Ohio Private Trust Companies - A New Option for High Net Worth Families

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The following article was featured in the July 2017 edition of *Legacy*, the Vorys newsletter focused on wealth planning.

Last Fall, Ohio joined several other states in enacting legislation that permits high net worth families to form their own family trust company, commonly referred to as a private trust company (PTC). The formation of a PTC provides high net worth families a customized alternative to having a bank or other corporate trustee serve the family's trustee needs (as distinguished from needs that might be served by a family office). However, a careful evaluation of the costs and benefits is required before diving in.

One of the primary benefits of a PTC is providing customized and centralized control over a large number of family trusts. By the time significant wealth has passed down a few generations, there are usually a large number of family trusts in existence which were created as part of the family's overall wealth transfer plan. These trusts typically have a dizzying array of assets, beneficiaries, terms and complicated tax aspects. The efficient and effective management and coordination of these trusts within a family's diverse needs and changing dynamics can present significant challenges to even the most seasoned corporate trustee. A PTC offers wealthy families the ability to retain and exercise such decision-making control and management authority over the family's assets through a single entity.

Privately-owned, active family businesses are a primary source of wealth for many high net worth families. Such businesses often require a mix of knowledgeable family members and key employees who are considered essential to the ongoing success of the business. An important component of a PTC is the ability to include these individuals on the PTC's governing board, as well as provide for easy and effective transition of management and oversight in the future.

Another issue increasingly faced by high net worth families is the significant liability exposure that accompanies the trustee position. While trust design in recent years has increasingly gravitated towards placing desired individuals in direct trustee or trust advisory roles, the resulting liability exposure in today's litigious environment can be an expensive, burdensome and significant downside, and one which families would choose to avoid, if possible. A PTC affords strong liability protection to the individuals called upon to render such services, which is a critical feature of a PTC and may be essential to attracting the desired individuals to serve the family.

There are several threshold requirements to address when forming a PTC. First, the family establishing a PTC must decide whether the PTC will be a licensed PTC or an unlicensed PTC. A licensed PTC is subject to a variety of additional requirements involving capitalization, bonding and regular audits; however, a licensed PTC also provides significantly more comfort for family members who are not actively involved in administration of the PTC or underlying trusts. Second, all PTCs are restricted to providing trustee services to a single family. The definition of "family", however, is more expansive than one may think, and encompasses up to ten successive generations, spouses and certain key employees.

A family contemplating the establishment of a PTC must also anticipate the costs associated with transitioning existing trusts to a PTC structure, as well as the ongoing operational, regulatory, personnel and professional costs that will be required. However, even in light of such considerations, a PTC may provide extremely attractive benefits to high net worth families.

Please feel free to contact your Vorys attorney if you have questions regarding the formation of a PTC for your family.