58TH ANNUAL
HECKERLING INSTITUTE
ON ESTATE PLANNING

Session III-B

Simplifying the Complex: Demystifying Directed Trusts, Family Offices and Private Trust Companies

January 11, 2024
2:00 – 3:30 pm EST

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Michael M. Gordon is a Director at the Wilmington law firm of Gordon, Fournaris & Mammarella, P.A. He is a graduate of Fairfield University and the Catholic University of America, Columbus School of Law. He received his Masters of Law in Taxation from Villanova University School of Law in 2008 and is a member of the Delaware and Maryland Bar Associations.

Michael is the former Chair of the Estates and Trusts Section of the Delaware Bar Association. He is a Fellow of the American College of Trust and Estate Counsel. Michael frequently lectures throughout the country on various estate planning topics.

Michael's practice focuses on the unique aspects of Delaware trust law, including directed trusts, dynasty trusts, asset protection trusts and all aspects of the validity, construction and administration of Delaware trusts. Michael routinely works with clients across the country to create Delaware trusts and to move existing trusts to Delaware to take advantage of Delaware's favorable trust law. Michael drafts, reviews and comments on Delaware trust agreements for local and out of state clients and provides legal opinions on the validity of trusts under Delaware law.

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Kim Kamin is a partner at Gresham Partners LLC, an independent wealth management firm currently serving about 120 families nationally as a multi-family office. At Gresham, Kim serves as Chief Wealth Strategist, leading Gresham's development and implementation of estate, wealth transfer, philanthropic, educational, and fiduciary planning activities. Previously she was a partner in the Private Clients Group at a large national law firm known for the quality of its T&E practice.

Kim is an adjunct professor at the Northwestern University Law School and on faculty for the University of Chicago Booth School of Business Executive Education.

Kim is a Regent of the American College of Trust and Estate Counsel (ACTEC), Past President of the Chicago Estate Planning Council, and is the Estate Planning & Legal Issues Domain Chair for the UHNW Institute. She also serves on the Founders' Committee for the University of Chicago Center of Law and Finance.

Kim is on the UHNW Families & Family Offices Committee of the Trusts & Estates Magazine Editorial Advisory Board. She has published on a wide variety of topics and is also a frequent lecturer in a variety of venues across the country (including for ACTEC, ALI-CLE, Family Office Exchange, Heckerling Institute, Purposeful Planning Institute, Notre Dame Tax & Estate Planning Institute, Montana Tax Institute and Tulane Tax Institute). She is co-executive editor and co-author for the Leimberg Library Tools & Techniques book, Estate Planning for Modern Families (4th Ed. forthcoming 2024), and she has been a contributing author for chapters in books, including the recent Wealth of Wisdom: Top Practices for Wealthy Families and Their Advisors.

Kim received her B.A., with distinction and departmental honors in Psychology, from Stanford University and her J.D. from the University of Chicago Law School. She is an AEP® (Distinguished) and a 21/64 Certified Advisor.

John Duncan is a named partner of Kozusko Harris Duncan, concentrating on the creation and representation of single and multi-family private trust companies, family offices, investment funds and similar family entities, as well as non-depository commercial trust companies and wealth advisors committed to serving private clients. John is currently focused on helping single family and multi-family trust companies/trust departments pursue a high calling, such as helping younger generations achieve independent, meaningful and satisfying lives.

John has devoted a significant portion of his professional life to drafting and consulting on legislation to facilitate the development of trust laws and single and multi-family private trust company laws. He was the principal author of New Hampshire's 2007-2008 trust and trust company law revisions, following up as the principal draftsman of revised Nevada and Tennessee trust and trust company acts, propelling all three states into the top five trust law states. He has also written or advised on significant contributions to financial institutions and trust laws and regulations for South Dakota and Wyoming, as well as Texas, North Carolina, Delaware and Florida.

John has published regularly in professional journals including in the ACTEC Journal, "Achieve the Promise-and Limit the Risks-of Multi-Participant [Directed] Trusts", with his wife, Anita Sarafa, and articles in Trusts and Estates Magazine, in particular "The Private Family Trust Company: The Most Customized Financial Institution Ever Devised", and the inaugural issue of The International Family Offices Journal, "The Private Trust Company Comes Back on Shore – In the United States". He has regularly presented in major forums.

John headed the banking and investment practice of the international law firm Jones Day before forming his own firm in 2000. He merged his firm with Kozusko Harris Duncan in 2012. John graduated with a B.A. at Yale University and a J.D. at The University of Chicago Law School.

He is selective now as to the matters he accepts based on their relevance to his trust company/trust department/wealth management focus. In particular, he looks for families who believe in encouraging their younger generations to embrace independent, meaningful and satisfying lives, often enhanced by a trust distributions structure incorporating a Beneficiary Relations Committee.

INTRODUCTION AND DISCUSSION OVERVIEW

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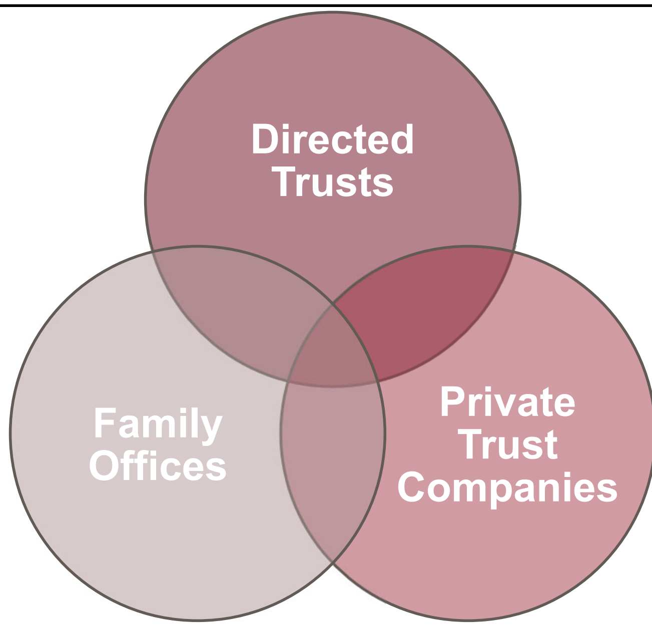

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Discussion Overview

- Directed Trusts
- Family Offices
- Private Trust Companies
- Using Directed Trusts, Family Offices and PTCs
- Q&A

REVIEW OF DIRECTED TRUST STRUCTURE

Roles in Directed Trust Structure

Trust Settlor
- Determine provisions of the governing instrument
- Can hold certain powers while alive, including to:
  - Appoint Trust Protector, Trustees, Trust Investment/Distribution Directors, and Designated Representatives
  - Substitute trust property
  - Borrow funds from the trust without adequate security
  - Serve as Trust Investment Director

Legal and Tax Advisors for the Trust Settlor

Trust Protector
- Should be an independent party (some states permit an LLC to serve)
- May be vacant role at trust outset
- May or may not be held to a fiduciary standard for responsibilities and authority defined in the trust
- Authority may be limited or broad, including to:
  - Appoint Successor Administrative Trustee and Trust Investment and Distribution Directors
  - Modify, reform or terminate the trust
  - Change the situs and/or governing law of the trust
  - Add or remove Beneficiaries

Trust Investment Director
- Family Member(s) and/or Independent Director (or Committee) makes investment decisions
- Directs Administrative Trustee about investments
- May direct investment in LLC
- Held to a fiduciary standard

Administrative Trustee
- Public trust company chartered in Delaware or South Dakota with favorable trust, tax and asset protection laws
- Holds and reports on trust assets
- Implements directions from the Trust Investment and Distribution Directors
- Prepares and signs trust tax returns
- Held to a fiduciary standard

Trust Distribution Director
- Directs Administrative Trustee to make distributions
- Family Members can make non-tax sensitive distribution decisions
- Independent Directors makes tax-sensitive distribution decisions
- Interact with respond to Beneficiaries' needs
- Held to a fiduciary standard

Investment Advisor/Manager
- Investment firm selected by Trust Investment Director
- Retained by Administrative Trustee to manage trust assets

Beneficiaries
- Receive trust distributions
- Communicate with and/or serve as Trust Investment Director
- May be permitted to appoint and/or remove fiduciaries
- May be given powers of appointment

Designated Representative for Beneficiaries

Legal and Tax Advisors for the Trust

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Communications in Directed Trust Structure

Trust Settlor
- Provide guidance regarding settlor intent
- May receive reports on trust activities
- Meet with Beneficiaries as desired

Administrative Trustee
- Receive guidance regarding settlor intent
- Receive directions from Trust Investment and Distribution Directors
- Make distributions to Beneficiaries
- Retain Legal and Tax Advisors and Investment Advisor
- Provide accountings and other reports to Beneficiaries and Trust Investment and Distribution Directors
- Report on activities to Settlor, Trust Protector and Beneficiaries

Trust Protector
- Receive guidance regarding settlor intent
- Receive reports from Administrative Trustee and Trust Investment and Distribution Directors

Trust Investment Director
- Receive guidance regarding settlor intent
- Receive reports on trust investments from Administrative Trustee and Investment Advisor
- Receive cash flow needs from Trust Distribution Director
- Communicate investment decisions to Investment Advisor and Administrative Trustee
- Provide reports on investment activities to Settlor, Trust Protector and Beneficiaries

Family Office
- Schedule and facilitate meetings and communications
- Develop and implement processes, procedures and documentation in coordination with Administrative Trustee
- Provide advice and guidance regarding planning strategies in coordination with Legal and Tax Advisors
- Provide beneficiary education services

Trust Distribution Director
- Receive guidance regarding settlor intent
- Meet with and receive distribution requests and other communications from Beneficiaries
- Communicate distribution decisions to Beneficiaries and Administrative Trustee
- Provide Investment Director with cash flow projections
- Provide reports to the Settlor, Trust Protector and Beneficiaries, while protecting Beneficiary confidentiality

Designated Representative for Beneficiaries
- Receives accountings for Beneficiaries who are under a particular age
- Receives Crummey notices for the Beneficiaries
- Represents Beneficiaries interests with the Trustee and any Trust Directors

Investment Advisor/Manager
- Meet with and receive guidance from Trust Investment Director
- Receive investment directions from Administrative Trustee
- Manage trust assets with discretion
- Provide reports to Trust Investment Director and Administrative Trustee

Legal and Tax Advisors
- Retained by Settlor for legal counsel and tax services
- Retained by Administrative Trustee for legal counsel and tax services
- Retained by Administrative Trustee for legal counsel provided to Trust Protector or Trust Investment / Distribution Directors

Beneficiaries
- Meet with Settlor to understand intent
- Meet with and provide distribution requests to Trust Distribution Director
- Receive distributions and tax reporting from Administrative Trustee
- Receive reports on activities from Administrative Trustee and Trust Investment and Distribution Directors

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OVERVIEW OF FAMILY OFFICES

What is a Family Office?

There is no typical family office, but common functions include:

- **Administrative**: Centralize administrative, recordkeeping, and tax compliance services for family members and their trusts and entities.
- **Investment/Wealth Management**: Oversee the management of family investments assets.
- **Fiduciary**: In some cases, the family office provides fiduciary services and acts as the trustee of family trusts.

Types of Family Offices

Single Family Office "SFO"	▪ Created, managed and owned by an individual family ▪ May be "investment only" or "concierge" services only ▪ May have minimal or extensive staff ▪ Qualifies for the SEC Family Office Exemption and doesn't need to register as an RIA
Multi-Family Office "MFO"	▪ Serves the needs of more than one family ▪ Combines resources for efficiency ▪ Creates a single point of contact for planning and implementation ▪ Shares family office functions ▪ Generally either an RIA or trust company (or possibly law firm)

Comparing Family Office Options

	Establish a Single-Family Office (SFO)	Engage a Multi-Family Office (MFO)
Pros	▪ Flexibility in selecting investments, services and staff ▪ Control of the design and delivery of services ▪ Opportunity to employ family members ▪ Alignment of interests between the family, the SFO and its staff	▪ Alignment of interests between each family, the MFO and its staff ▪ Access to select investment managers ▪ Personalized attention due to low advisor-to-client ratios ▪ Continuity following the death or disability of a founder ▪ Each family/entity bears its own costs, which generally will be less than if establishing own SFO
Cons	▪ Must fit within SEC's "family office exception" to avoid RIA registration ▪ Requires a significant commitment of capital, time and ongoing oversight ▪ Involves all the risks that accompany operating a small, personal services business ▪ Risk that survivors of the founder won't have the requisite capital, time, interest or ability to keep the SFO operating effectively	▪ Less control of investment options, services, and staffing than with establishing own SFO ▪ Risk if MFO is sold or brings in outside investors and new owners change investment options, services and staffing in ways that reduce alignment of interests

Detailed Family Office Services

Services are customized to address a wide spectrum of long-term family needs.

Investments
- Investment policy development
- Portfolio construction
- Manager selection
- Comprehensive performance reporting

Wealth Transfer Planning
- Develop objectives
- Diagram current plan
- Legal and tax strategies
- Action plan to implement changes
- Trust and estate administration

Family Philanthropy
- Multi-generational objectives
- Personal giving programs
- Private foundation management
- Strategy analysis and implementation
- Foundation/grant administration

Integrated Financial Services
- Balance sheet reporting
- Cash flow planning
- Retirement planning
- Bank financing analysis & negotiation
- Life insurance analysis

Client Information Mgmt
- Consolidated reporting
- Online access to custom reports
- Document management and retention
- Record keeping for personal property

Family Continuity/Education
- Family governance
- Family education plan
- Family counseling
- Family meeting coordination
- Coaching and mentoring
- Coordination of outside advisors

Tax Review & Compliance
- Review of individual & entity tax returns
- Estimated tax payments
- Year-end tax planning
- Tax legislation updates
- Tax compliance

Risk Management
- P&C insurance assessment
- Specialty lines of insurance
- Cyber, property, and personal security
- Collectibles inventory/appraisal/storage

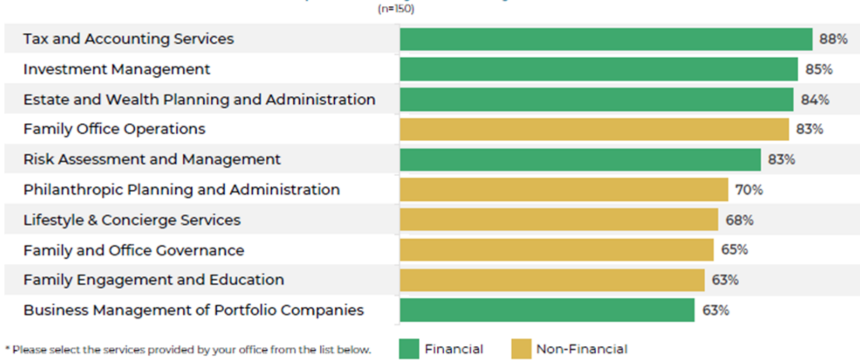
Lifestyle Enhancements
- Personal bill paying
- Domestic help and payroll
- Property management
- Concierge services
- Private aviation and travel management
- Healthcare advisory services

Services Provided by Single Family Offices

2023 FOX Family Office Benchmarking – Chart Pack

Most family offices provide a broad range of services

Services provided by the family office
(n=150)

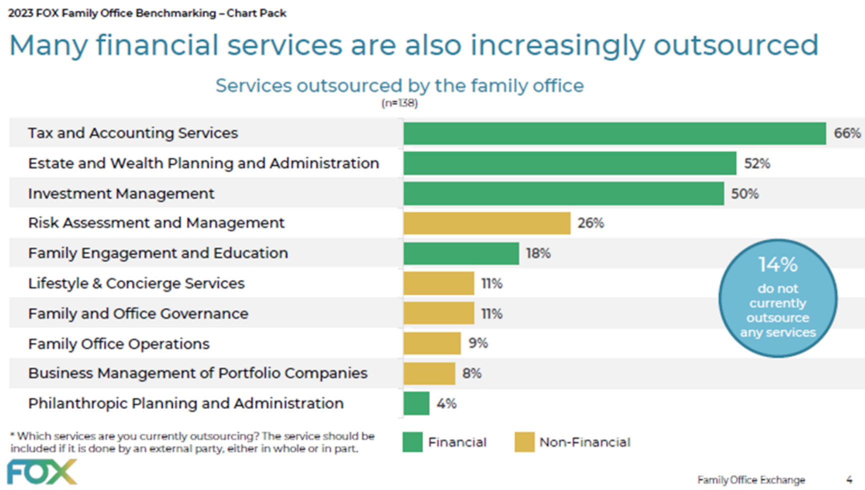


* Please select the services provided by your office from the list below.

FOX

Family Office Exchange 2

Services Outsourced by Single Family Offices



FAMILY OFFICE STRUCTURES

Structural Options

- Multi-family Office ("MFO")
- Virtual Family Office ("VFO")
- Embedded Family Office ("Corner Office" model)
- Classic SFO Structure
- Profits Interest Model
- Private Trust Company ("PTC")

Can be a combination of the above.

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Ownership and Governance Options

- Who should own the family office?
  - Outright?
  - In Trust?

- Who should control the family office?
  - Senior generation only?
  - Should all family lines be represented?
  - Outside directors?
  - Advisory committees—audit, investment, compensation, etc.

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SEC Family Office Exemption

- Excludes an SFO from the definition of “investment adviser” under Rule 202
- SEC describes family offices as: “entities established by wealthy families to manage their wealth and provide other services to family members, such as tax and estate planning services.”
- Ownership limited to “family clients”
  - Includes broad definition of “family”, including step-children, former spouses, most trusts and entities, and key employees
- Control limited to “family members”

Staffing the Family Office

- Who should run the family office?
  - Family members or outside professionals?
- How to retain and promote family office staff?
- How to compensate family office staff?

Fee Structures

- Fixed fees
- Hourly fees
- Percentage of resources used
- Percentage of AUM for investment management
  - Including or not including performance component?
  - Allocated proportionately among all investors?
- Profits interest for investment management
- Combination of the above

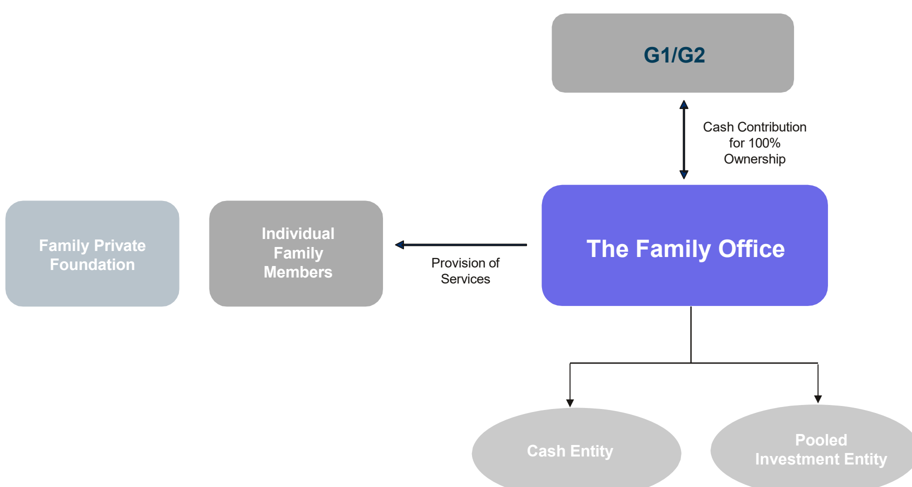
Profits Interest Governance/Fee Structure

- When family office conducts a “trade or business” may be able to deduct “ordinary and necessary expenses” incurred in “carrying on any trade or business” under Code Section 162
  - Deductible “above the line” from gross income
  - “Trade or business” isn’t clearly defined
  - Generally, must be a regular and continuous activity with a profit motive
  - Entity tax classification
- Significant entrepreneurial risk is key
  - Proposed regulations under Code Section 707(a)(2)(A)
- Arm’s-length nature of relationship
- Family office obligated to pay management costs regardless of performance
- Degree of common ownership (“overlap”)
- Ensuring Code Section 2701 does not apply to the structure
- Determining the appropriate profits interest

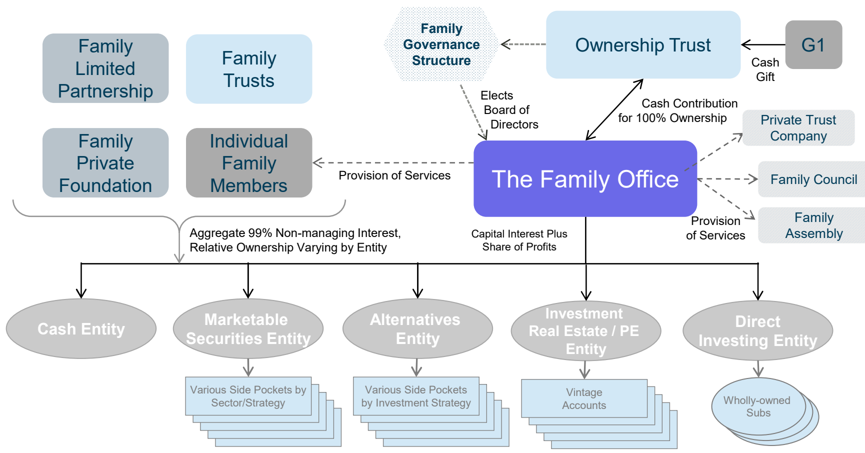
Relevant Case Law

- *Higgins* (1941) – Must have an "active trade or business" case to deduct expenses.
- *Lender* (2017) – When facts and circumstances support that an active trade or business is being conducted, expenses can be deducted using a profits interest structure.
- *Hellman* (2018) – When the entity managing the investments and the assets being managed "overlap", the facts and circumstances likely don't support a claim that an active trade or business is being conducted.

Classic Single Family Office Structure



Single Family Office Structure with Profits Sharing



OVERVIEW OF PRIVATE TRUST COMPANIES

Why Create a Private Trust Company

- **For optimal control over the family's wealth by addressing causes of long term decline**.
  - Minimizing family dissent and facilitating generational transitions
  - Avoiding fragmentation of asset management
  - Maintaining, and limiting liability for, higher concentrations
- **For optimal platform for bringing younger generations into management**
- **Attract, retain and provide for succession of capable trust officers and advisors**
- **Take control of services provided to the family and its trusts and beneficiaries**
- **Change state fiduciary income tax situs of trusts**
- **Change administrative and substantive laws governing family trusts**

Confidentiality

- **Many families want confidentiality, not only from third parties, but also between branches, requiring**
  - Separate committees for Discretionary Decisions for the branches that wish confidentiality
  - Population by different persons
  - Agreed procedures to create "Chinese Walls: … which must be followed by trust officers.
- **End result: PFTC management remains informed, at Board level, of the broad-scope of activities of various branch clients but not details**
- **There is a more robust path to branch confidentiality, but it requires each branch to have their own, full cast of characters**

Important Operational Elements

- **Proper location of activities**
  - To avoid conducting a trust business in the wrong jurisdiction
  - To eliminate or minimize jurisdictional contacts with unfavorable state(s)
  - "Trust" fiduciary activities – only in home state (state of charter) or from regulatorily-approved out-of-home-state trust office
  - Certain administrative activities can occur outside of the home state office or an approved out-of-state trust office
  - Population by different persons
  - Agreed procedures to create "Chinese Walls: … which must be followed by trust officers.

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What Can't Be Out-Sourced

- **Accepting Family Trusts**
- **Distribution Decisions:** However, PFTC can contract with third parties to act as officers, Distribution Committee or Beneficiary Relations Committee
- **Decisions about use of cash (i.e., whether for investments, distributions or expenses):** But implementation can be delegated and family office or third party can follow budget or policy adopted annually
- **Certain investment decisions (i.e., setting investment policy objectives):** But investments themselves can be handled by family-owned entities, third parties, or a combination
- **Major Keys:** These decisions must be made in the home state where the PFTC is chartered because they are the key fiduciary decisions

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Major Decisions, Timeline and Costs

Major Formation Steps

- **Is a license needed or advisable?**
  - Exempt from registration as investment advisor with SEC
  - Licensing produces greater regulatory requirements than unregulated trust company, but not burdensome
  - With a license, can operate interstate offices
  - Some states provide greater protection and flexibility to licensed trust companies
- **Select Home State**
  - Geographic convenience is an important factor
  - Generally, good substantive trust laws and dedicated trust judiciary outweigh good banking laws
  - "Home State" tax laws impacting the entity and trusts it administers
  - To states: NV, NH, SD, TN and WY…**not** CA, NY, DE, FL, MA, TX, etc.

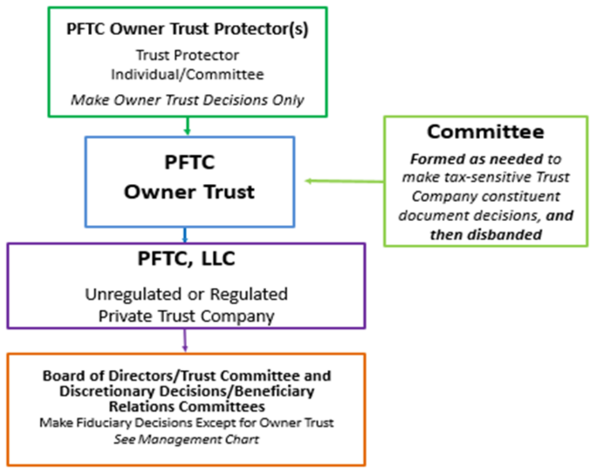
- **Securities Laws and PFTCs**
  - A PFTC can provide investment advice to its family members pursuant to the "family office exception" under the Securities Laws. The exception exempts the family office and PFTC from registering as a Registered Investment Advisor ("RIA") for family members able to be served by the family office/PFTC
  - A regulated PFTC is a bank and for SEC purposes is exempt from registering as an RIA under the banking exemption of the Investment Advisors Act of 1940

- **Corporate Transparency Act and Other Details**
  - Formally licensed by a state (i.e., a regulated PFTC, generally over $100 million but usually over $250 million)
  - Defined as a bank by the Investment Company Act of 1940 and Federal Regulations
  - The top states are NH, NV, SD and TN **but not Wyoming**, which charges substantial costs to be regulated by the state
  - A simple, licensed and regulated PFTC for now at least should not be subject to the Corporate Transparenty Act, but various versions may be
- **Prepare Detailed Business Plan with Pro-Forma Financials (3 years)**
- **Prepare and File Charter Application (if one sought)**
- **Prepare to Commence Business Operations**

- **Formation Timing, typically, 3 to 9 months total, consisting of**
  - 3-4 months for client deliberations, designing structure and business plan, and preparing application (if any)
  - 306 months for state approval of application (if applicable)
  - 0-3 months preparation for formation meetings and start-up (typically begins once application is filed and while in review)
- **Annual Operating Costs (other than staff): $125,000 to $175,000**

PFTC, LLC Recommended Ownership Structure

November 1, 2023



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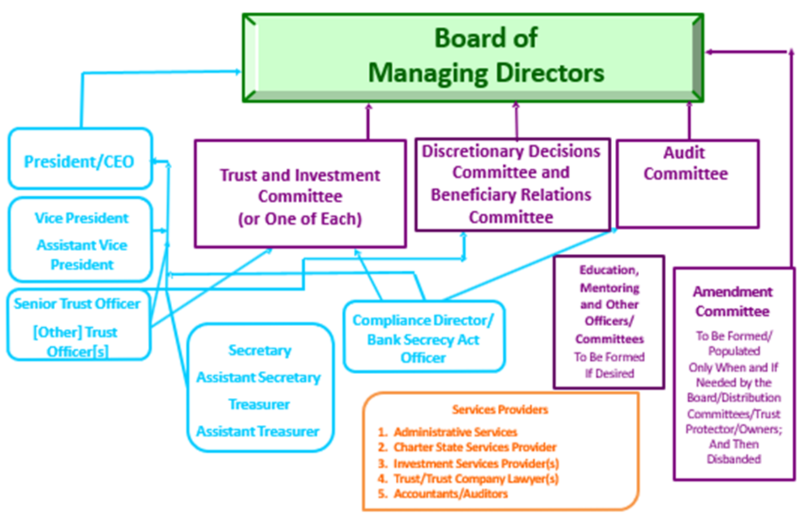
Typical Private Family Trust Company Options

Management Organizational Chart, November 2023



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FAMILY STRATEGIC STRUCTURES COMPARISON BY
PRIMARY FAMILY OFFICE STRUCTURES' STRATEGIC CAPABILITIES

STRUCTURES → ELEMENTS ↓	BASIC SINGLE ("ALTER EGO)" FO WITH INFORMAL TRUST ROLE	SOPHISTICATED SINGLE FAMILY OFFICE WITH FORMAL TRUST ROLE	PRIVATE TRUST COMPANY (REGULATED)	MULTI-FAMILY OFFICE: SOPHISTICATED; NOT A PFTC; NO TANDEM SFO
Controls Strategic Assets and Decisions	No	Limited	Maximum	Very Limited
Implements Family Governance Decisions	Moral authority only	Limited legal authority under Family supervision	Complete legal authority under Family supervision	Limited legal authority under Family supervision
Tailored Family Member Wealth Management Roles	Narrow range of Family roles	Broader range of Family roles	Broad and deep range of Family roles	No or narrow range of Family roles
Insulation of Family/ FO Management from Fiduciary Liability	None	Yes, for certain functions prudently delegable to SFO* *But only in each case if properly structured with quality risk management and consistently implemented	Yes*	For trust administration and investment management if delegated to MFO
Exemption from Investment Adviser Registration	Only if Qualifying Family Office (QFO) under SEC FO Rule	Only if QFO (very limited client list)	Yes, if properly structured	No
Choice of Best State Trust and Tax Laws	Must use out-of-state Individual or Institutional Trustee(s) for nexus	Must use out-of-state Individual or Institutional Trustee(s)	Virtually unlimited choice (in states with excellent trust and tax laws available)	Must use out-of-state Individual or Institutional Trustee(s)
State-of-the-Art Fiduciary Risk Management	Requires formal (contractual/ delegation) trust role by the SFO	♦ Requires State-of-the Art policies, procedures and governance ♦ Complex-structures unavoidable	♦ State-of-the Art policies, procedures and governance inherent ♦ No inherent complex structure risk	♦ Requires State-of-the Art policies, procedures and governance ♦ Complex-structures unavoidable
Permanent Trustee Succession Solution	No	No	Yes	No
Persons controlling: ♦ *Family trust assets* ♦ *Strategic decision-making* ♦ *Strategic plan implementation*	♦ Trustees and ♦ Individual Family Members	♦ Trustees ♦ Individual Family Members, and ♦ SFO (to some degree) by contract	♦ PFTC as Trustee and SFO ♦ Family, through PFTC governance structure	♦ Trustees ♦ Individual Family Members ♦ Family as whole (to some degree) by contract

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DRAFT BYLAW OF A TRUST COMPANY
"BENEFICIARY RELATIONS COMMITTEE"

Kozusko Harris Duncan
Revised November 1, 2023

Beneficiary Relations Committee. The Directors shall designate and appoint a Beneficiary Relations Committee ("Committee") to exercise discretionary distribution powers, when granted under one or more Governing Instruments, and to fashion and direct the Company's provision of appropriate guidance and assistance to trust beneficiaries with respect to their personal and career development. The Committee shall meet at least quarterly and shall consist of at least two (2) individuals, each of whom shall serve for a term of one year or until his or her successor is appointed or elected. The duties of the Committee are as set forth below.

(a) *Distributions Standards and Procedures.* With respect to each trust whose Governing Instrument permits discretionary distributions to beneficiaries, determine from time to time but at least annually whether such a distribution should be made through a process consistent with and incorporating the following principles and procedures:

(1) Review from time to time the applicable Governing Instrument to confirm its purpose and other terms applicable to the making of discretionary distributions.

(2) Determine the overall circumstances of the trust beneficiaries to determine whether and in what form and amount a discretionary distribution should be made to one or more beneficiaries consistent with the Governing Instrument and the best interests of the beneficiaries, which determination should reflect:

a. Each present and future beneficiary's circumstances including needs, goals and resources, including other trusts as well as non-trust financial resources and intellectual, human, social, and spiritual capital apparently available to that beneficiary; and

b. Each beneficiary's requests for distributions and the purpose and other reasons provided for such requests.

(3) Where deemed appropriate, the Committee may authorize and direct the managing senior or other trust officer to assist beneficiaries in providing the information reasonably required by paragraph (2) above, including identifying any professional assistance required and determining whether trust funds may be used to cover some or all of the costs of such assistance.

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(4) Subject to applicable privacy and confidentiality requirements, coordinate with, and gather or provide information from or to other fiduciaries to the extent considered appropriate by the Committee in performing its above duties.

(b) *Beneficiary Personal and Career Development.* It is the policy of the Committee in addition to assist each beneficiary's personal and career development through obtaining for the beneficiary such counseling, teaching, mentoring, life coaching, estate planning or similar guidance and personal finances management assistance as the Committee determines to be appropriate in collaboration with the beneficiary, if an adult, or, if a minor, one or more parents or guardians of the person of the beneficiary ("beneficiary representative", together with the beneficiary if deemed appropriate by a parent or guardian).

(1) Such services may also include assistance to the beneficiary in developing the information set forth in paragraph (a)(2) above that is reasonably required by the Committee to make distribution decisions. The Committee will have responsibility for implementing these policy, with the support of the Company's trust officers;

(2) The Committee shall provide or cause to be provided such services as agreed upon with the beneficiary or beneficiary representative; and

(3) The Committee shall determine the extent to which the agreement services will be funded from the Company's trustee or other fees and the extent to which reasonable remuneration from the beneficiary or beneficiary representative will be required.

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