest generations, particularly her grandchildren. She sees them as growing up in another country, figuratively – and possibly quite literally for her great-grandchild. Should she plan her views around them, rather than her children, as far as the factors discussed above? Can the structure for governance adjust over time if the grandchildren have different interests and aptitudes than the children? Is the range of choices likely to continue to evolve over time, just as it has over the last 20 years, so that future adaptability is a key factor? What if we have a virtually national trust law 20 years from now? Or no state regulation of fiduciaries? Or completely different ways of managing money, events that we cannot even foresee at this time?

7. Recommendation for Sarah by Her Advisors

Based primarily on input from their advisors, this branch favors the choice of either an institutional trustee in the traditional role, or more likely, a combination referred to broadly as “open architecture” in which the trust’s investments are managed by investment advisors separate from the trustee who performs the other trustee functions.

The trustee could be an administrative trustee, probably in Delaware, and the investments could be pooled in LLCs owned by the various trusts and family members. Ideally, the trusts would provide for this separation of function, so not all of the investments would be held in LLCs, i.e., some would be held directly by the trustee but managed by professional investment advisors.

Also, it would be essential that in some way that the family form a Protector company, probably as a Delaware non-stock, no-profit company. Sarah views the Protector company as providing the authority to direct, or at least “jawbone” the trustee on all important decisions that her family would need to influence.

This “incorporated decision-maker” could involve various family members and advisors of various levels of expertise and experience in decisions to change trustees and investment advisors, further amend the trusts, restrict or liberalize the exercise of “hot” tax powers as the law changes, and so forth. The Protector company can foster the involvement of younger generations. Grandchildren and great-grandchildren can manage smaller projects and, on larger projects, provide assistance and due diligence to enable the family leaders to make informed decisions. The younger family members in this way can gain the experience and knowledge needed for their own later decision-making.

How this structure could be put in place with the existing trusts is yet another question, since the Parable Trust for Sarah has no such provisions. She has been told that the Delaware could be approached on the question of making a change to the governance provisions, or possibly the

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Delaware trustee would have a power under Delaware law to pour over Sarah's Parable Trust to a new trust with revised administrative provisions such as the Protector company.

Abel's Branch:

Abel believes that Sarah's approach is a good one, but he wants the family to do more. He recognizes the past difficulties with family unity of trust management, but times are different now, as is the family. He wants the family to join together to establish a family trust company, though not in a typical fashion.

In Abel's world, every question has a suitable answer, and here he has found it in the "personal trust company" – a hybrid that falls midway between Sarah's solution of an open architecture trust and a fully regulated family trust company.

In this structure, the family would engage an independent trust company to serve as administrative trustee and would create a separate family-run fiduciary company to oversee the administrative trustee and separate investment advisors and to make distribution decisions. The family company would not be owned by anyone (it would not issue any stock), but it would be run by a family board, much like a family foundation, including advisors to the family. It would resemble Sarah's Protector company in its board composition but its authority over the trusts would be much more direct, and much stronger.

1. Direct Participation by Family & Trustee Succession

Abel wants to promote family cohesiveness and sees the personal trust company as a more robust vehicle for the family's role in the trusts. It encourages more direct responsibility by both the family and its personal advisors, as if they were individual trustees but without the personal liability risk. It combines direct family participation at the trustee level with the advantages of a continuing corporate life.

As with a Protector company, the voting arrangements and divisions of responsibility can be changed by changing the corporate documents without having to change the trust documents, once the role of the family fiduciary company is imbedded originally in the trust documents.

3. Suitable Assets, Investment Style, and Regulation

Abel envisions members of his branch having investment oversight responsibility in that, through their role as decision-makers in the personal trust company, they will choose registered investment advisers to manage the investments of those trusts over which the personal trust company serves as trustee. He also would like the structure to be flexible enough to permit his children to be more actively involved in the investments (i.e, possibly picking and choosing investments, not only advisers, for each trust).

If the personal trust company renders "investment advice," it may be required to register itself as an investment adviser under the Adviser's Act. The personal trust company may be able to side-step registration if it delegates investment management to one or more registered investment

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advisers (and limits its role to the selection and oversight of such advisers). The more active a hand in investment management the personal trust company has, the more likely it will be required to register itself as an investment adviser unless it qualifies for a specific exemption from registration. Alternatively, the company could apply for an order from the SEC exempting it from registration under the Adviser's Act; the SEC has shown a willingness to exempt a family run or affiliated entity that serves only one extended family (for example, if it serves only descendants of Abel's parents or trusts for their benefit).

4. Federal Tax Issues –Important but Manageable

Abel's advisor cautions that the IRS is studying the question of whether adverse estate tax consequences could result if family members hold decision-making authority within a family trust company. This concern arises if family members or certain others (such as individuals considered, for tax purposes, to be controlled by a family member) participate in the management of a private trust company and thus can affect distributions. According to the advisor, however, protective restrictions can be built into the trust agreements or in the company's governing documents to ensure that there is no such inadvertent inclusion of trust assets in any individual's taxable estate. Since the terms of the Parable Trust do not now contain this protective language, it is simpler to build the protective language into the personal trust company's governing documents (and, on an ongoing basis, far easier to make revisions to the company's governing documents if additional changes are necessary as a result of future law changes, rather than having to modify the terms of the trust).

To the extent Abel's structure unbundles the fees and expenses of trust management, it has the same difficulty with income tax deductibility and the AMT as Sarah's approach does, but he is hoping to be able to have bundled trustee fees to some extent.

5. Low Tax Neutral Site with Good Trust Law – Easy Choices

Abel's advisor has explained that use of the personal trust company, when located in a low or neutral tax jurisdiction, ensures that the state income tax consequences to the trust of an individual trustee's moving from one jurisdiction to another will be minimized (or eliminated).

Abel's advisor has suggested that the personal trust company be formed in South Dakota, or possibly Nevada if its laws similarly permit use of an unregulated personal trust company. Nevada may not be preferred by some family members because of its association with gaming; those may prefer to visit Mt. Rushmore instead for trustee meetings. South Dakota is nearer the middle of the country and therefore a bit more convenient to Abel's spread-out branch as compared to Sarah's choice of Delaware. To his surprise, creating an unregulated personal trust company in Delaware does not appear possible in any event.

Abel's advisor has received guidance from the South Dakota regulators that it will not require regulation of an unregulated personal trust company as long as it partners with a regulated South Dakota institution as administrative trustee. Abel has been informed that the laws of South Dakota are particularly favorable to the creation of a personal trust company, but that South Dakota is

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probably not the only state where the structure could be approved (although many of those other jurisdictions would require the company to have shareholders).

6. Family Coordination – Sharing Talents and Experiences in a Friendly Environment

As Abel understands it, the personal trust company framework naturally provides a legal and practical environment for family and non-family members to work together in a variety of different roles to address the strategic, operational and administrative aspects of trust management.

A particular individual's role in the personal trust company may include such positions as that of a director, nonvoting board observer, officer (including assistant officers), or committee member (advisory committees, audit committees, etc.). These roles may be structured to create a natural environment for younger family members to participate in the trust's governance and gradually gain first hand experience with a trustee's responsibility and perspective. Responsibility for strategic decisions can be separated from operational issues and addressed by different decision-makers, permitting individuals who may not have the time, skill or desire to handle all aspects of a trustee's responsibilities to make valuable strategic contributions (or to choose not to be involved at all). Much of this could be accomplished in a Protector company but the personal trust company can have a broader, more direct role in governance.

In addition, Abel believes that having a common family trust company is a means to draw the family together. He realizes, however, that a forced union will exaggerate any natural tensions between family groups and thus is prepared (and willing) for the personal trust company to subdivide into multiple personal trust companies. According to Abel's advisor, the personal trust company is highly scalable. It can be made to fit a small family or a large family, limited or extensive responsibilities, and multiple personal trust companies may be formed that are mirror images of each other but for the identity of the decision-makers involved.

7. Privacy Issues – Still a Concern?

Abel understands Sarah's concerns over privacy among the branches, and her belief that the best solution is to use the open architecture approach. Abel, however, believes that institutional or third-party trustees typically do not make the effort to get to know the family, its philosophy or objectives well enough to make distribution or investment decisions. Therefore, it seems difficult to leave distribution decisions to a third-party, likely institutional trustee.

Abel has been told that a personal trust company has no natural means of preventing disclosure of one family branch's personal details to another family branch (if a member of the other branch is serving as a director of the private trust company which is trustee of the other branch's trusts). Yet he has also been told that a personal trust company may greatly reduce disclosures by imposing information firewalls between family groups (for example, specifying that different officers or committee members act for the company with respect to trusts for different family branches or individuals).

Firewalls do not guarantee privacy since the company's board of directors has oversight over all trust company functions. If a perfect privacy shield is desired, then multiple personal trust

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companies should be used (either with each separate company to handle all of the functions, or only those functions for which privacy is an issue, still relying on a common company for other functions).

8. Abel's Crystal Ball

As compared to a regulated trust company, Abel believes his structure would be more portable if circumstances change, or the law changes, if opportunities open up elsewhere or if the family's center of gravity moves or circumstances somehow change. Also, if the structure cannot move or adapt to new conditions, at least the expense of establishing the company and operating it has been modest, compared to a regulated company.

9. Recommendation for Abel by His Advisors

Abel's branch has embraced a variation of the "open architecture" solution used by Sarah's branch, but one that further involves family decision makers (and their trusted advisors) in the distribution and investment responsibilities, with an institution handling only the administrative responsibilities. The company and the institutional trustee would most likely be based in South Dakota, although other jurisdictions may be suitable.

Investments might be pooled in LLCs owned by the various trusts or managed separately in each trust's investment account(s). To avoid the Adviser's Act issues, the LLC or separate trust accounts could be managed by one or more registered investment advisers who are in turn overseen by the personal trust company in its role as trustee of each trust. As long as there are no more than 100 family trusts who are members of any pooled investment vehicle the Company Act should not raise any significant issues. If there are more than 100 family trusts, Abel's advisor is confident that structures may be created to avoid mandatory regulation of any vehicle as an investment company under the Company Act.

The personal trust company would be structured to include the distribution and investment "trustee" responsibilities over each trust, and also the "Protector company" responsibilities described in Sarah's recommendation.

Abel envisions the personal trust company structure as a means to ensure personalized service, flexible decision-making and continuity, while promoting the active engagement of individual family members with the strategic and operational aspects of trust management.

Abel has received preliminary advice that suggests the Parable Trust could be amended in South Dakota courts to add this kind of governance, and he has received a greater level of assurance that other trusts could be amended to add such provisions if the grantor is still alive to endorse the change.

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