



香港信託人公會  
Hong Kong Trustees' Association

# Family Office Governance

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# Agenda

- Family Office Market
- Governance Challenge
- Investment Office Assessment
- Family Office Assessment
- Summary →

# Family Office Market

# Reasons for Growth:

- Consolidation
- Diversification
- Liquidity
- Privacy
- Emigration
- Estate & Asset Protection 



# Challenges:

- Competent and Coordinated Project Management
- Appropriate Legal Infrastructure
- Appropriate Compliance Infrastructure
- Appropriate Financial Infrastructure
- Appropriate Physical Infrastructure

# Challenges:

- Competent and Coordinated Project Management
- **Appropriate Legal Infrastructure**
- Appropriate Compliance Infrastructure
- Appropriate Financial Infrastructure
- Appropriate Physical Infrastructure ➞

# Client Typology:

- **Founder Generation Mainland Family:**
  - Liquidity Event
  - Financial Assets
  - Emigration
  - Consolidation | Professionalization
  - Privacy, Estate Planning and Asset Protection
  - Young Family (Children <21 yrs)
  - Single Generation Planning
  - Moderate Structuring Requirements and Complexity
  - **Investment Office** ➞

# Client Typology:


- **Multi-Generation Hong Kong Family:**
  - Operating Business and Financial Assets
  - Multiple Generations | Branches
  - Global Family
  - Transitional Business Wealth | Diversification
  - Branch and Generational Planning
  - High Structuring Requirements and Complexity
- **Family Office** ➡

# Governance Challenge:

- Existing Governance Solutions *Fit-for-Purpose?*
- Family Office: Operating **NOT** Passive Investment Entity
- What is Best Practice? ☐

# Governance Challenge

# Governance Challenge


- Overview
- Investment Office Governance
- Family Office Governance
- Summary 





# Overview

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- What is “Governance”?
- Corporate Governance Codes (Cadbury Report, HKEX Code)
- Risk and Performance Management Framework:
  - Competency
  - Alignment
  - Effectiveness
  - Accountable
  - Transparent 



# Simplified

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- Control
- Participation
- Benefit
- Abuse ☐





# Control

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- Clear Decision Making Structure
- Division: Strategic and Operational Decision Making
- Types of Control: Autonomous, Collective, Delegated or Authorized
- Transitional Control 



# Participation


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- Membership:
  - Economic Member
  - Operational Member
  - Competency Criteria
  - Representative Criteria
  - Transitional Participation ➞



# Benefit

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- Economic Benefits – Family Liquidity Plan
- Operational Benefits – Executive Salary and Benefits
- Liquidity Structure
- Compensation Structure 



A close-up photograph of a hand holding a black pen, positioned over a document. The pen is about to check a box. The document has several checkboxes, some of which are already checked with a black mark. The background is slightly blurred, focusing attention on the pen and the checkboxes.

# Abuse

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- Governance Safeguards: Conflict of Interest / Checks-and-Balances
- Operational Safeguards: Fit-and-Proper Criteria
- Third Party Risk: Financial Transparency / Reporting
- Dispute Management
- Transitional / Contingent Safeguards 






# Summary

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## “Governance”

- Risk and Performance Management Framework:
  - Effective and Clear Control Structure
  - Effective Competency Safeguards
  - Effective Oversight and Supervision
  - Commercial Success 






# Summary

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## “Governance”

- Risk and Performance Management Framework:
  - Effective and Clear Control Structure
  - Effective Competency Safeguards
  - Effective Oversight and Supervision
  - **Commercial Success** 

# Investment Office Governance



## Key Objectives

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- Effective Governance Contingency Plan, Client: Death, Incapacity, Unaccounted, Incarceration, Duress.
- Open Governance Structure Where Client is Involved
- Closed Governance Structure Where Client not Involved ☐



## Control Requirements

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- Client Involved:
  - Autonomous Decision Making
- Client Not Involved:
  - Accountable and Competent Decision Making
  - Restricted Operational Discretion
  - Increased Risk Management Safeguards →





## Participation Requirements

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- Client Involved:
  - Client Discretion and Assessment
- Client Not Involved:
  - Competency Safeguards
  - Experience “*Fit-and-Proper*” Criteria
  - Performance Framework 



## Benefit Requirements

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- Client Involved:
  - Client Discretion
- Client Not Involved:
  - Family Liquidity Structure
  - Executive Compensation Structure







## Abuse Safeguards

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- Client Involved:
  - Client Direct Supervision
- Client Not Involved:
  - Executive “Fit-and-Proper” Criteria
  - Governance Risk Management (Co-Governance Safeguards)
  - Operational Risk Management (Fit-and-Proper Criteria)
  - Enhanced Audit & Supervision ☐





## Summary

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- Effective Governance Succession:
  - Accountable Decision Making Structure
  - Competent Professional Management
  - Competent Investment Management
  - Framework of Supervision ➞

# Family Office Governance



## Key Objectives

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- Representative Decision Making
- Clear Governance Division
- Clear Liquidity Structure
- Accountable Management
- Professionalized Management
- Transitional Governance Rules ➞







## Control Requirements


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- Family Representative Forum (Family Council)
- Co-Governance Division (Strategic Investment Policy vs. Operational Implementation)
- Family Council Reserved Decisions: Investment Plan, Significant Investment Positions etc...
- Executive Team Operational Management (Operational Discretion)
- Transitional Rules ➡



## Participation Requirements

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- Family Council Member Criteria
- Executive Team Member Criteria
- Transitional Rules 








## Benefit Requirements

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- Family Liquidity Plan (Sustainability / Sufficiency Assessment)
- Liquidity Structure – Income
- Liquidity Structure – Capital
- Executive Compensation Structure
- Transitional Rules 



## Abuse Safeguards

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- Council Member Rotation
- Director Rotation
- “Fit-and-Proper” Criteria
- Enhanced Audit & Supervision
- Rights of Access to Information








## Summary

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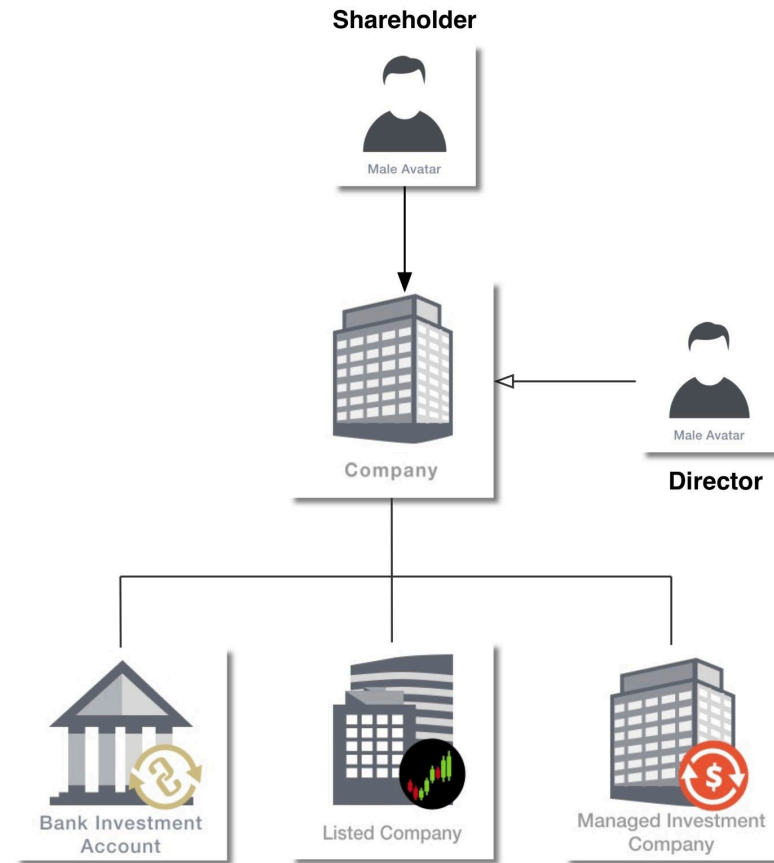
- Representative Decision Making Structure:
  - Clear Co-Governance Rule
  - Competent Executive Management
  - Competent Investment Management
  - Clear Liquidity Plan
  - Transparent Administration
  - Transitional Governance 



# Structuring Assessment Investment Office

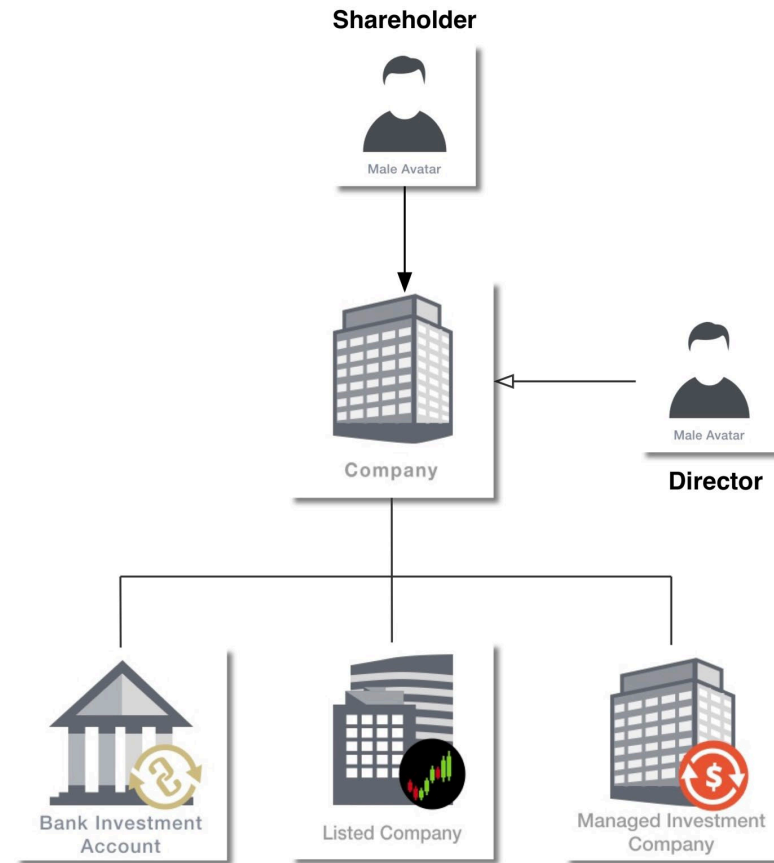
# Investment Office Assessment

- **Unstructured Options:**
  - Family Charter
  - Shareholders Agreement
  - Share Rights
- **Structured Option:**
  - Trust



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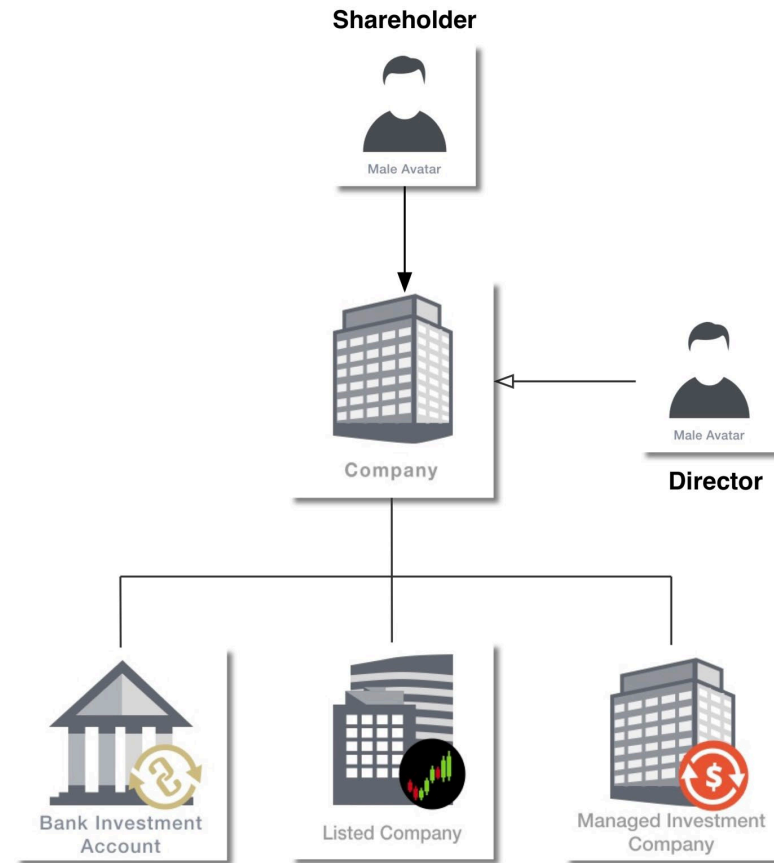
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- **Structured Option:**

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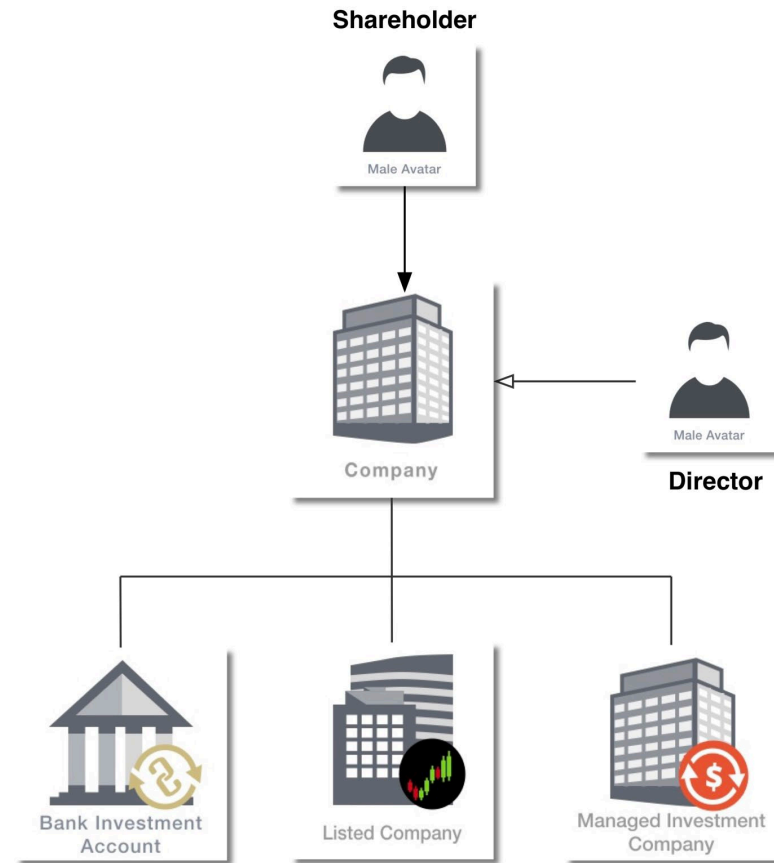
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- **Shareholders Agreement**

- **Share Rights**

- **Structured Option:**

- Trust



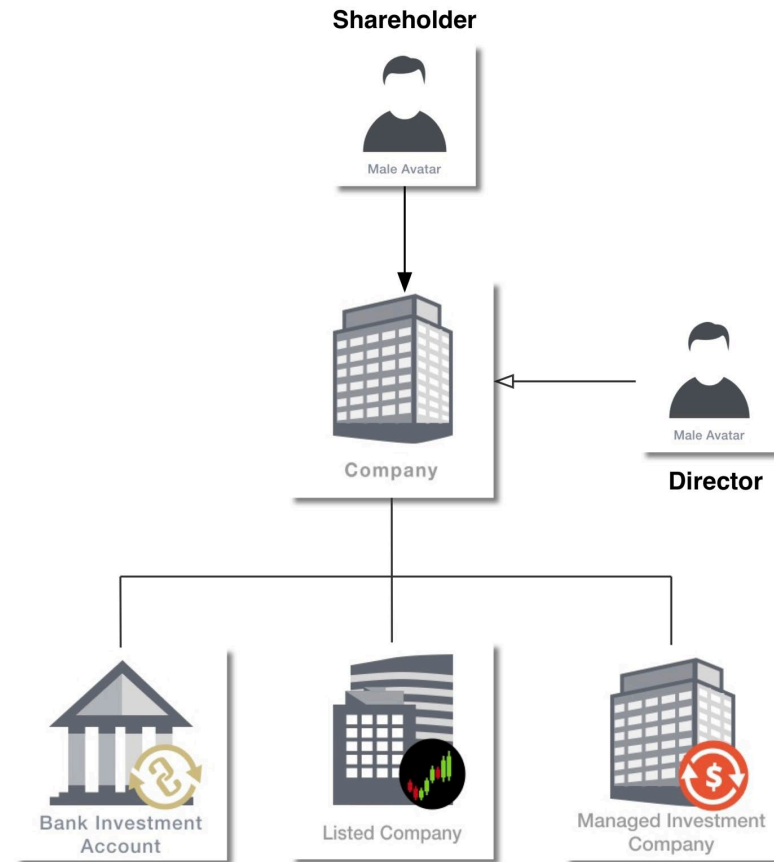
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- **Structured Option:**

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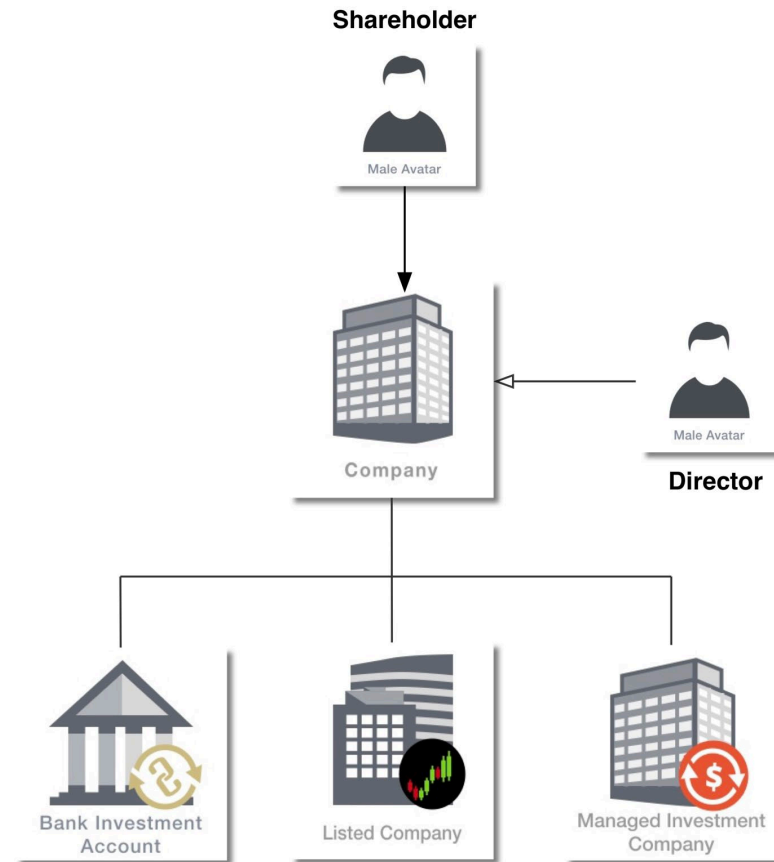
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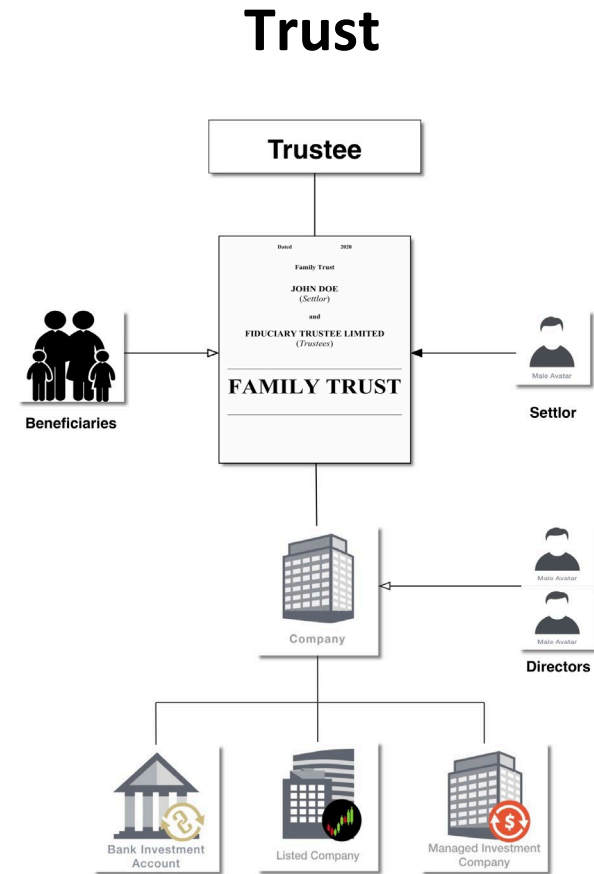




# Investment Office Trust

## Key Requirements

- Clear Separation Governance Control

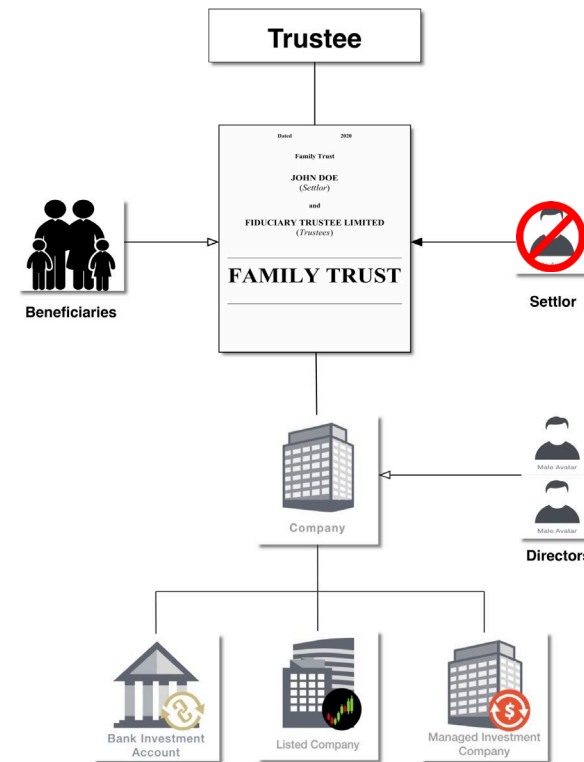


# Investment Office Trust

## Key Requirements

- Clear Separation Governance Control
- Clear Governance Succession Plan – Settlor Failure:

**No Settlor**

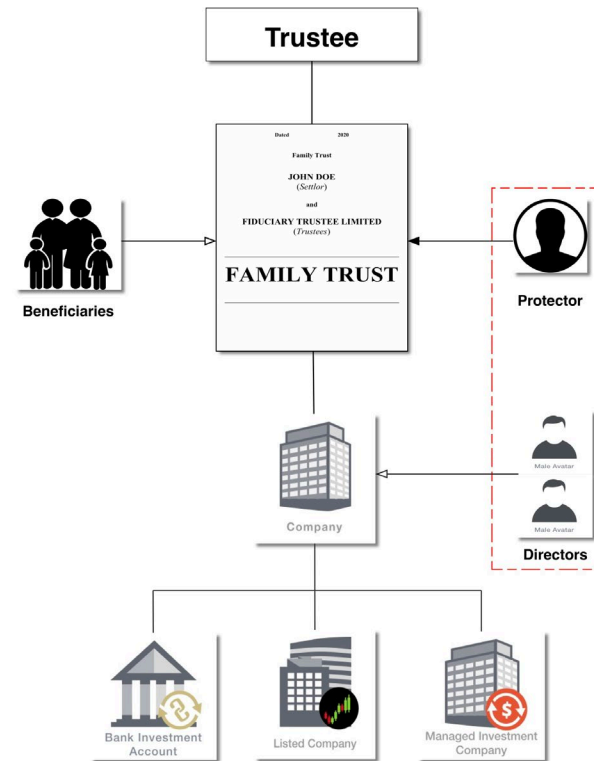


# Investment Office Trust

## Key Requirements

- Clear Separation Governance Control
- Clear Governance Succession Plan
  - Settlor Failure:
  - Comprehensive Settlor Failure Definition
  - Competency Safeguards
  - Accountability Safeguards
  - Operational Safeguards →

## Successor Protector



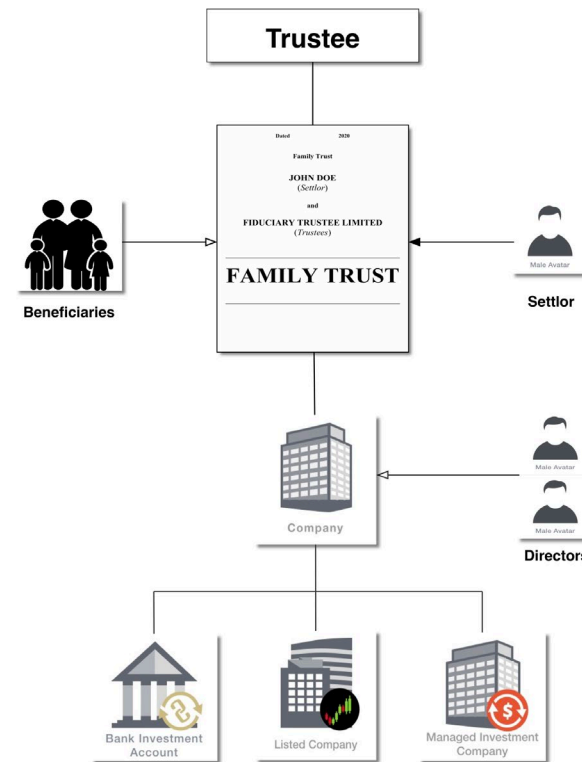
# Investment Office Trust

## Current Practice

- **De Facto Governance Separation:**
  - Anti-Bartlett Clause | Duty Exclusion Clause
  - Zhang Hong Li [2019] HKCFA 45
  - No Trustee Supervision - Director Fraud | Dishonesty
  - See Para 73 “Voluntary Supervision”
  - Long Form Bartlett Clause | Based on Para 8 First Schedule Bahamas Trustee Act 1998
  - Ineffective Short Form Bartlett Clause
  - Appleby vs. Citco BVIHC 156 2011 [Para 33]
  - Based on Para 8 Second Schedule BVI Trustee Act



## Investment Trust



**Trustees not bound to interfere with company management.**

8. The Trustees shall not be bound or required to interfere in the management or conduct of the affairs or business of any company in which the Trust Fund may be invested (and whether or not the Trustees have the control of such company) and so long as no trustee of this instrument has notice of any wilful negligence wilful default or fraud or dishonesty on the part of the directors having the management of such company they may leave the same (including the payment or non-payment of dividends) wholly to such directors and no beneficiary is entitled as such beneficiary in any way to compel control or forbid the exercise (including in any particular manner) of any voting or other rights at any time vested in the Trustees with regard to such company including without prejudice to the generality of the foregoing any powers the Trustees may have (even if also directors of such company) of compelling such company to distribute any dividend. *(Amended by Act 11 of 2003)*

*(Inserted by Act 7 of 1993)*

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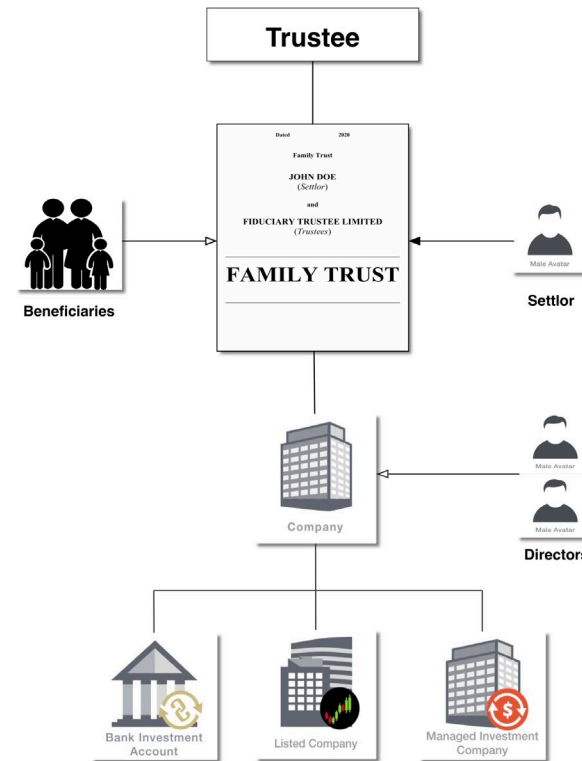


# Investment Office Trust

## Assessment

- **De Facto Governance Separation:**
  - Anti-Bartlett Clause
  - Developing Area of Law
  - Intervention Uncertainty: Director Reckless Behavior? Dishonest?
  - Uncertain Interaction with AML (Supervision) Obligations | Enhanced Due Diligence Measures
  - No Express Director Competency Safeguards
  - Encourages Unsupervised Director Autonomy
  - Inadequate Governance Succession Plan →

## Investment Trust

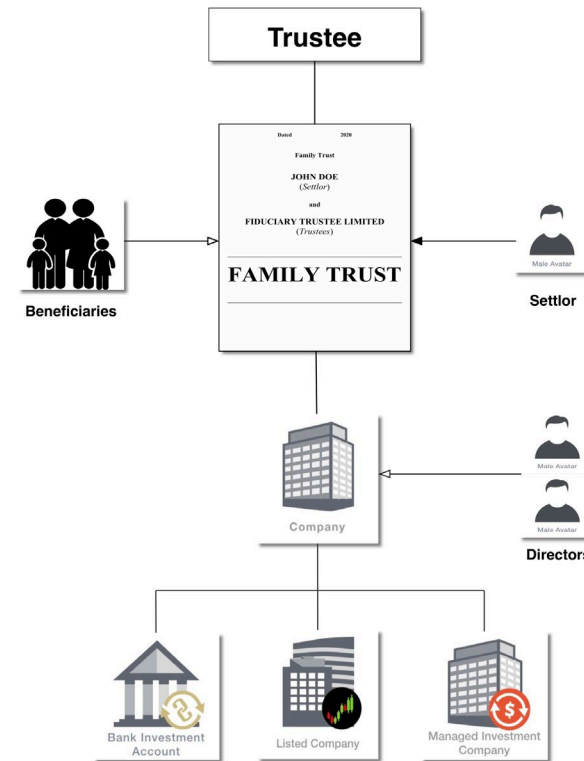


# Investment Office Trust

## Current Practice Assessment

- **Delegated Investment Power:**
  - Trustee Duty to Supervise (Appointment and Ongoing)(see sections 41F, 41M and 41N HK Trustee Ordinance)
  - Delegated Governance | Not Co-Governance or Reserved Power
  - Residual Investment Supervision
  - Anti-Bartlett Interaction
  - No Express Director Competency Safeguards
  - Director Autonomy | No Supervision
  - Not Adequate Governance Succession Plan →

## Investment Trust

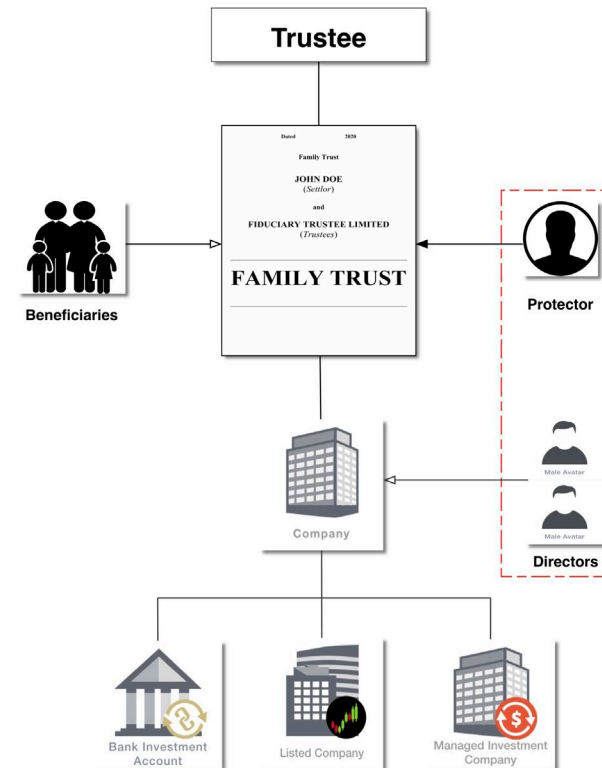


# Investment Office Trust

## Current Practice Assessment

- **Investment Direction:**
  - Power Holder (Settlor | Protector)
  - No Express Trust to Retain – Residual Trustee Obligations (Coterminous?)
  - Investment Direction “*Liability Lacuna*”: Trustee Liability Exclusion | Personal Non-Fiduciary Power (see section 41X Trustee Ordinance)
  - Ambiguous scope of Power Clause
  - No Protector Competency Requirements
  - No Director Competency Requirements
  - No Effective Operational Safeguards
  - Settlor Failure: Restrictive Definition →

## Investment Trust

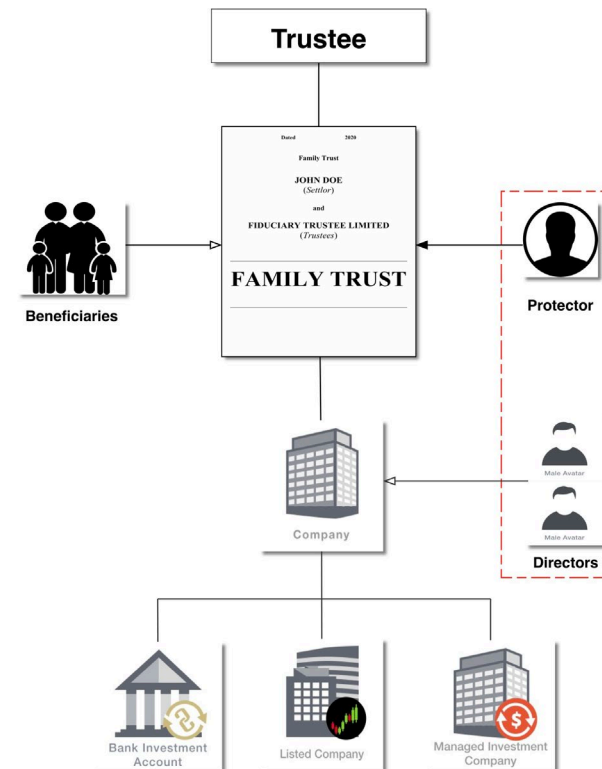


# Investment Office Trust

## Current Practice Assessment

- **Reserved Investment Powers:**
  - Power Holder (Settlor | Protector)
  - Contingent Trust to Retain – No Residual Trustee Investment Obligations
  - “*Liability Lacuna*”: Trustee Liability Exclusion | Personal Non-Fiduciary Power (see section 41X Trustee Ordinance)
  - Ambiguous Scope of Power Clause
  - No Protector Competency Requirements
  - No Director Competency Requirements
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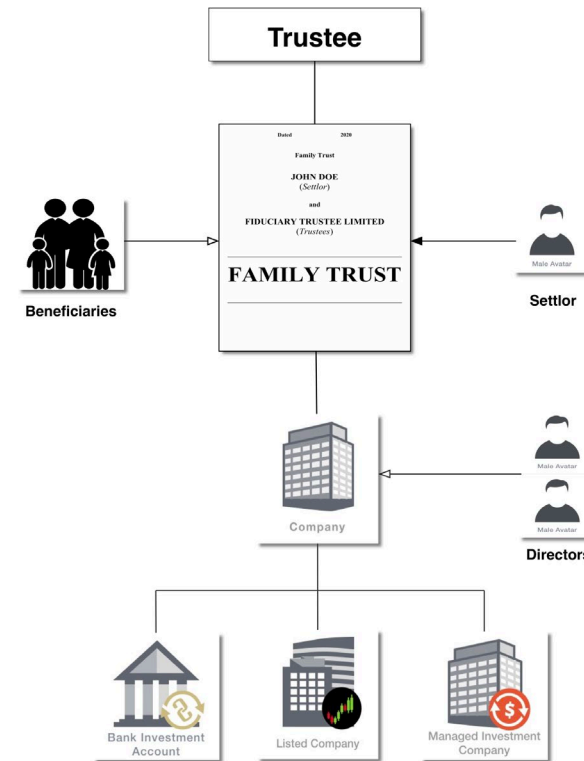


# Investment Office Trust

## Best Practice

- **Control | Participation**
  - Reserved Investment Powers:
  - Contingent Trust to Retain
  - Minimum Accountability | No “*Liability Lacuna*”
  - Express Limited Personal | Fully Fiduciary Power
  - Protector Competency Requirements
  - Director Competency Requirements
  - Exoneration Provisions – Gross Negligence
  - Operational Safeguards (Negative Investment List)
  - Comprehensive Settlor Failure Definition
  - Effective Governance Succession Plan →

## Investment Trust

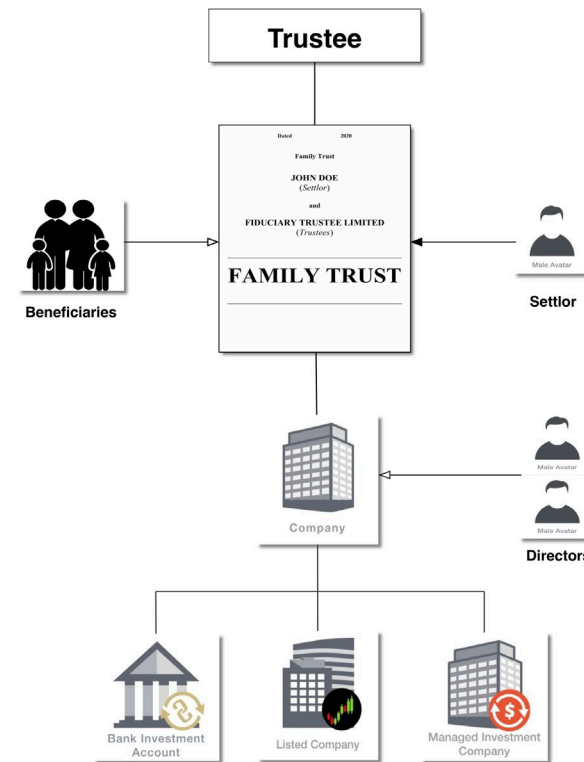


# Investment Office Trust

## Further Drafting Considerations

- **Benefit**
  - “Overloaded Powers” | illusory Invalid Trust
  - TMSF 2011 | Clayton 2016
  - Pugachev 2017 | Webb 2020 | Zhang Lan 2022
  - Offshore Trust Legislation | Statutory Code
- **Abuse**
  - Restricted Rights Access to Information
  - Forfeiture Clause | Administrative Decisions
  - Arbitration Clause →

## Investment Trust

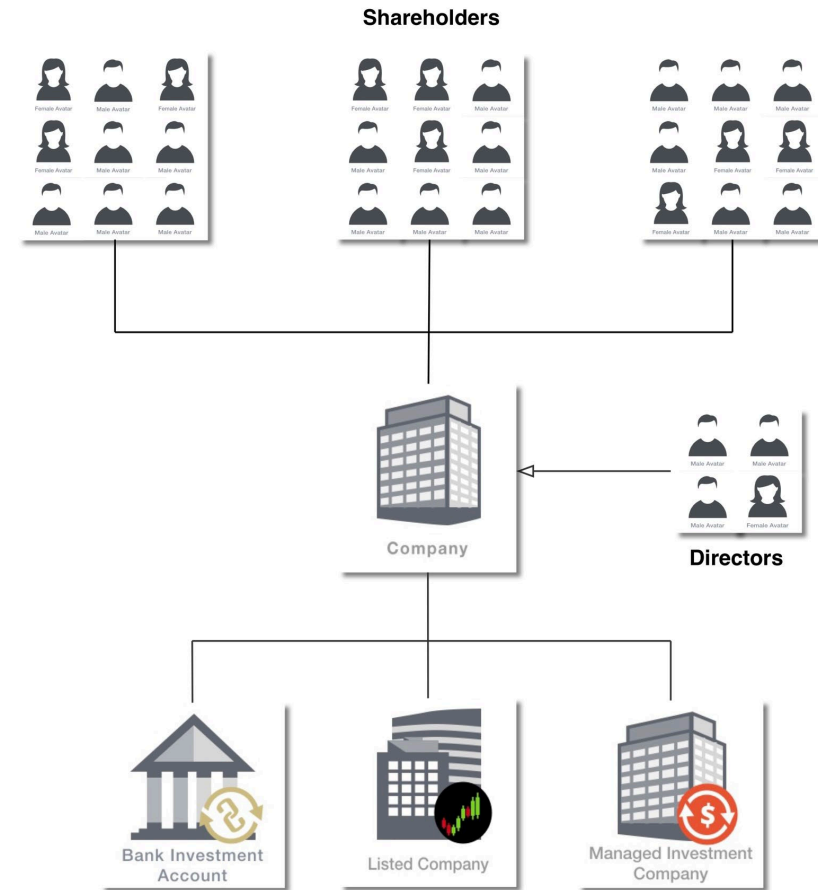




# Structuring Assessment Family Office

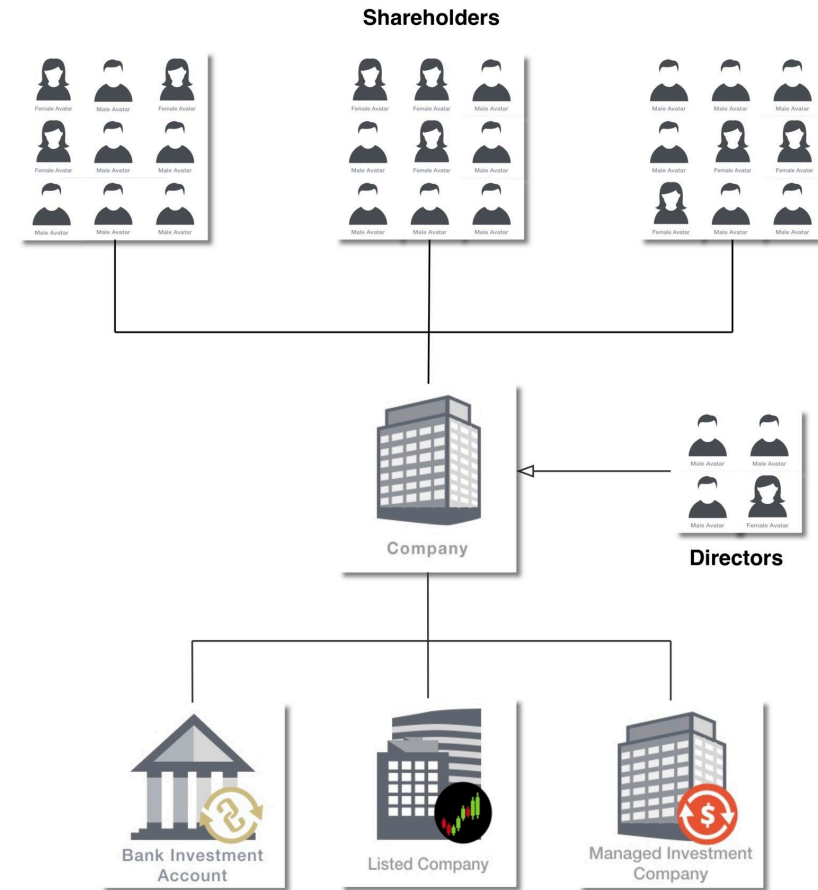
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- **Structured Option:**
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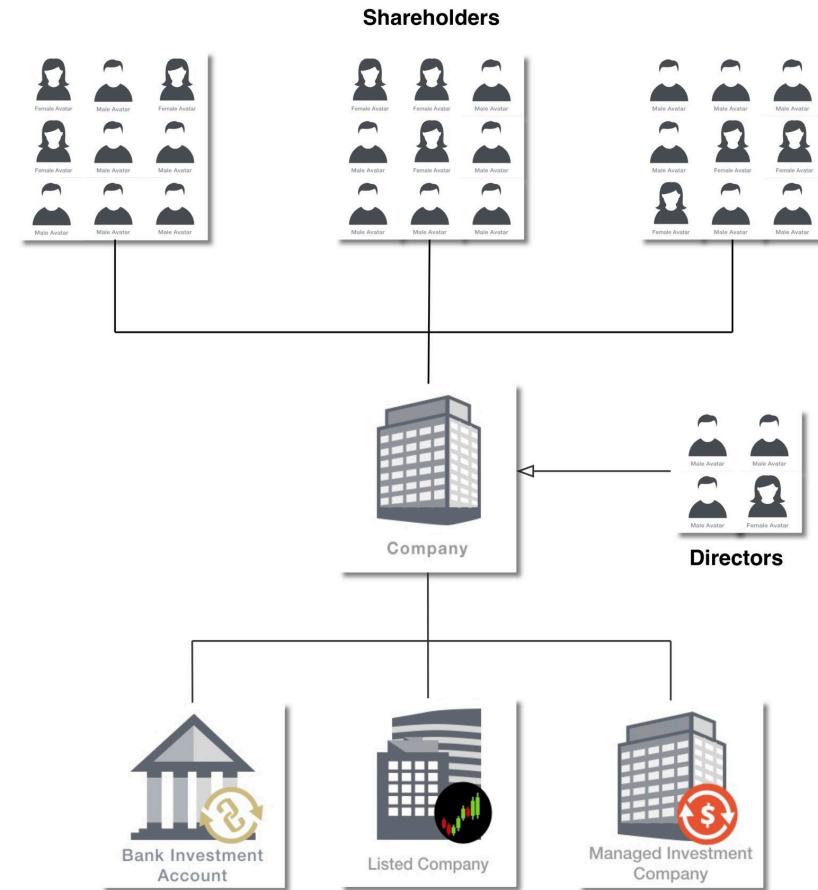
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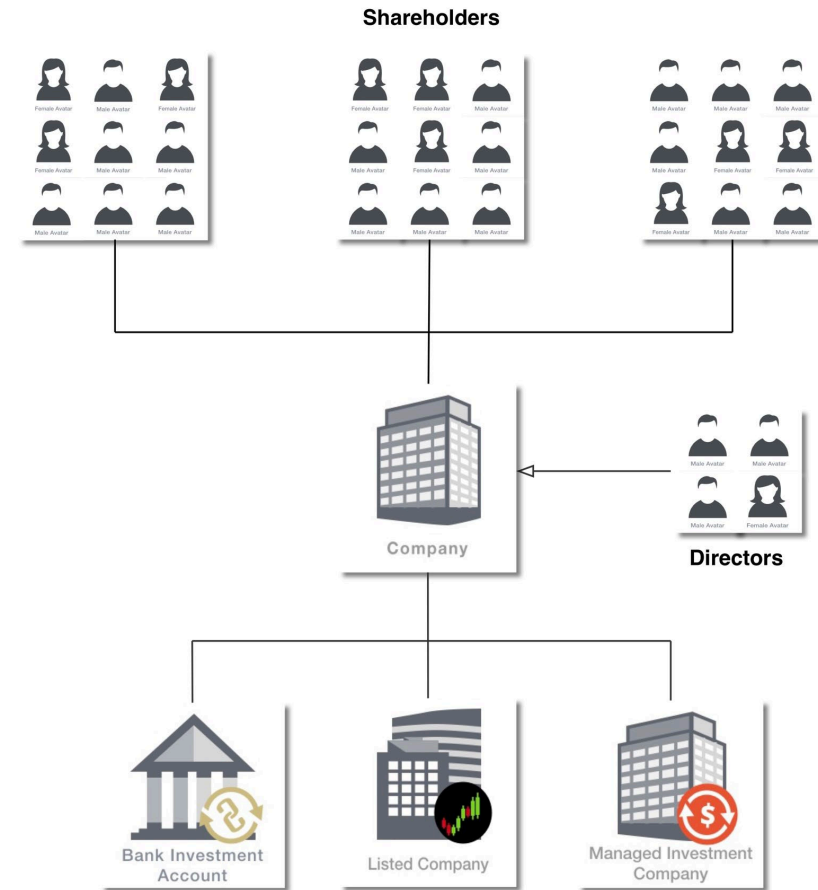
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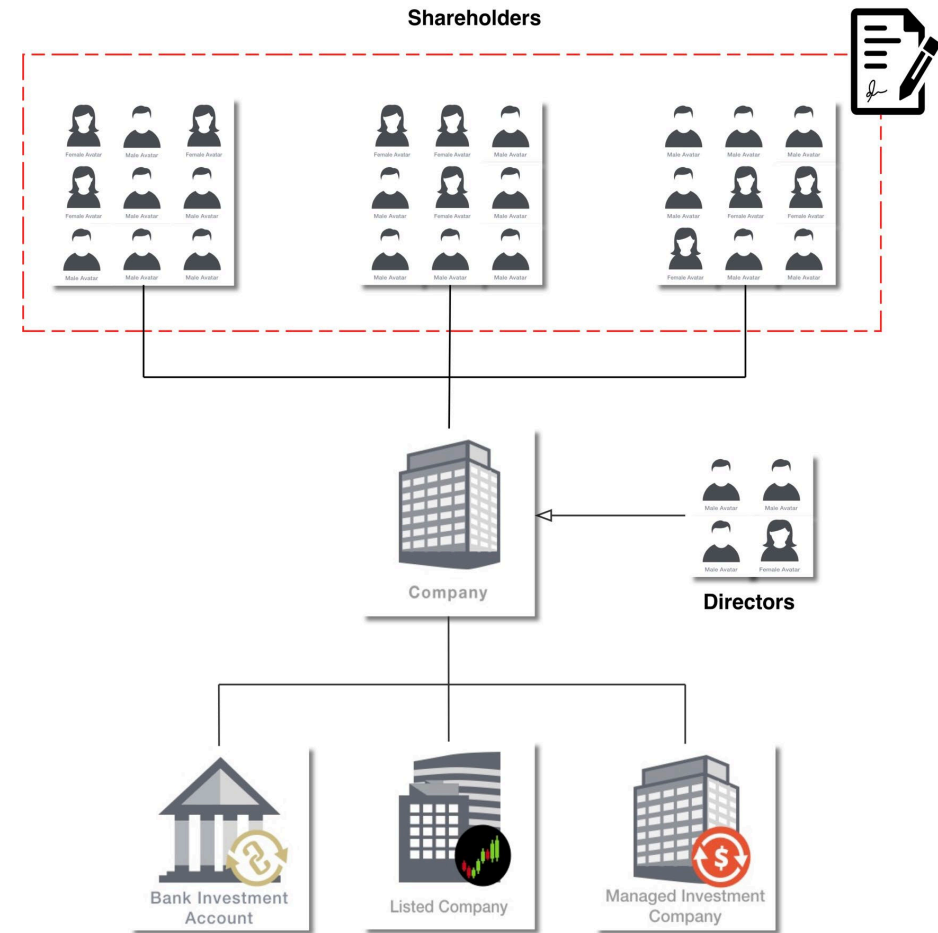




# Family Office Agreement

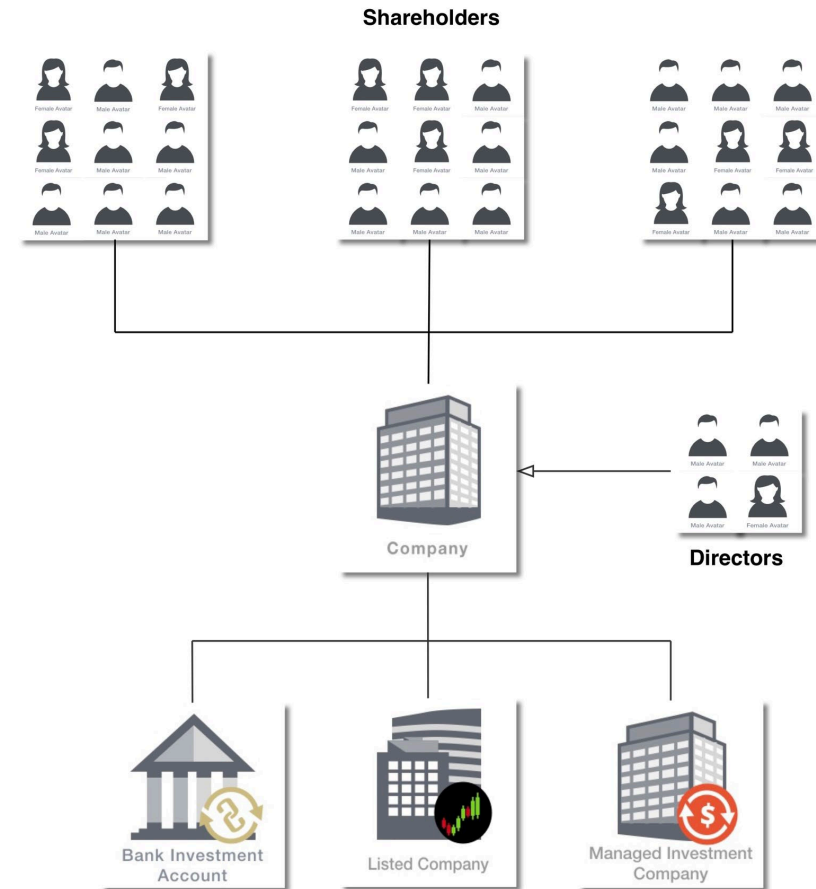
## Key Provisions

- Legalized: “Family Charter”
- Contractual: “Family Council”
- Discretionary Proxy Voting | Family Council
- Family Council | Director Interaction
- Reserved Co-Governance
- Reserved Corporate Governance
- Liquidity Plan | Buy-Back | Transfer Restrictions | Adherence
- Succession | Public Policy Restrictions
- M&As Translation | Class Rights →



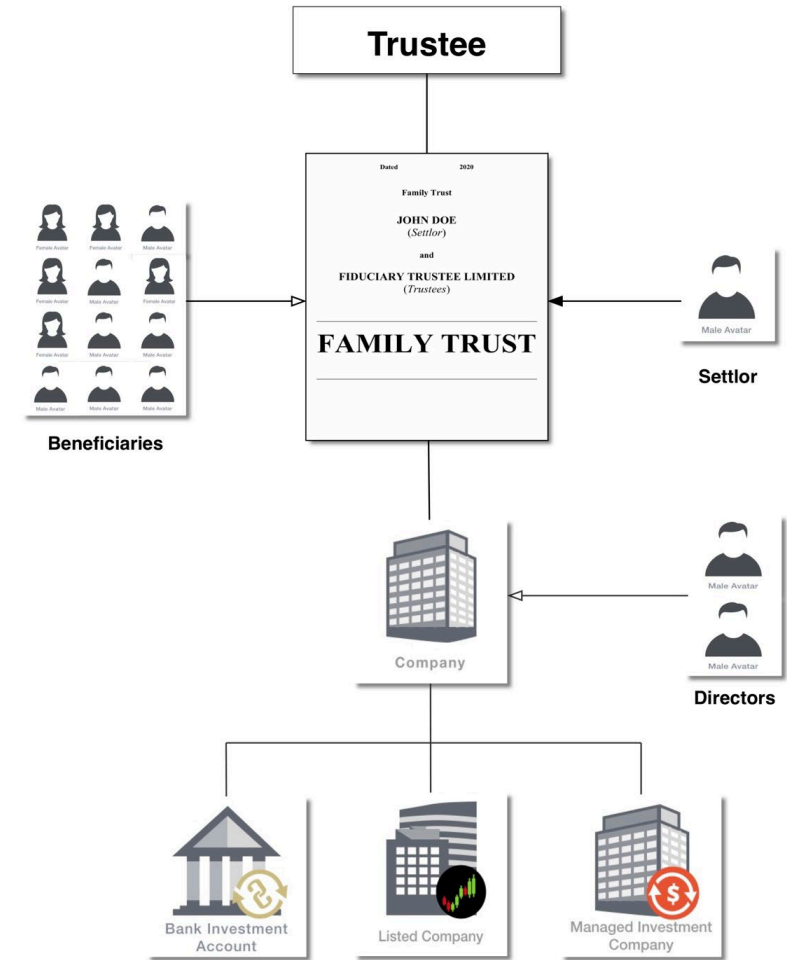
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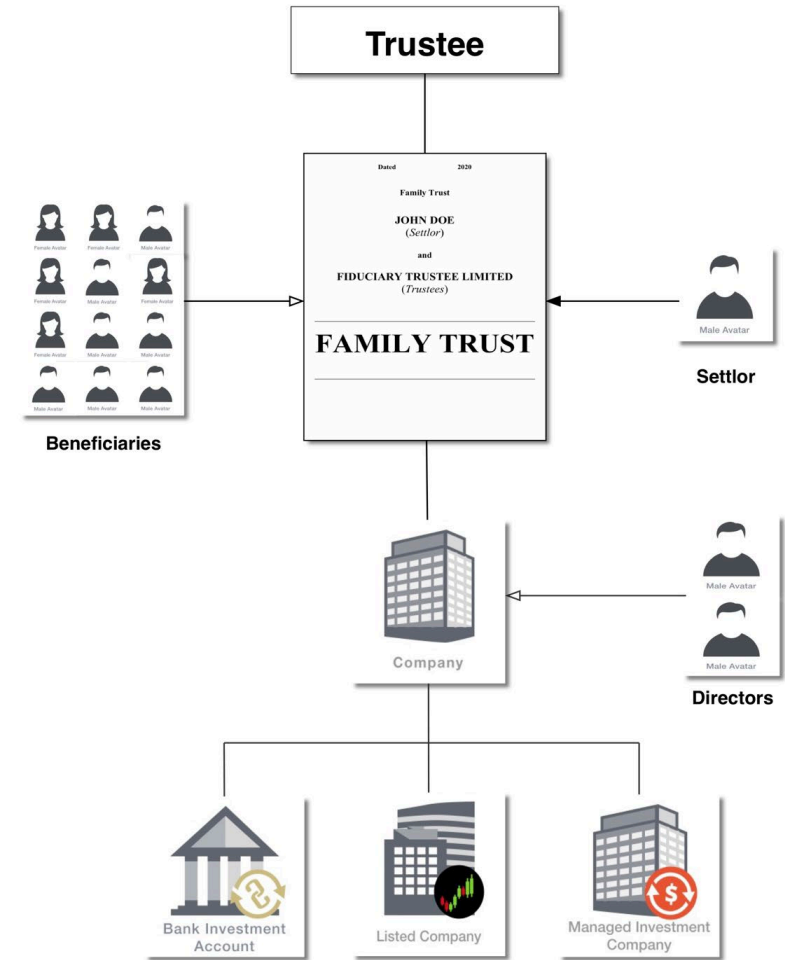
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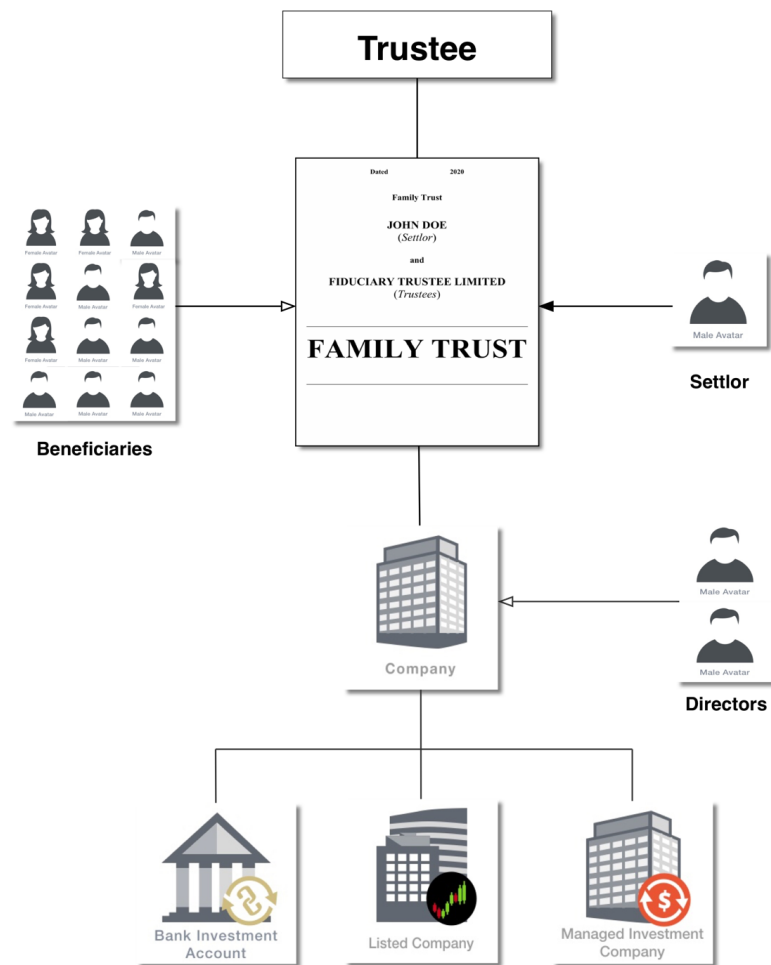


# Family Office Trust

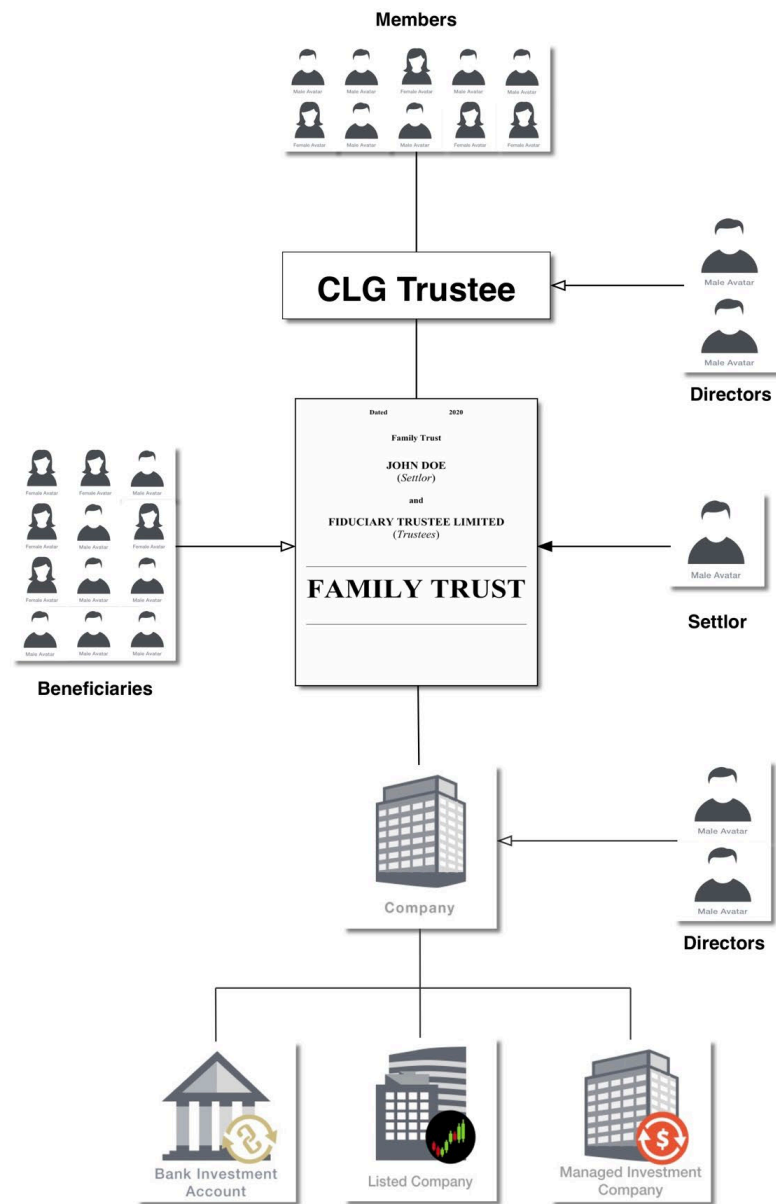
## Evaluate Options

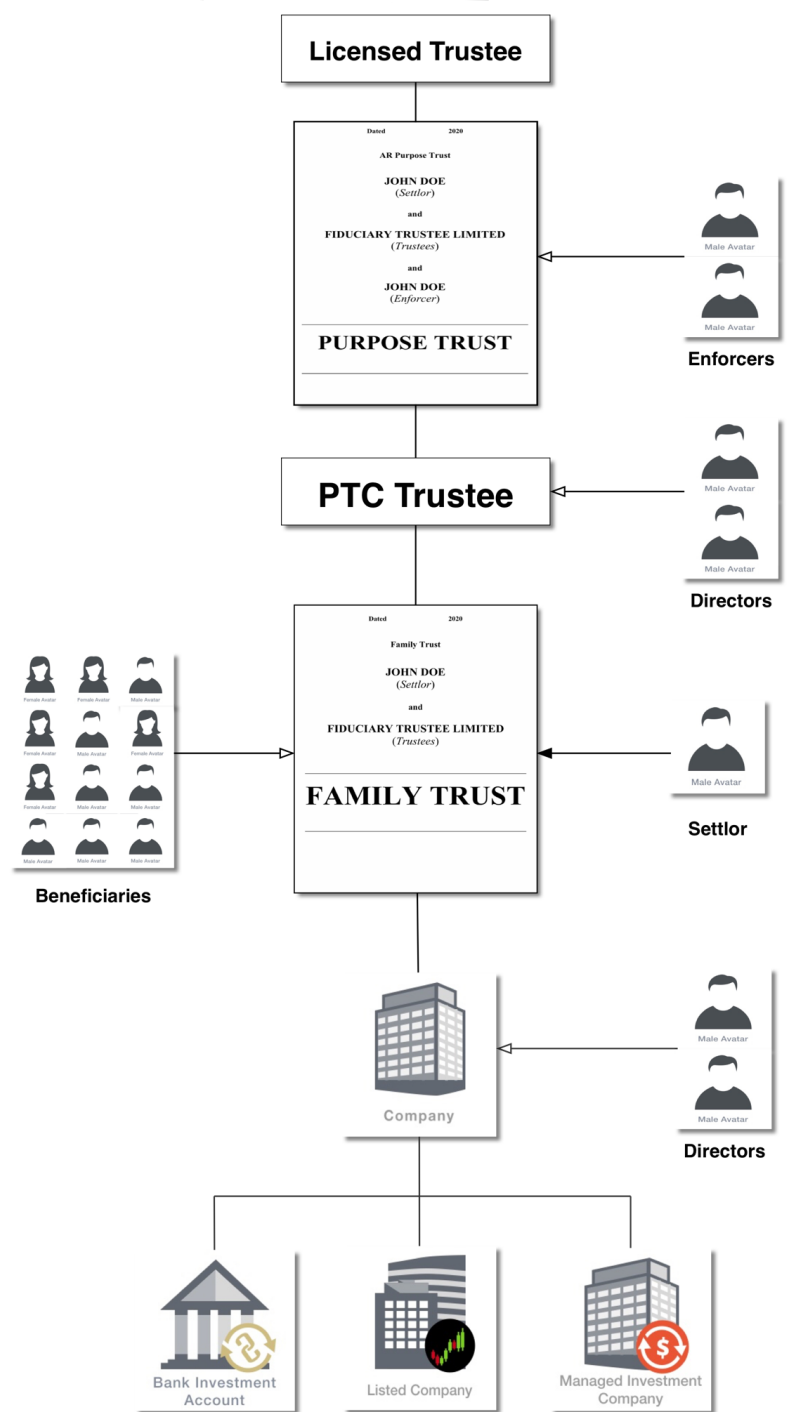
- Private Trust Company Structure
- PTC Limited Guarantee vs. PTC Limited Shares
- Single Fund Trust
- Multi-Fund Trust
- Multi-Trust (Hybrid) →





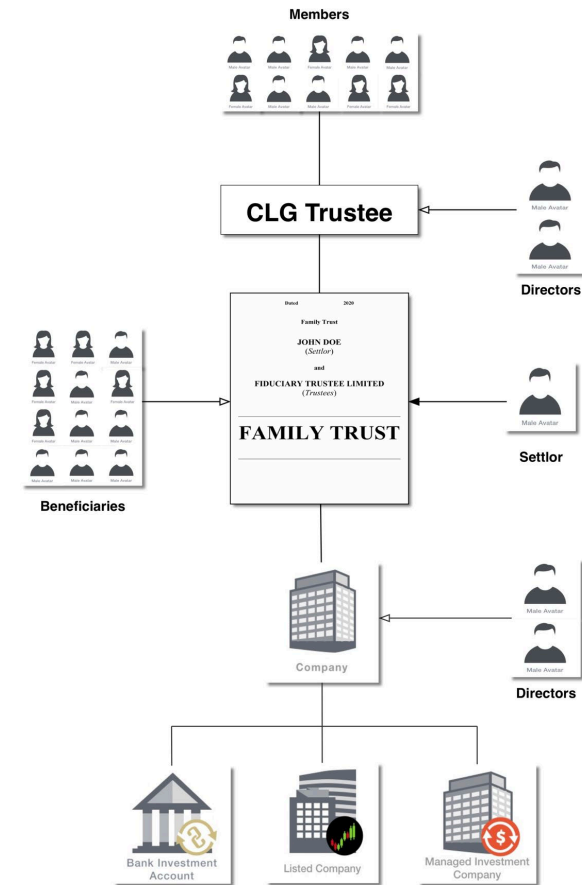






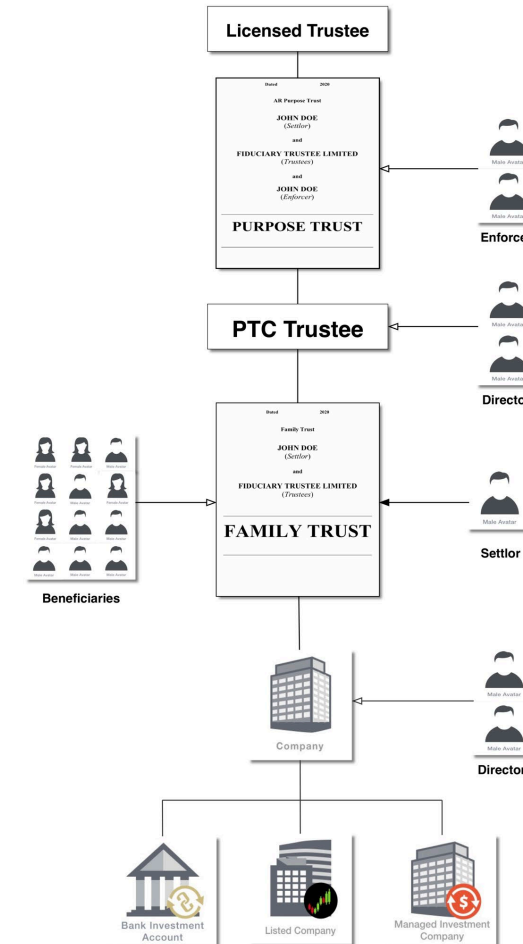
# PTC Limited By Guarantee

- Member Interest Cease on Death – No Estate Succession
- Applicable Family Member Criteria
- Unable to Entrench M&A Provisions
- Unstable Multi-Generation Governance
- Risk of Power Capture | Family Member Exclusion | Prejudicial Amendment →



# PTC Limited By Shares

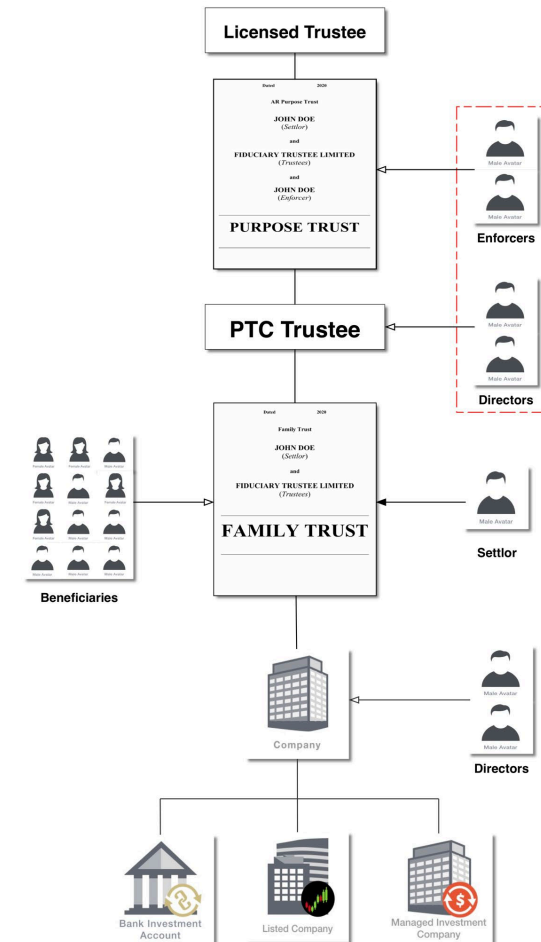
- Purpose Trust PTC Ownership
- Purpose Trust Governance Purposes
- PTC Director Governance
- Purpose Trust Representative Decision Making
- Family Office Trust
- Benefit and Succession
- Family Office Co-Governance
- Family Office Director Governance
- Accountable, Representative and Transparent



# Purpose Trust Governance

## Key Requirements

- Representative Enforcer Committee Members
- Enforcer Member: Criteria, Appointment, Removal
- Enforcer Committee Governance Powers - PTC Director Code
- PTC Director: Criteria, Appointment, Remuneration and Removal →

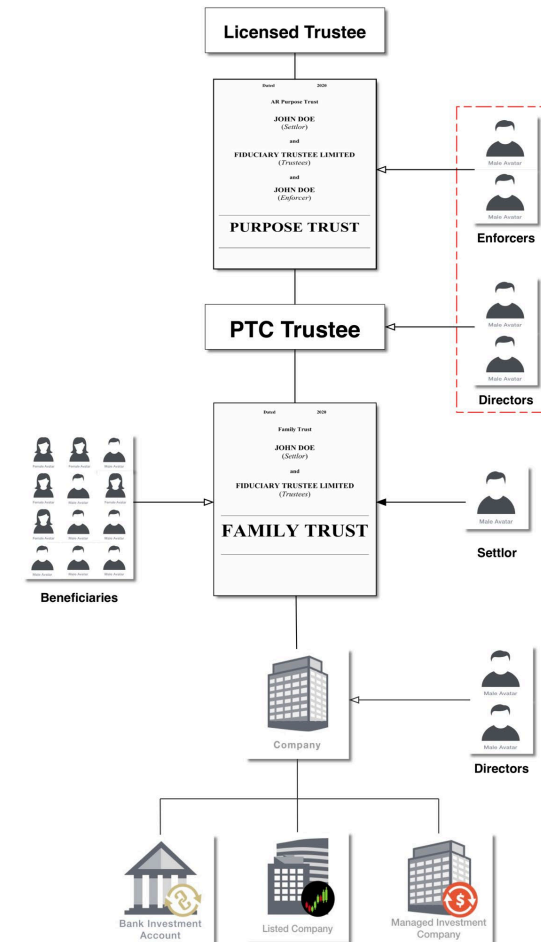




# Purpose Trust Governance

## Common Drafting Errors

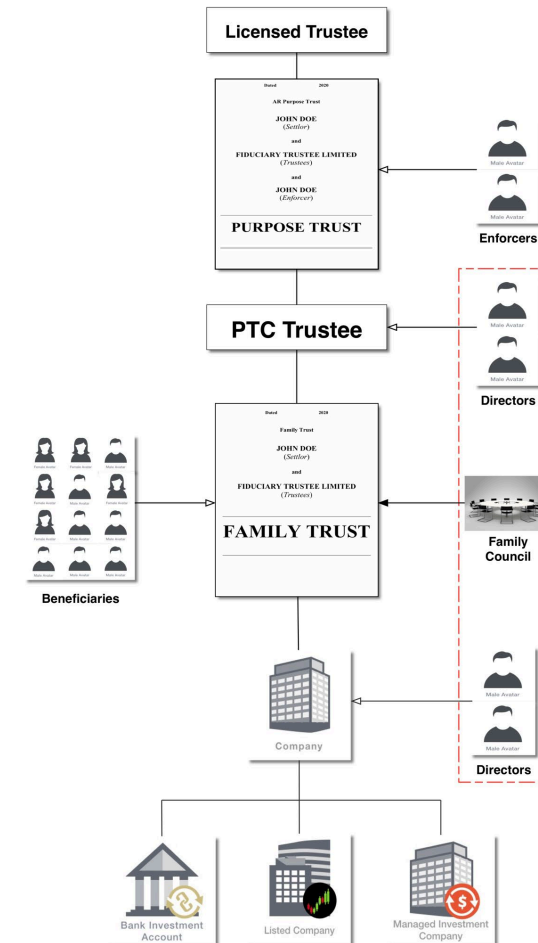
- PTC Director Appointment and Removal | Trustee Administrative Power Not Formal Purpose
- Enforcer(s) Not Representative – Simple Settlor Successor Nomination
- Enforcer is PTC Director – No “*Check-and-Balance*”
- No PTC Director Criteria →



# Family Trust Governance

## Key Requirements

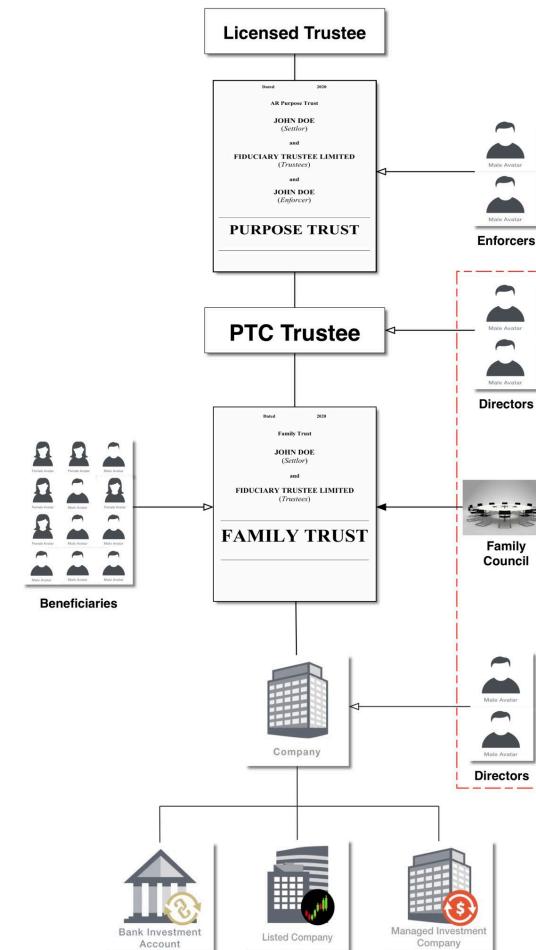
- Representative Family Forum: Family Council (Committee of Protectors)
- Family Council Member: Criteria, Appointment, Removal Rules
- Family Council: Co-Governance Rules – Strategic Investment Decisions
- Family Council: Family Office Corporate Governance Rules
- Family Office Director: Criteria, Appointment, Remuneration and Removal →

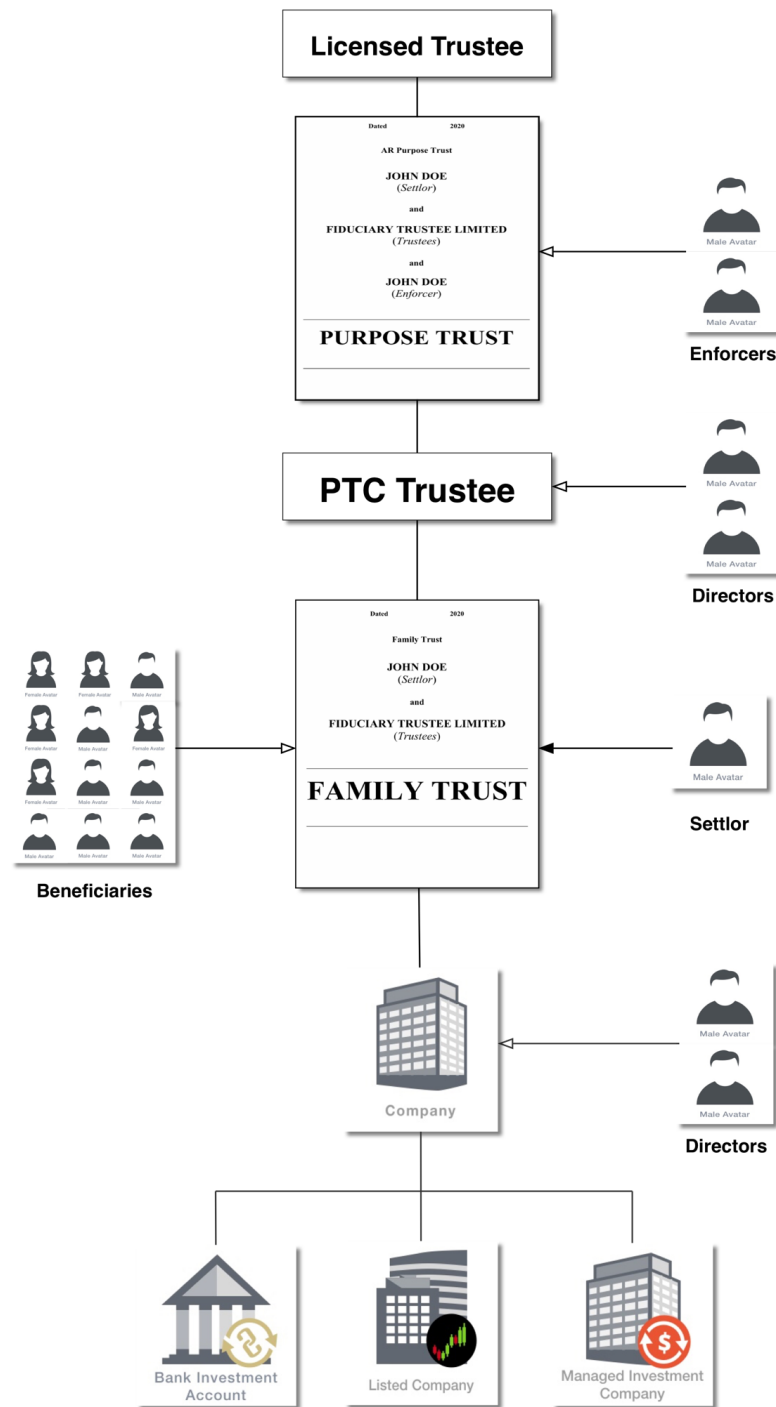


# Family Trust Governance

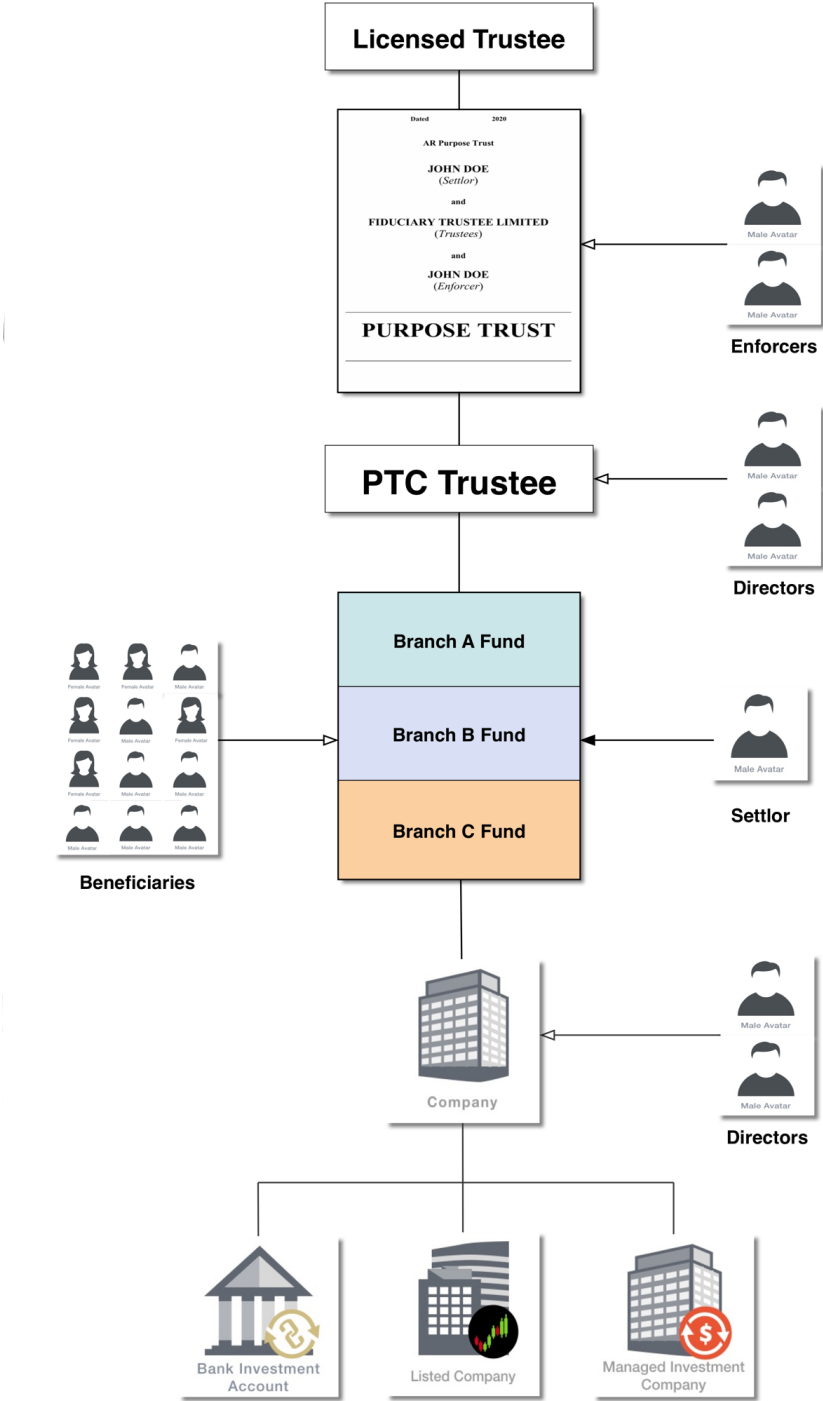
## Common Drafting Errors

- No Intermediating Family Council – No Co-Governance Division
- PTC Trustee Unfettered Discretionary Control
- Family Office Director(s): No Criteria, Appointment, Remuneration and Removal
- PTC Directors also Family Office Directors – No “*Check-and-Balance*”

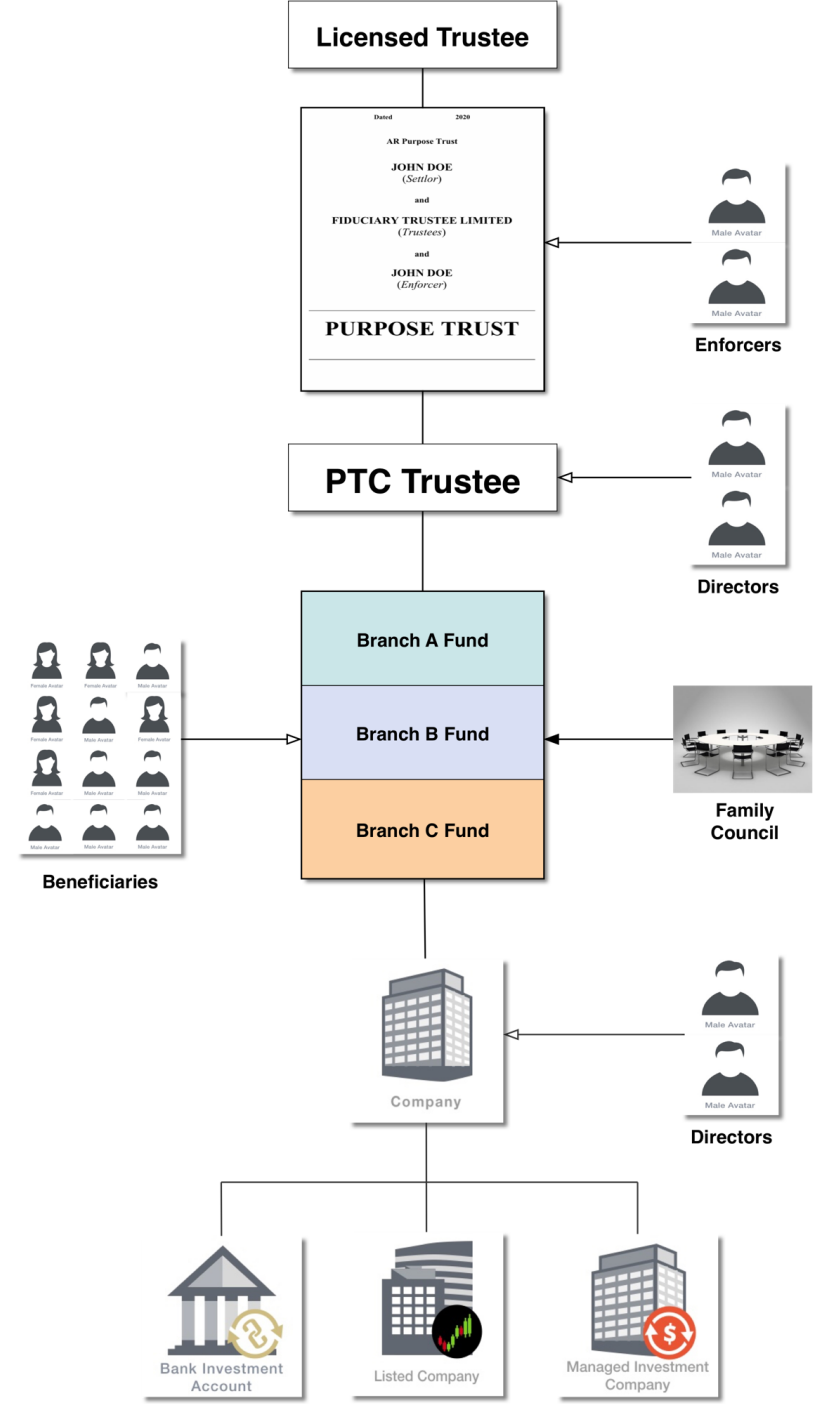




# Multi-Fund Trust



# Consolidated Family Council

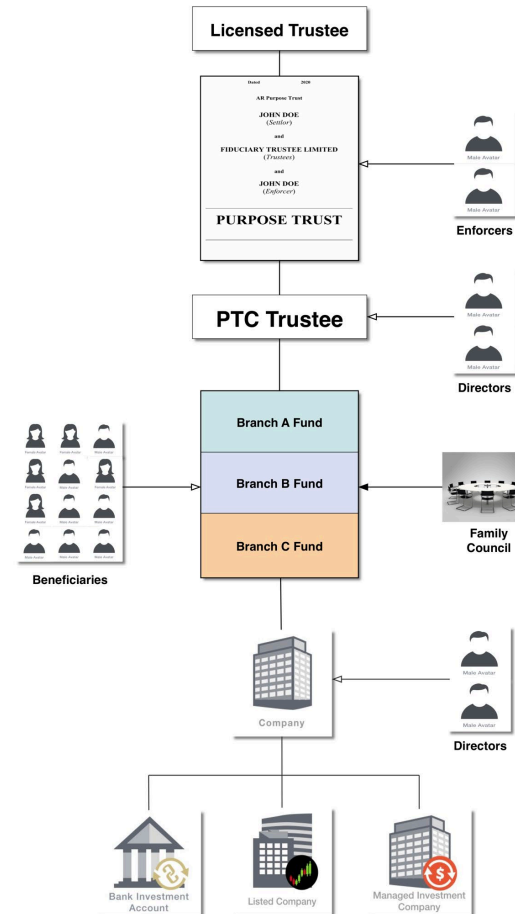


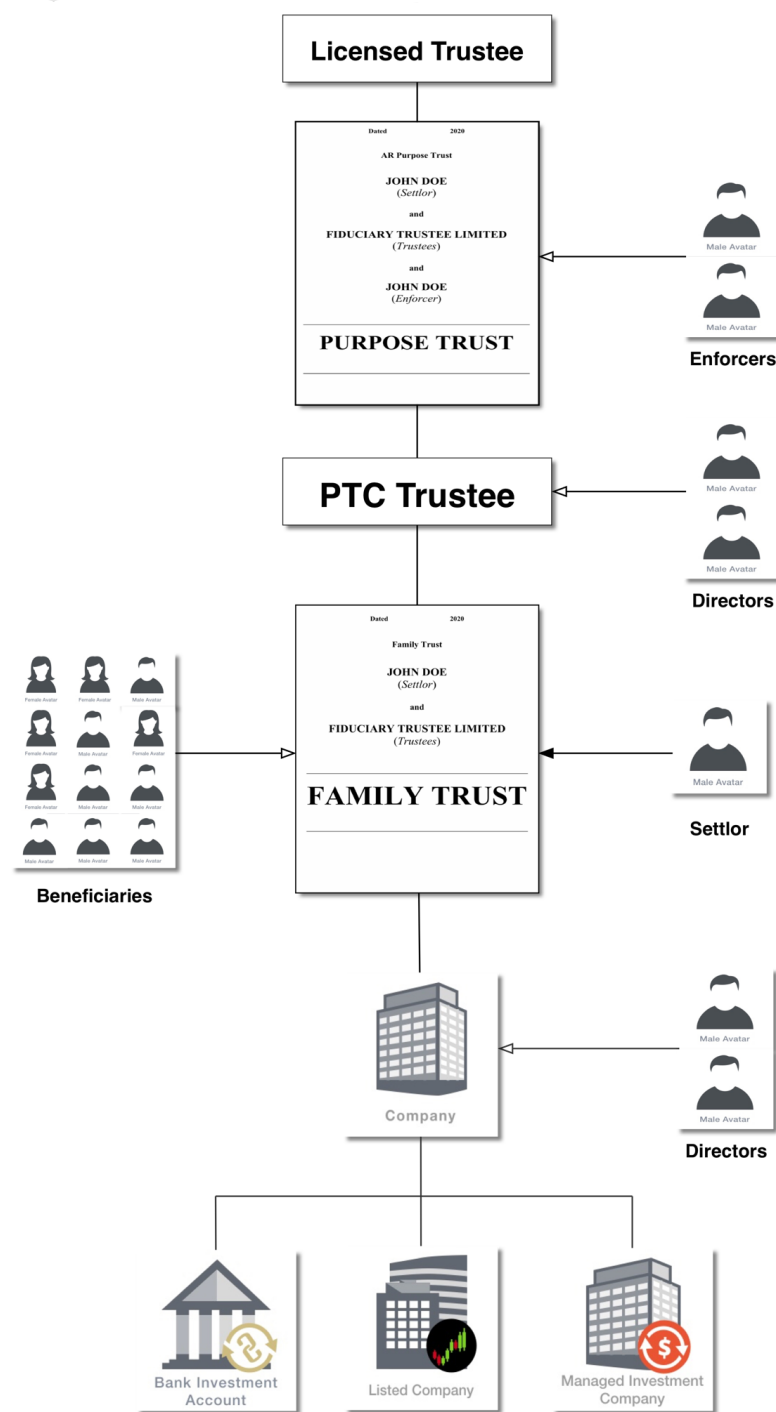


# Multi-Fund Trust

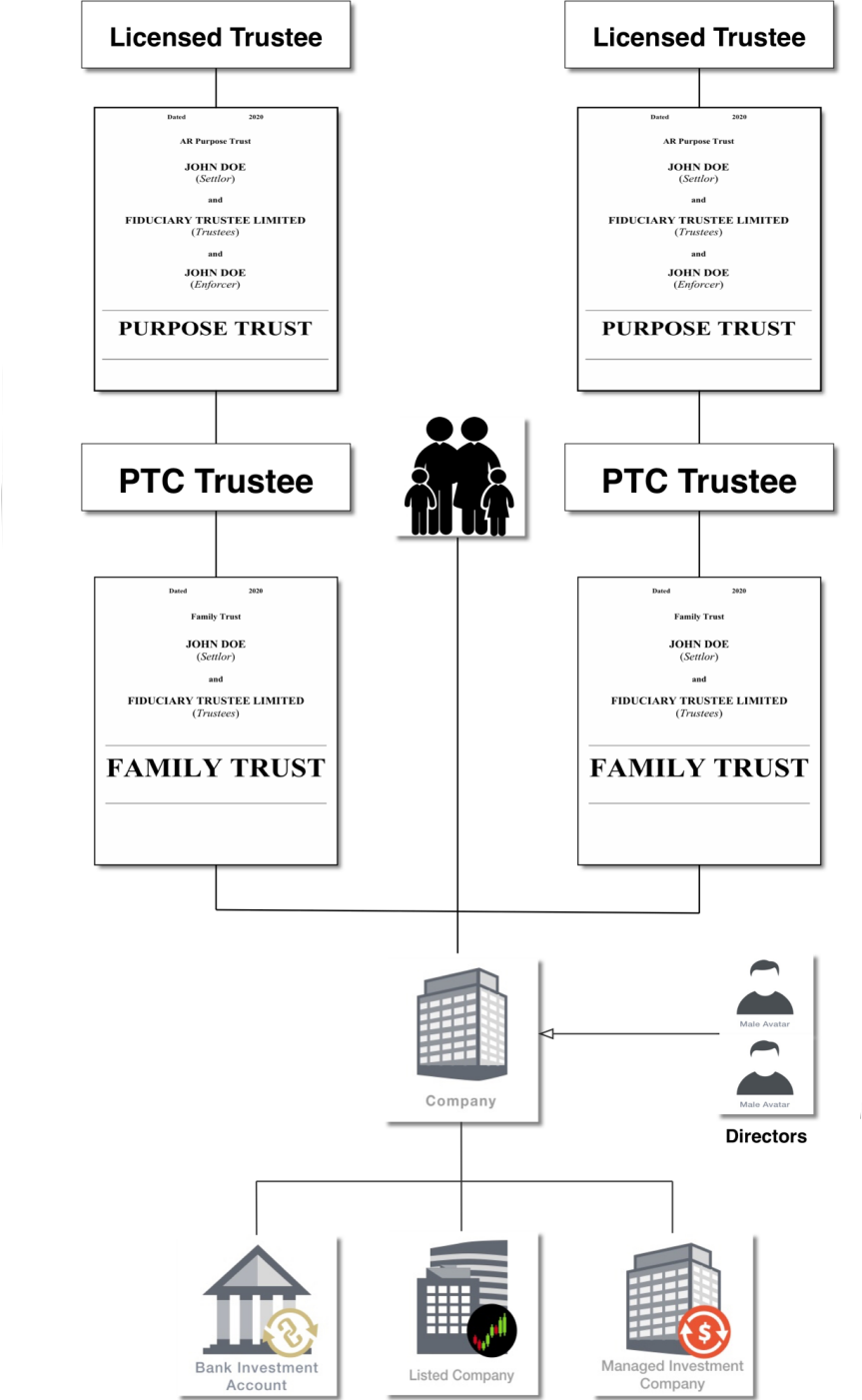
## Key Benefits

- Segregated Benefits (pre-Branch)
- Discretionary Sub-Fund, Life Interest Sub-Fund, Protective Sub-Fund, Cross Accrue on Failure
- Cost Effective Trust Allocation vs. Separate Trusts
- Sub-Fund Protectors (Consent Distributions)
- Family Council Consolidated Sub-Fund Protectors: Co-Governance and Corporate Governance Rules →

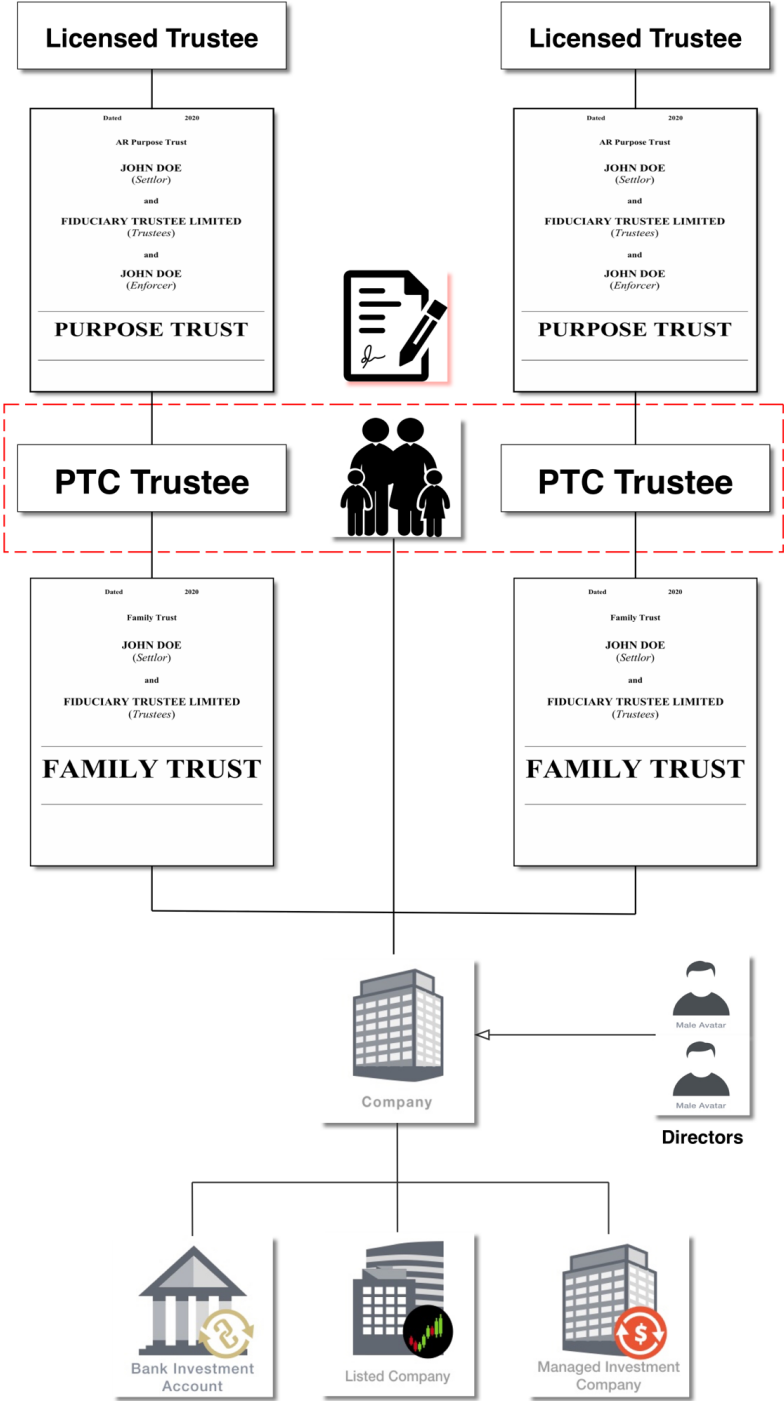




# Multi-Trust (Hybrid)



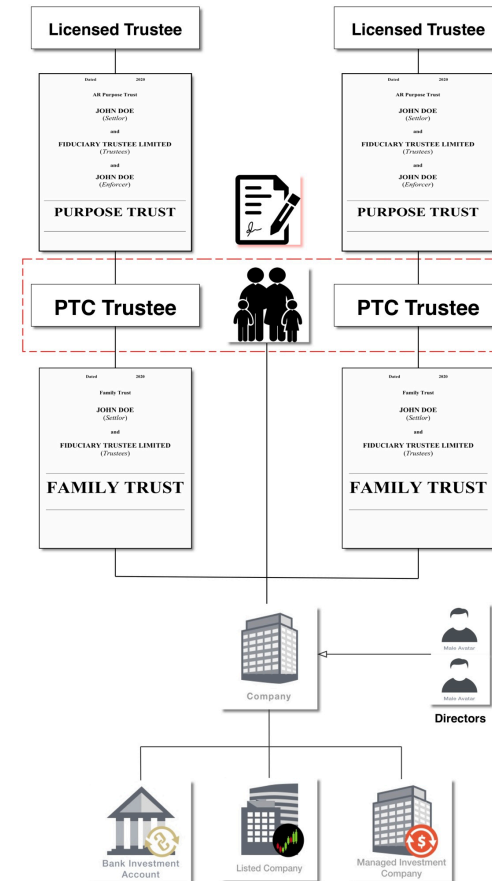
# Universal Shareholders Agreement



# Multi-Trust (Hybrid)

## Key Benefits

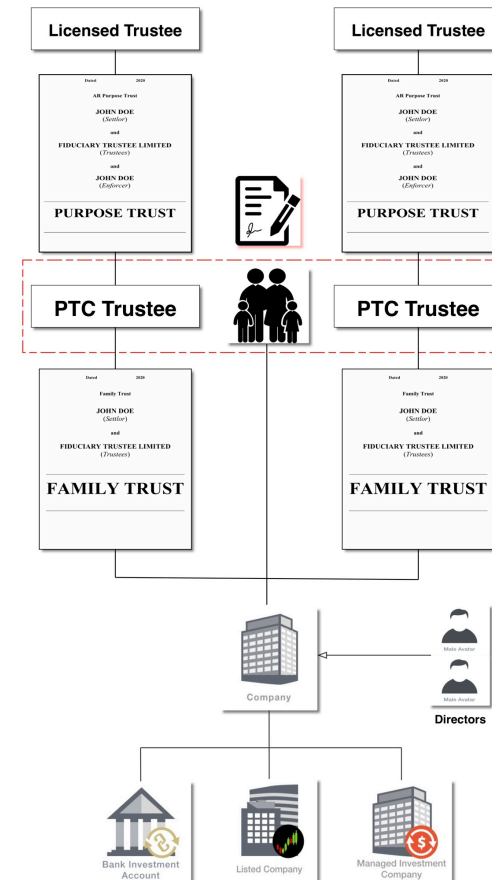
- Segregated Liability Exposure
- Segregated Information Access
- Segregated Succession and Benefits
- Collective Decision Making →



# Multi-Trust (Hybrid)

## Key Provisions

- Universal Shareholders Agreement: Co-Governance Division, and Family Office Company Director Rules
- Share Disposal, Succession and Adherence Rules
- Single Fund Trust Internal Governance Applied
- Personal Ownership and Succession Implications →







# Summary

- Investment Office Governance Objectives: “Survivability”
- Family Office Governance Objectives: “Sustainable Family Social System”
- Two Different Markets
- Two Different Solutions
- Consider Legacy Structures – Enhancements
- Review Precedent Documents
- Review Service Provider Precedents
- Educate Staff
- Educate Clients ➡

Thank You!

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A group of five business professionals, three men and two women, are seated around a table in a meeting. They are all wearing dark business suits. The man in the center, who is older with grey hair and glasses, is looking down at a document. The woman to his left is looking at a smartphone. The man to his right is looking at a document. The woman on the far left is looking down. The man on the far right is looking at a document. The background is a white brick wall. The text "Family Office Governance" is overlaid in the center of the image.

# Family Office Governance

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