



香港信託人公會
Hong Kong Trustees' Association

HONG KONG TRUSTEES' ASSOCIATION

SEMINAR ON

Investment Office Trust vs. Family Office Trust

24 October 2024




Investment Office vs. Family Office

Zac Lucas, Partner
Spencer West LLP



Agenda

- Overview - Market
- Overview - Family Office Solutions
- Investment Office
- Family Office
- Summary 

Market Overview

Mainland Segment:

- 93,850 UHNWIs (>\$30 million)
- Total Value UHNWIs >\$2.8 Trillion
- +10,000 (est, yrly) intend to emigrate
- Projected 400 – 500 mainland companies will IPO in HK over next 5 years
- 90 (est) mainland companies have submitted listing applications
- Estimated AUM value \$9 to \$12.8 billion current listing applications
- 9,000 – 10,600 (est) UHNW mainland Chinese are resident in Hong Kong →



Market Overview

Hong Kong Segment:

- 1,500 – 2,000 Family Businesses lead by founder over age of 70 yrs
- First – to – Second Generation Transfer:
- 50% - 70% Failure Rate
- 30% - 40% Success Rate
- 20% - 30% “**Cash Out**” (est AUM \$75 - \$120 billion) ➡



Market Overview

The “*Liquidity*” Challenge:

- Wealth Dissipation / Erosion
- Family Conflict
- Lifestyle Inflation (Uncontrolled Spending)
- High Tax Emigration
- Poor Investment Knowledge (Network)
- Poor Investment Management
- Poor Investment Opportunities
- Lack of Asset Protection or Succession Planning
- Failure to Transition from Business to Financial Wealth
- **Family Office Solution →**



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Investment Office

Principal Attributes:

- Founder Generation
- Nuclear Family (Spouse, Minor Child)
- Single Generational Planning
- Direct (Founder) Control
- Asset Protection
- Privacy
- Migration
- Administrative Consolidation
- **Mainland Client** ➡





Summary

Two Principal Types:

- Investment Office – Single Generational, Mainland Client
- Family Office – Multi-Generational, Hong Kong Client ➡



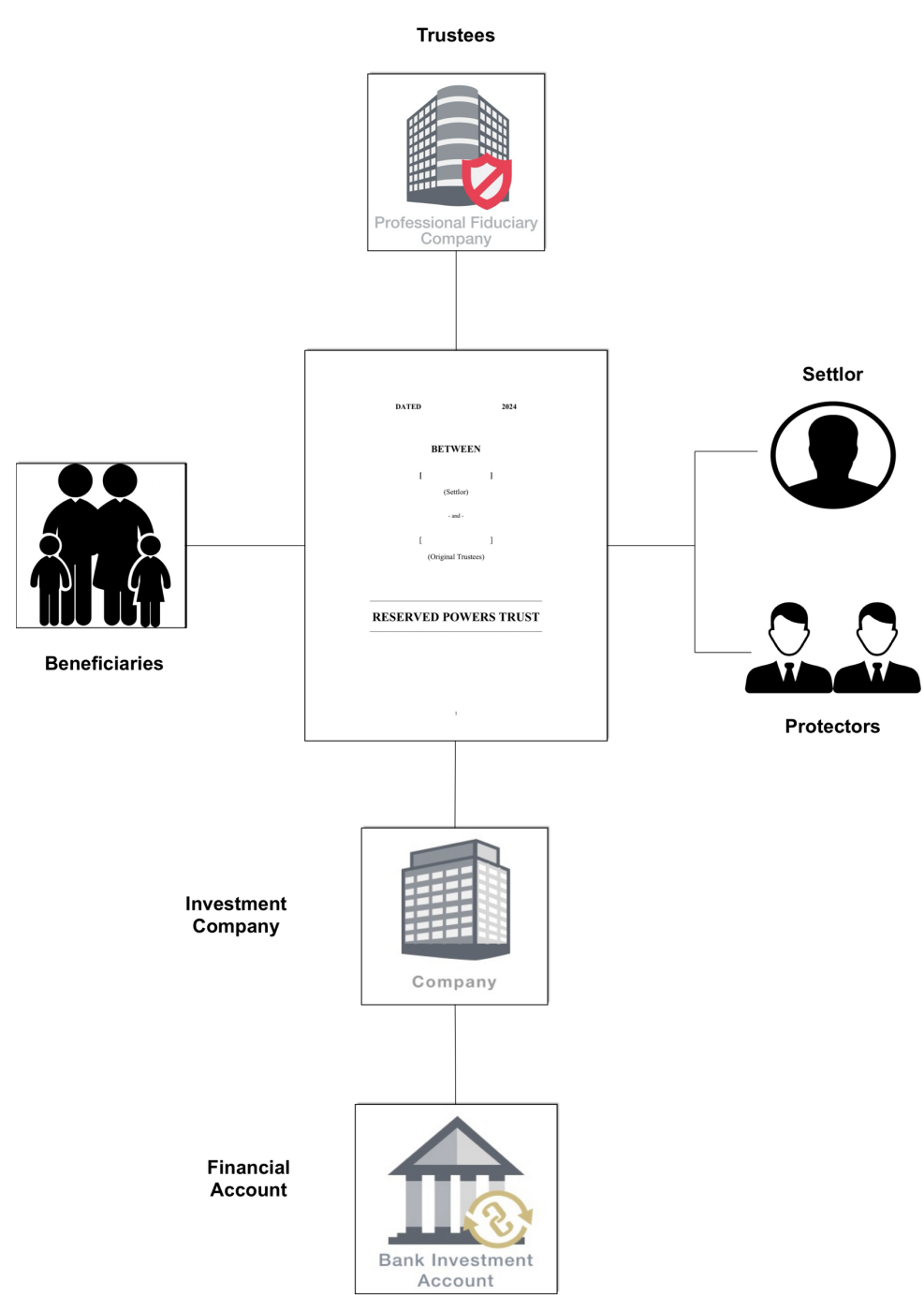
Investment Office

Agenda

- Reserved Power Trust (RPT)
- Trustee Investment Liability
- Trust Integrity and Functioning
- CRS (Mis)Reporting ➡

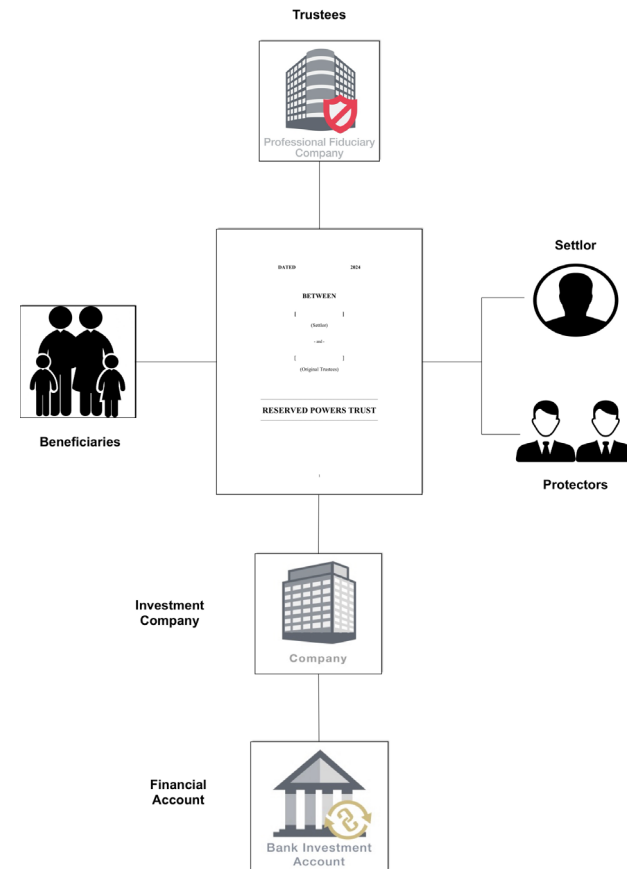


Reserved Power Trust



Reserved Power

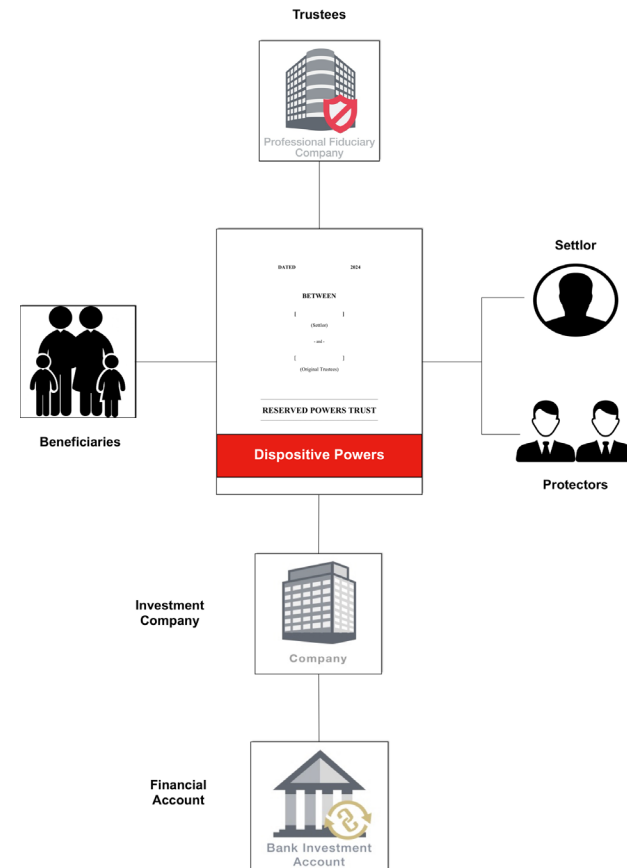
Governance Framework



Dispositive

Powers:

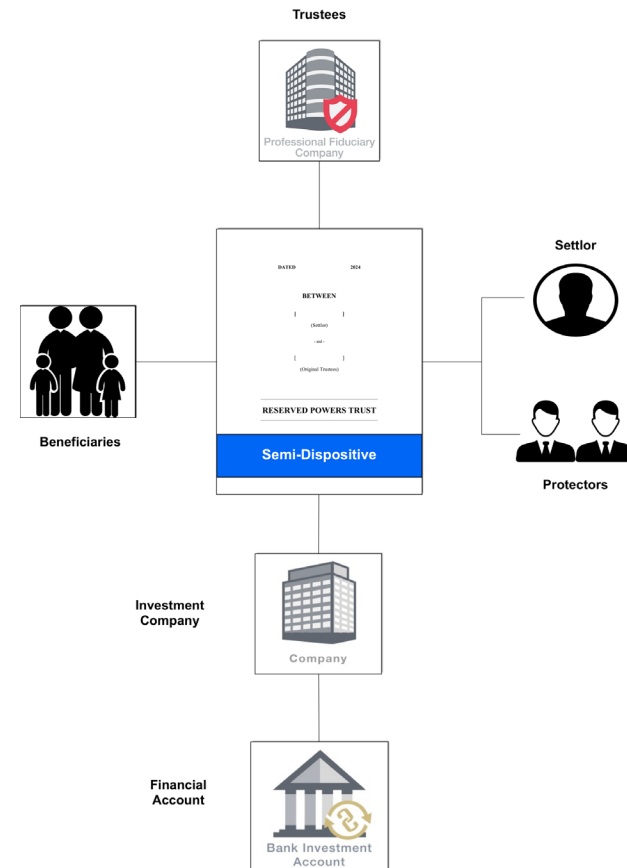
- Power of Appointment
- Power to Direct Income
- Power to Direct Capital
- Power to Revoke ➡



Semi-Dispositive

Powers:

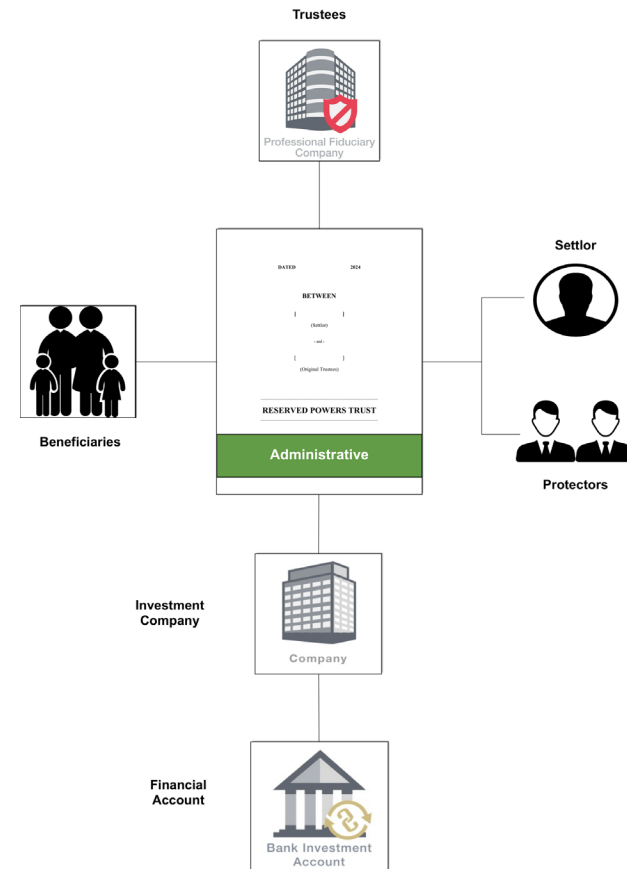
- Power to Amend
- Power to Add/Remove Beneficiaries
- Power to Appoint/Remove Trustees
- Consent / Veto Exercise of Dispositive or Quasi-Dispositive Powers ➡



Administrative

Powers:

- Investment Directions
- Bartlett Clause
- Change Proper Law
- Change Exclusive Jurisdiction
- Consent / Veto Exercise of Administrative Powers ➡

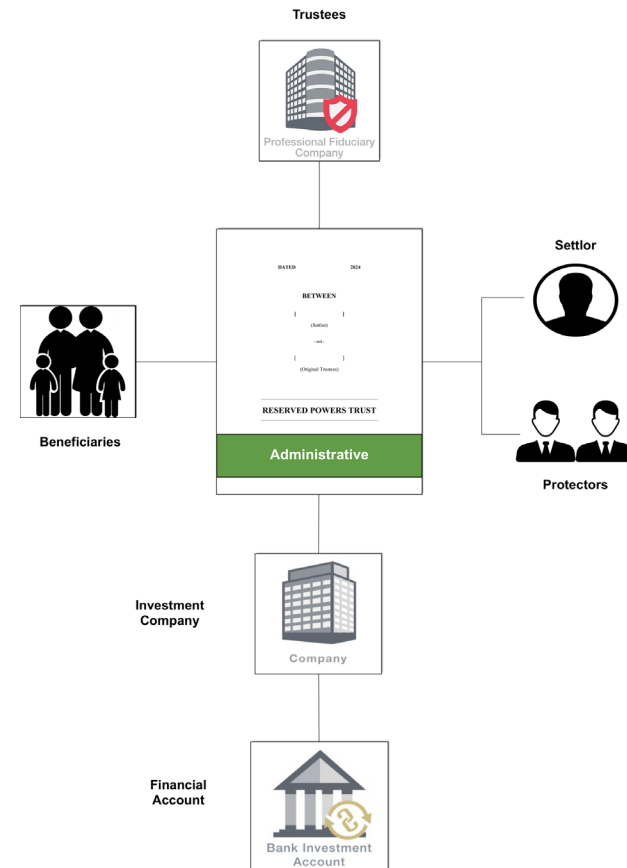


Investment Control

Investment Control

Administrative

- Client Demand: **Investment Control**
- Principal Provisions:
 - Reserved Investment Power
 - Bartlett Clause
- Trustee Investment Liability:
 - Zhang Hong Li vs. DBS Bank 2019 (**Zhang**)
 - Ivanishvili vs. Credit Suisse Trust 2023 (**Ivanishvili**) →



Zhang Hong Li vs. DBS Bank Ltd

Facts

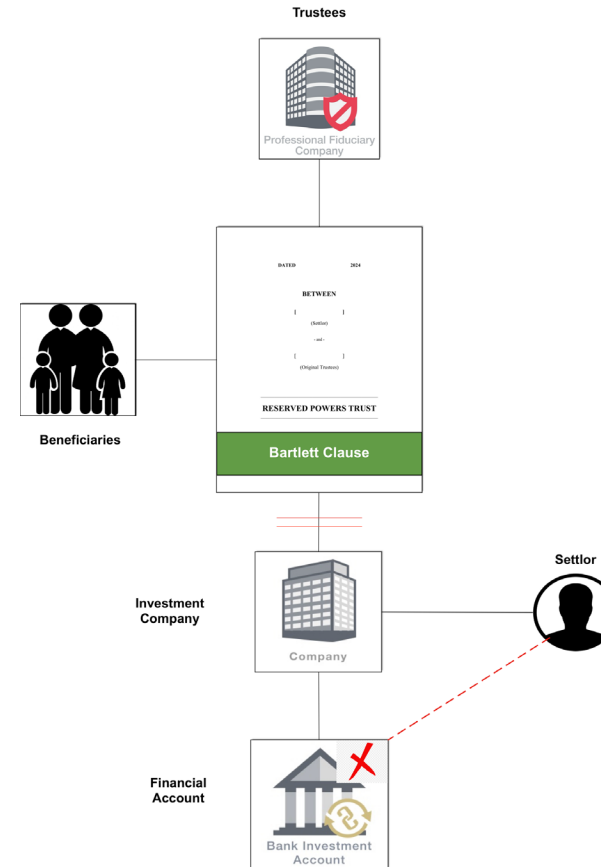
- Trust established in 2005, was designed to hold the sole share in Wise Lords, a private investment company.
- Trust contained comprehensive Bartlett clause. Settlor was investment advisor to Wise Lords.
- The trust became highly leveraged with significant exposure to AUD. When the AUD depreciated, the trust suffered considerable losses.
- Plaintiffs alleged negligent breaches of trust and fiduciary duties by the trustees (DBS Trustee) and corporate directors (DHJ Management) for approving risky investments without sufficient oversight. ➡

		FACV No. 2 of 2019 [2019] HKCFA 45
	IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION FINAL APPEAL NO. 2 OF 2019 (CIVIL) (ON APPEAL FROM CACV NO. 138 OF 2017)	
BETWEEN		
	ZHANG HONG LI	1 st Plaintiff
	JI ZHENGRONG	2 nd Plaintiff
	BRUNO ARBOIT and RODERICK JOHN SUTTON (suing in their capacity as the current Trustees of the Amsun Trust)	3 rd Plaintiffs (1 st Respondent)
	WISE LORDS LIMITED	4 th Plaintiff (2 nd Respondent)
	and	
	DBS BANK (HONG KONG) LIMITED	1 st Defendant
	IQ EQ (NTC) TRUSTEES ASIA (JERSEY) LIMITED (formerly known as DBS TRUSTEE HK (JERSEY) LIMITED, NAUTILUS TRUSTEES ASIA LIMITED and FIRST NAMES (NTC) TRUSTEES ASIA LIMITED) (in their capacity as the former Trustee of the Amsun Trust)	2 nd Defendant (1 st Appellant)
	NAUTILUS CORPORATE SERVICES LIMITED (formerly DBS CORPORATE SERVICES (HONG KONG) LIMITED, NAUTILUS CORPORATE SERVICES LIMITED and NAUTILUS CORPORATE SERVICES (HONG KONG) LIMITED)	3 rd Defendant
	DHJ MANAGEMENT LIMITED	4 th Defendant (2 nd Appellant)
	LEE KWOK TAI, PETER	5 th Defendant
	LIM LEUNG YAU, EDWIN	6 th Defendant
	LIU HIU HONG, LINDA	7 th Defendant

Zhang Hong Li vs. DBS Bank Ltd

Decision

- Trial judge and Court of Appeal found DBS Trustee and DHJ Management liable for breaches of their duties. The trial judge specifically noted that DBS Trustee had a “**high level supervisory duty**” over the investments, which they failed to exercise prudently.
- Court of Final Appeal addressed whether the trustees owed a duty of supervision despite the anti-Bartlett clause. The court affirmed the effectiveness of the anti-Bartlett clause and confirmed that there was no “**high level supervisory duty**”.
- No allegation (Settlor) investment advisor engaged in fraudulent or dishonest behavior: just negligent investment management. ➡



Ivanishvili vs. Credit Suisse Trust

Facts

- Trust established in 2005. The trust had assets of over USD 1.1 billion.
- Corporate vehicles, including Meadowsweet Assets Limited and Soothsayer Limited, were used to manage the trust's assets.
- RM embezzled large sums of money from the trust between 2005 and 2015. Fraudulent activities were uncovered in 2015.
- Trustee sued for breach of trust, claiming that the trustee failed to safeguard its assets.
- The plaintiffs sought damages of approximately USD 1.2 billion, alleging that the Trustee did not take steps to prevent or detect RM's fraudulent activities. ➡

IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE
REPUBLIC OF SINGAPORE

[2023] SGHC(I) 9

Suit No 4 of 2021

Between

- (1) Bidzina Ivanishvili
- (2) Ekaterine Khvedelidze
- (3) Tsotne Ivanishvili, a minor
suing by his litigation
representative, Ekaterine
Khvedelidze
- (4) Gvantsa Ivanishvili
- (5) Bera Ivanishvili

... *Plaintiffs*

And

Credit Suisse Trust Limited

... *Defendant*

JUDGMENT

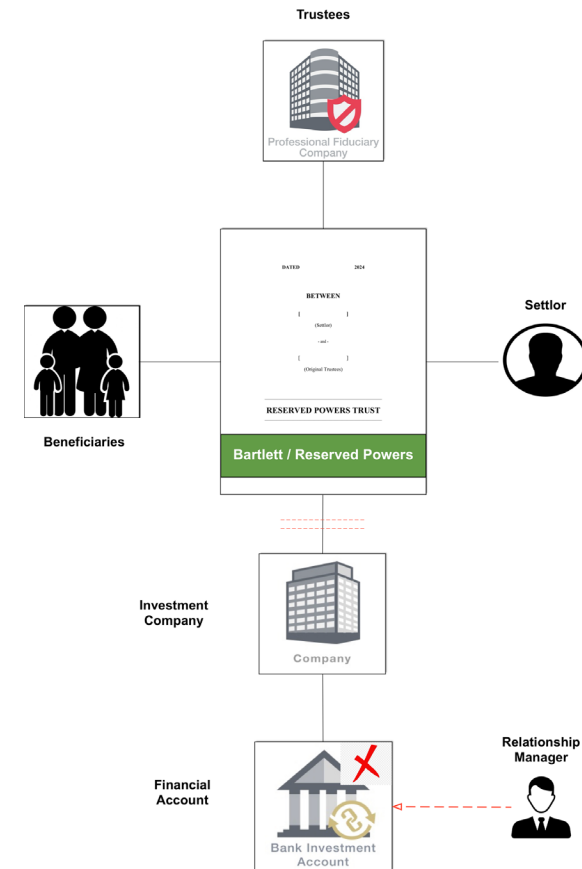
[Trusts — Trustees — Duties]

[Trusts — Breach of trust — Extent of liability]

Ivanishvili vs. Credit Suisse Trust

Decision

- Trustee admitted breached its duty to safeguard the trust assets by December 31, 2008.
- Court determined Trustee should have recognized the risk of fraud as early as December 2006, given the RM's concerning behavior. By March 2008, the Trustee's failure to prevent the RM from accessing trust assets amounted to be a breach of its duty to safeguard the assets.
- The court awarded USD 742.73 million in equitable compensation. This was based on the returns the Trust would have achieved under a competent trustee.



Summary

Zhang Decision

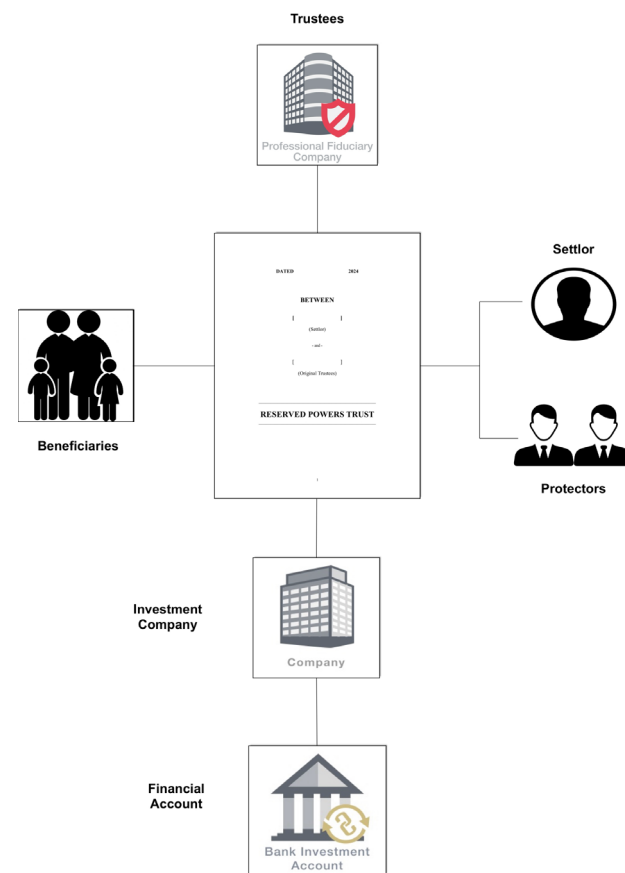
- Breach of Duty of Care
- Bartlett Clause Effective - Duty Modification
- Actual Notice - AML Requirements
- Waiving Bartlett Protections – Vicarious Investment Management (Trustee Corporate Directors)?
- Director Dishonesty – Reckless Investment Activities? ➡

Ivanishvili Decision

- Breach of Duty Safeguard Trust Assets
- Cannot Exonerate or Modify Fiduciary Obligation
- Bartlett Clause Not Relevant – Actual Notice Misappropriated Assets
- Defective Investment Direction Provisions
- Investment vs. Misappropriation? ➡

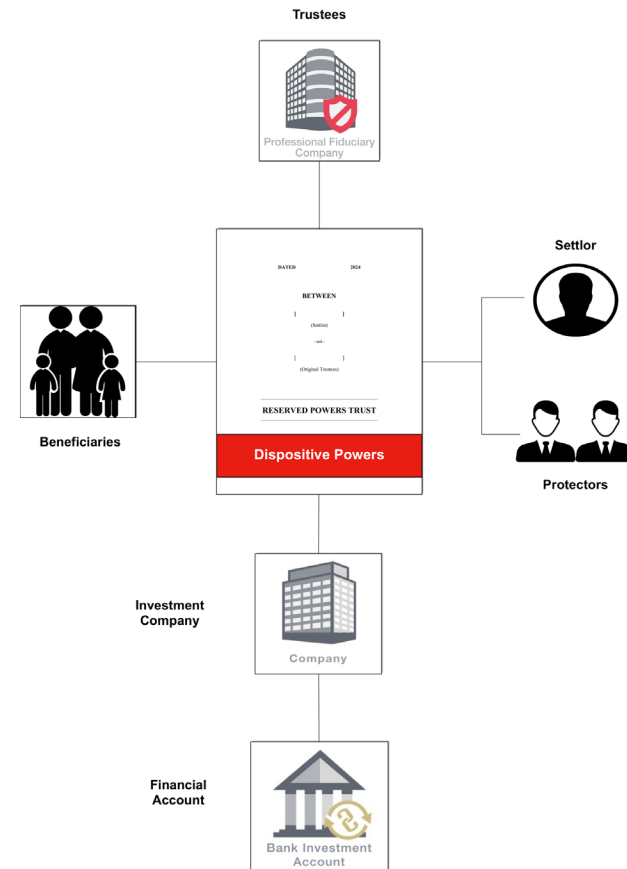
Trust Integrity

Trust Integrity



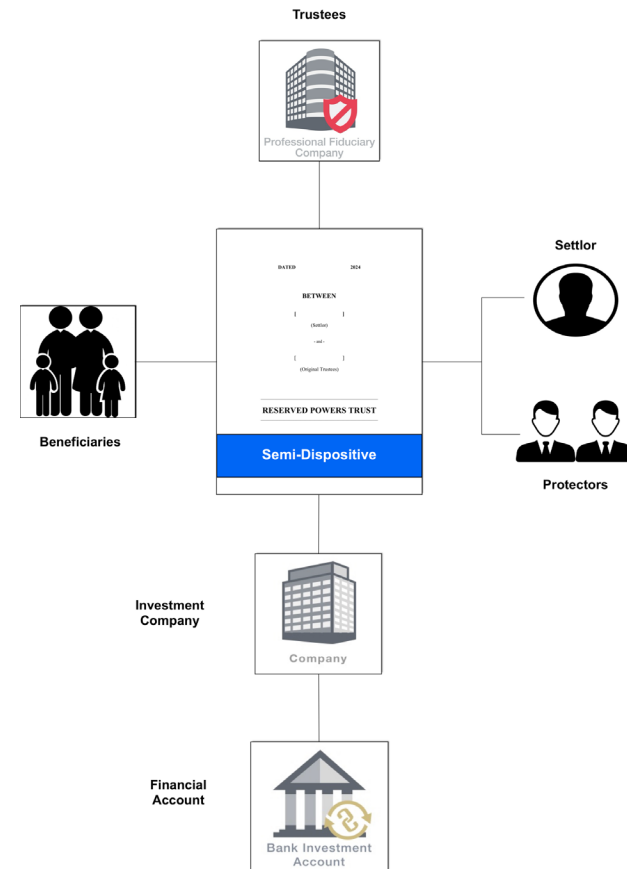
Trust Integrity

- Reserved Dispositive Powers



Trust Integrity


- Reserved Dispositive Powers
- Reserved Semi-Dispositive Powers

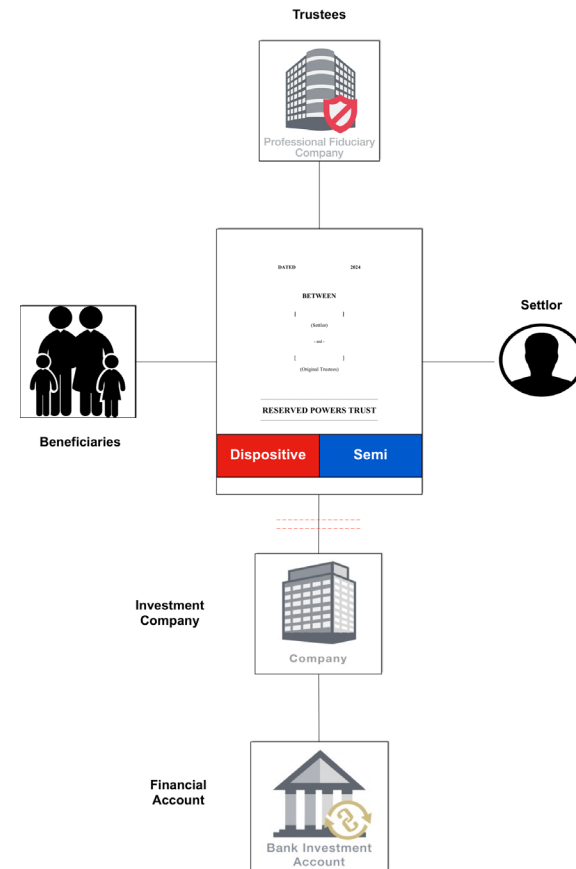


Trust Integrity

Dispositive

Client Demand: **Substantive Control**

- Invalid Illusory Trust, Leading Decisions:
 - Mezhprom Bank vs. Pugachev 2017 (**Pugachev**)
 - Webb vs. Webb 2020 (**Webb**) 



Pugachev

Facts

- Sergei Pugachev, a Russian oligarch, founded Mezhprom Bank, which went into insolvency in 2010. The bank's liquidator pursued claims against Pugachev for misappropriating large sums from the bank.
- Pugachev established five New Zealand trusts between 2011 and 2013. He claimed these trusts were set up for the benefit of his family.
- The trusts were discretionary trusts, with Pugachev named as a beneficiary and Protector. The trust assets included significant properties and other valuable assets.
- The liquidator argued that the trusts were invalid, asserting that Pugachev retained control over the assets despite placing them in trust.
- The liquidator alleged that the trust deeds did not divest Pugachev of ownership and control of the assets, asserting that the trusts were created to shield the assets from creditors rather than to benefit the named beneficiaries. ➡

Before:
THE HON. MR JUSTICE BIRSS

Between:
(1) JSC MEZHDUNARODNIY PROMYSHLENNIY
BANK
(2) STATE CORPORATION "DEPOSIT
INSURANCE AGENCY" Claimants

- and -

(1) SERGEI VIKTOROVICH PUGACHEV
(2) KEA TRUST COMPANY LIMITED
(3) FINETREE COMPANY LIMITED
(4) BRAMERTON COMPANY LIMITED
(5) BLUERING COMPANY LIMITED
(6) MARU LIMITED
(7) HAPORI LIMITED
(8) MIHARO LIMITED
(9) AROTAU LIMITED
(10) LUXURY CONSULTING LIMITED
(11) VICTOR SERGEYEVITCH PUGACHEV
(12) ALEXIS SERGEEVICH PUGACHEV
(13) IVAN SERGEEVICH PUGACHEV
(14) MARIA SERGEEVNA PUGACHEV
(The 12th, 13th and 14th Defendants by their
litigation friend ALEXANDRA TOLSTOY) Defendants

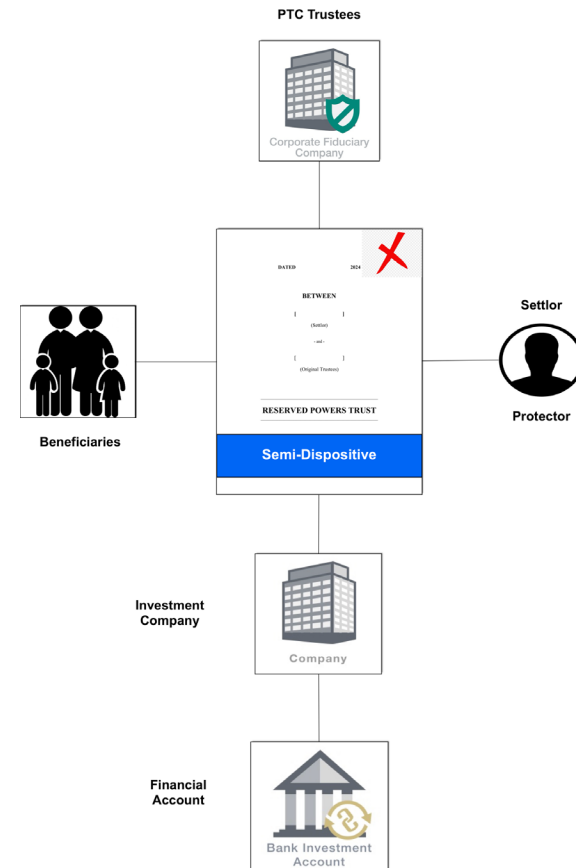
STEPHEN SMITH QC, TIM AKKOUH and CHRISTOPHER LLOYD (instructed by HOGAN
LOVELLS INTERNATIONAL LLP) appeared on behalf of the Claimants.
HODGE MALEK QC and PAUL BURTON (instructed by DEVONSHIRES SOLICITORS LLP)
appeared on behalf of the Twelfth to Fourteenth Defendants.
Hearing dates: 4th, 5th, 10th - 13th, 28th 31st July

HTML VERSION OF JUDGMENT

Pugachev

Decision

- Court ruled that Pugachev had not genuinely divested himself of control over the trust assets.
- Court determined that Pugachev retained effective control over the assets due to the powers he held as Protector.
- Powers Held:
 - Power to Remove and Appoint Trustees;
 - Veto Power: He retained a veto over key decisions made by the trustees, including investment and distribution of income or capital;
 - Power to Appoint and Remove Beneficiaries.
- The court concluded that these powers were **purely personal**, meaning they could be exercised for his own benefit.
- Invalid Illusory Trust ➡



Webb

Facts

- Case involved a matrimonial property dispute between Mr. and Mrs. Webb after their separation.
- Mr. Webb created the Arorangi Trust in 2005, holding various properties in the Cook Islands. He was the sole trustee, Protector and one of the beneficiaries.
- Mr. and Mrs. Webb separated in 2016, and Mrs. Webb initiated proceedings in the Cook Islands, seeking a division of the matrimonial property. She claimed that the Arorangi Trust was invalid and should be treated as part of the matrimonial estate. ➡

[2020] UKPC 22
Privy Council Appeal No 0013 of 2019

JUDGMENT

Webb (Appellant) v Webb (Respondent) (Cook Islands)

From the Court of Appeal of the Cook Islands

before

**Lord Wilson
Lord Carnwath
Lady Black
Lord Briggs
Lord Kitchin**

JUDGMENT GIVEN ON

3 August 2020

Heard on 20 and 21 January 2020

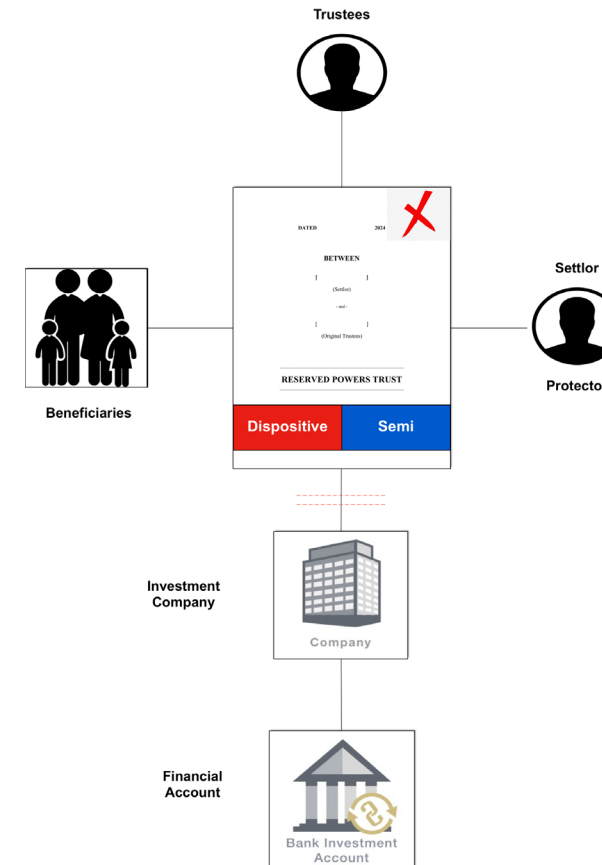
Appellant
Sean Owen McAnally

Respondent
Isaac Hikaka
Tim Mullins

Webb

Decision

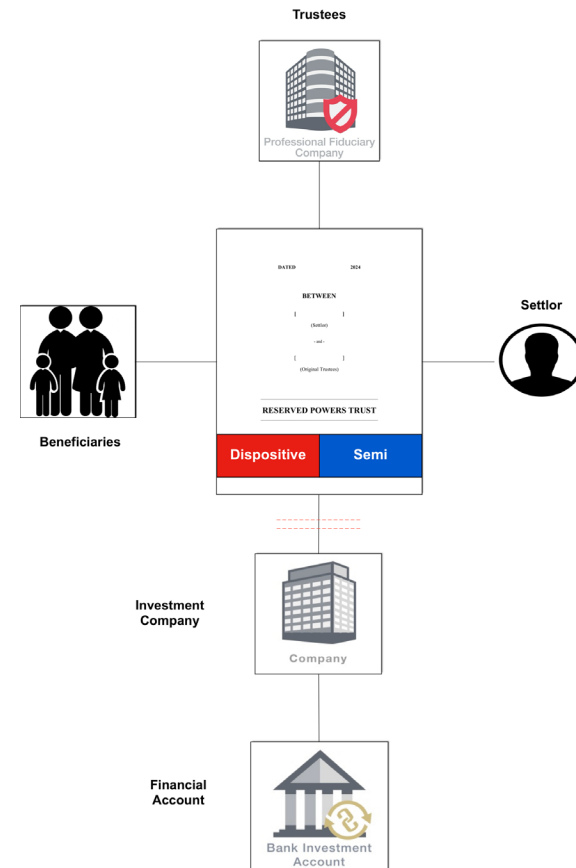
- Court ruled that Mr. Webb had not genuinely divested himself of control over the trust assets.
- Court determined that Webb retained effective control over the assets due to powers and positions held.
- Retained Powers (Sole Trustee and Protector):
 - Remove and appoint trustees;
 - Control trust's investments;
 - Vary the Trust;
 - Resettle Trust;
 - Appoint Himself as Sole Beneficiary;
 - Revoke.
- Largely **personal powers**, invalid illusory trust →



Key Lessons

Trust Review

- At Risk Illusory Trust Jurisdictions: Hong Kong, Singapore
- Express Scope of Power: Personal vs. Fiduciary
- Offshore Trust Law Protections (Cayman, BVI, Channel Isles)
- **Note:**
 - Clayton vs. Clayton 2016 (**Clayton**)
 - La Dolce Vita vs. Zhang Lan 2022 (**Zhang Lan**)



Clayton

Facts

- The case involved a long-running matrimonial dispute between Mr. and Mrs. Clayton, focusing on the division of matrimonial property, particularly assets held within the Vaughan Road Property Trust (VRPT).
- VRPT was set up to separate business from operating assets, providing a degree of asset protection.
- Mr. Clayton was sole Trustee and Protector reserving the following **personal** powers:
 - Power to Appoint and Remove Beneficiaries
 - Power to Appoint and Remove Trustees
- Trustee Powers subject to numerous fiduciary disregards (exercise powers in own interest)



NOTE: PURSUANT TO S 169 OF THE FAMILY PROCEEDINGS ACT 1980 AND S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOV.T.NZ/FAMILY-JUSTICE/ABOUT-US/ABOUT-THE-FAMILY-COURT/LEGISLATION/RESTRICTION-ON-PUBLISHING-JUDGMENTS](http://www.justice.govt.nz/family-justice/about-us/about-the-family-court/legislation/restriction-on-publishing-judgments).

IN THE SUPREME COURT OF NEW ZEALAND

SC 23/2015
[2016] NZSC 29

BETWEEN

MARK ARNOLD CLAYTON
First Appellant

MARK ARNOLD CLAYTON AS
TRUSTEE OF THE VAUGHAN ROAD
PROPERTY TRUST
Second Appellant

AND

MELANIE ANN CLAYTON
Respondent

Hearing: 1, 2 and 8 September 2015

Court: Elias CJ, William Young, Glazebrook, Arnold and O'Regan JJ

Counsel: M J McCartney QC and K E Sullivan for First Appellant
C R Carruthers QC and A S Butler for Second Appellant
D A T Chambers QC and J R Hosking for Respondent

Judgment: 23 March 2016

JUDGMENT OF THE COURT

A The appeal is allowed in part.

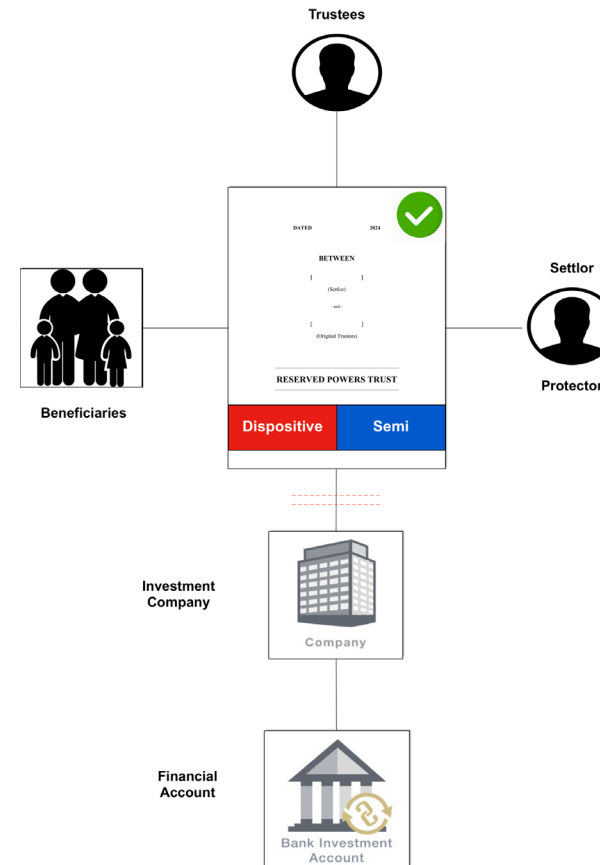
B We set aside the findings of the Court of Appeal that cl 7.1 of the Vaughan Road Property Trust (VRPT) trust deed (the VRPT deed) is a general power of appointment and that the power is both property and relationship property, having a value equal to that of the net assets of the VRPT.

C We substitute a finding that the powers of Mr Clayton as Principal Family Member and Trustee under cls 6.1, 7.1, 8.1 and 10.1 of the VRPT deed (read in light of cls 11.1,

Clayton

Decision

- The court found VRPT was a valid trust. However, the court also recognized that the powers retained by Mr. Clayton allowed him significant personal control over trust assets.
- The court held Mr. Clayton's powers were so extensive that they were tantamount to ownership. As a result, the court treated these powers as relationship property, meaning they (trust assets) could be divided between Mr. and Mrs. Clayton.
- Offshore (Cayman, BVI, Channel Islands) Trust Laws – Asset Protection Implications



Zhang Lan

Facts

- Plaintiffs obtained two Hong Kong judgments in 2020 concerning their acquisition of shares in companies beneficially owned by Zhang Lan.
- The judgments were based on negligent misrepresentation claims related to the acquisition. The plaintiffs registered the Hong Kong judgments in Singapore for enforcement.
- Dispute revolved around funds held with Credit Suisse and Deutsche Bank.
- Plaintiffs argued that Zhang retained effective control over the accounts, evidenced by her ability to transfer funds for her own benefit.
- Zhang argued that she no longer had beneficial ownership, as funds had been transferred to a company, held by a family trust (Success Elegant Trust) established for the benefit of her son and his children.
- Zhang was not a beneficiary, trustee nor power holder – was sole director of underlying company. ➡

IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 278

HC/OS 1139/2020 (Summons No 2703 of 2021)

Between

La Dolce Vita Fine Dining
Company Limited

... Plaintiff

And

(1) Zhang Lan
(2) Grand Lan Holdings Group
(BVI) Limited
(3) Qiao Jiang Lan Development
Limited
(4) Success Elegant Trading
Limited

... Defendants

HC/OS 1140/2020 (Summons No 2704 of 2021)

Between

La Dolce Vita Fine Dining
Group Holdings Limited

... Plaintiff


And

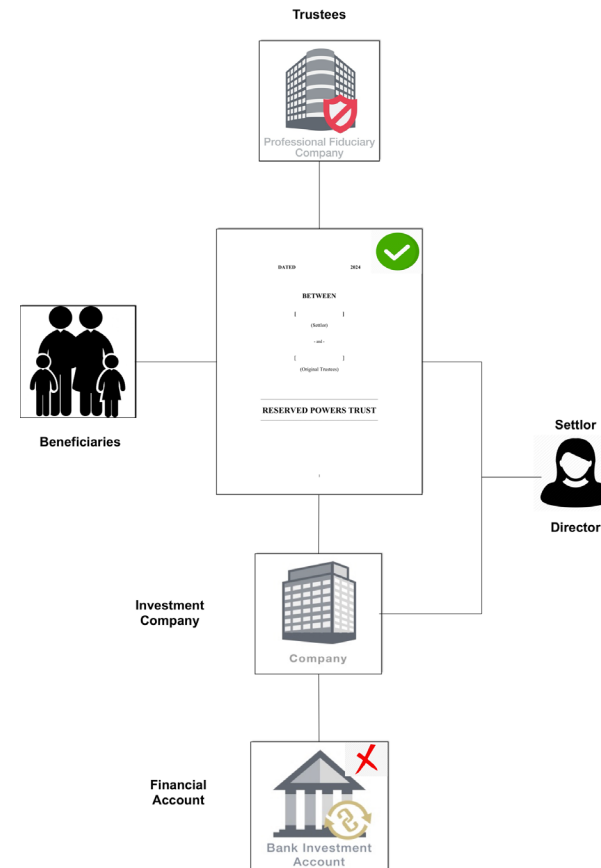
(1) Zhang Lan
(2) Grand Lan Holdings Group
(BVI) Limited
(3) Success Elegant Trading
Limited

... Defendants

Zhang Lan

Decision

- Court found that Zhang had retained beneficial ownership of the funds in the Credit Suisse and Deutsche Bank accounts.
- Despite transferring funds to the Trust, Zhang's conduct indicated that she did not intend to relinquish control. She continued to operate the accounts as the sole signatory and made significant transfers for her own benefit.
- Notable Conduct:
 - Zhang transferred a significant amount to Metro Joy International Limited. This sum was used to purchase a condominium apartment in New York, which a U.S. court found to be owned by Zhang;
 - After becoming aware of the Hong Kong freezing orders, Zhang made urgent transfers from the Deutsche Bank account, totaling US\$35,832,587.
- Valid Trust, Invalid Illusory Transfer
- Wider Implications, Application of Offshore (Cayman, BVI, Channel Isles) Trust Law Protections 

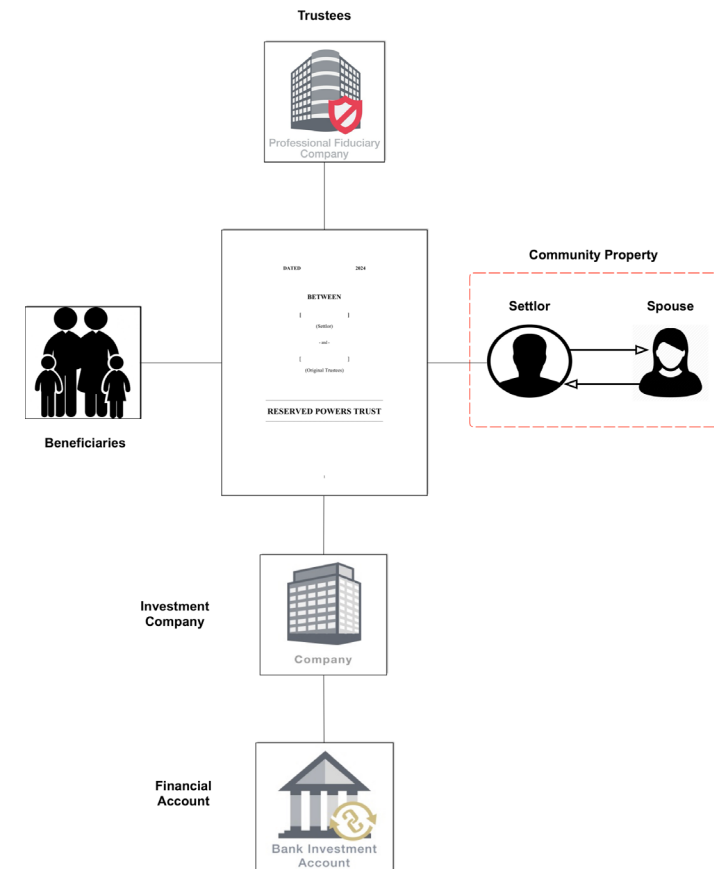


Trust Integrity
Community Property

Community Property

Private International Law: Matrimonial Domicile,
Foreign Ownership Moveable / Immovable
Assets

- Example, Community Property Jurisdictions:
 - China
 - Philippines
 - Indonesia
 - Thailand
 - Vietnam
- Types: Absolute Community, Deferred Community
- Trust Firewall Protections: Succession | Divorce
- Slutsker vs. Haron Investments 2013 (**Slutsker**) →



Slutsker

Facts

- In 2000, during their marriage, Mr. and Mrs. Slutsker purchased a property in London for £6 million.
- The funds used for the purchase came from a Swiss bank account held in Mrs. Slutsker's name. This account contained money that was considered joint family property under Russian matrimonial law.
- Following the purchase, the property was placed into a discretionary trust known as the Misha Trust, which was established in the Cayman Islands.
- Mr. Slutsker claimed 50% beneficial interest in residential property based on Russian matrimonial law, sought to challenge the validity of the trust under English law, claiming a resulting trust over half of the property. ➡

Between:

VLADIMIR IOSIFOVICH SLUTSKER	Claimant Appellant
- and -	
(1) HARON INVESTMENTS LTD	Defendants
(2) SUMMIT TRUSTEES (CAYMAN) LTD	Respondents

(Transcript of the Handed Down Judgment of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street, London EC4A 3DY
Tel No: [020 7404 1400](tel:02074041400), Fax No: [020 7831 8838](tel:02078318838)
Official Shorthand Writers to the Court)

David Brownbill Q.C. and Adam Cloherty
(instructed by Taylor Wessing LLP) for the Appellant
Gilead Cooper Q.C. and Richard Wilson
(instructed by Berwin Leighton Paisner LLP) for the Respondents
Hearing dates: 20 and 21 March 2013

HTML VERSION OF JUDGMENT ☐

Crown Copyright ©

Lord Justice Lloyd:

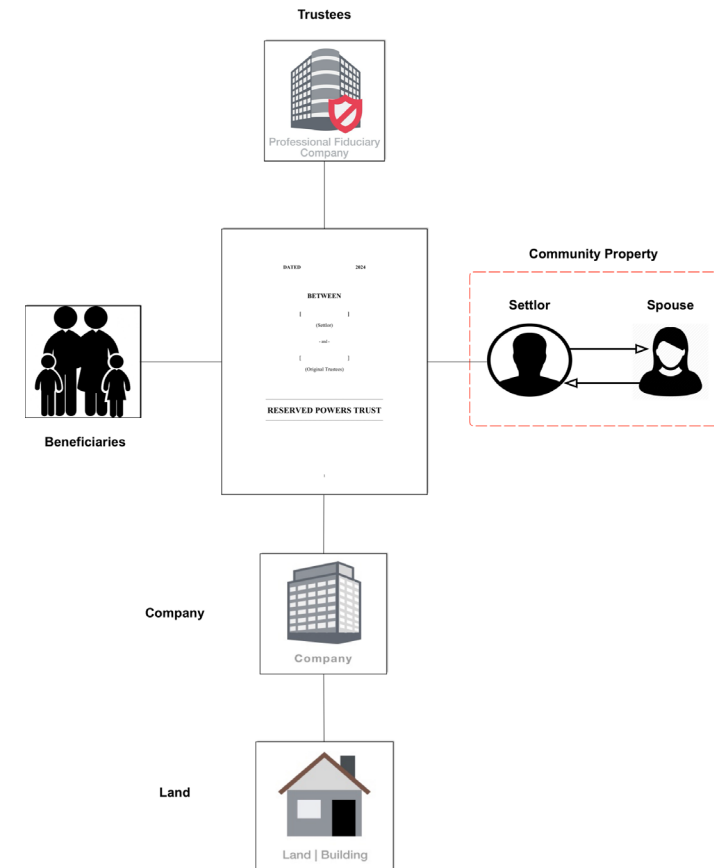
Introduction and summary

1. This appeal is from an order of Mr Justice Underhill sitting as a judge of the Chancery Division. He made the order on 17 September 2012, having handed down judgment on that day: [\[2012\] EWHC 2539 \(Ch\)](#). He dismissed the Claimant's claim, but he gave permission to appeal. The dispute is about the beneficial ownership of a freehold property, 3 The Boltons, London SW10. I will call it the Property. In substance, though not in form, the dispute is between two Russian individuals, Vladimir and Olga Slutsker, who were married to each other from 1990 until their marriage was brought to an end by a divorce ordered by a court in Moscow in 2009.
2. The Property was bought in late 2000 for £6 million, with at least a further £1.5 million being spent on subsequent improvement works to it. It was bought as a family home, and was intended to be occupied primarily by Mrs Slutsker, together with the couple's son, Mishka (born in 1999) and any other children they might have, of whom there is one, Anna, born in 2003. The purchase was taken in the name of the First Defendant, Haron Investments Ltd (Haron), originally as nominee for Mrs Slutsker. Before long, as had been contemplated, Mrs Slutsker caused Haron to hold the beneficial interest in the Property upon trust for the trustee of a discretionary trust, called the Mishka

Slutsker

Decision

- The court determined Mr. Slutsker knew and consented to the Trust and had nevertheless failed to object within the time limits prescribed by Russian law.
- Court rejected argument that a resulting trust arose under English law, in which he would hold a 50% beneficial interest in the property. The court emphasized that Russian law governed the parties' rights, and Russian law did not support such a resulting trust claim. ➡

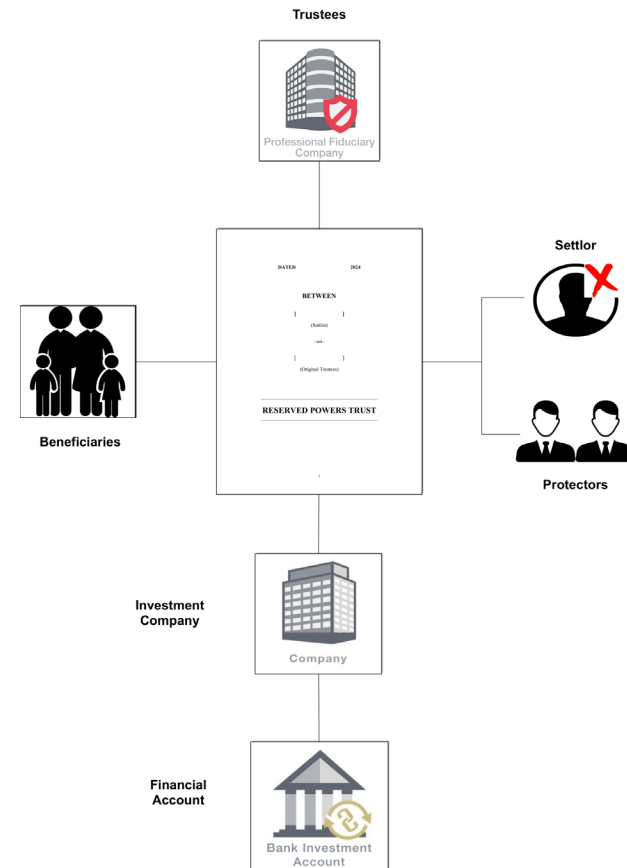


Trust Integrity
Survivability

Survivability

Settlor Failure

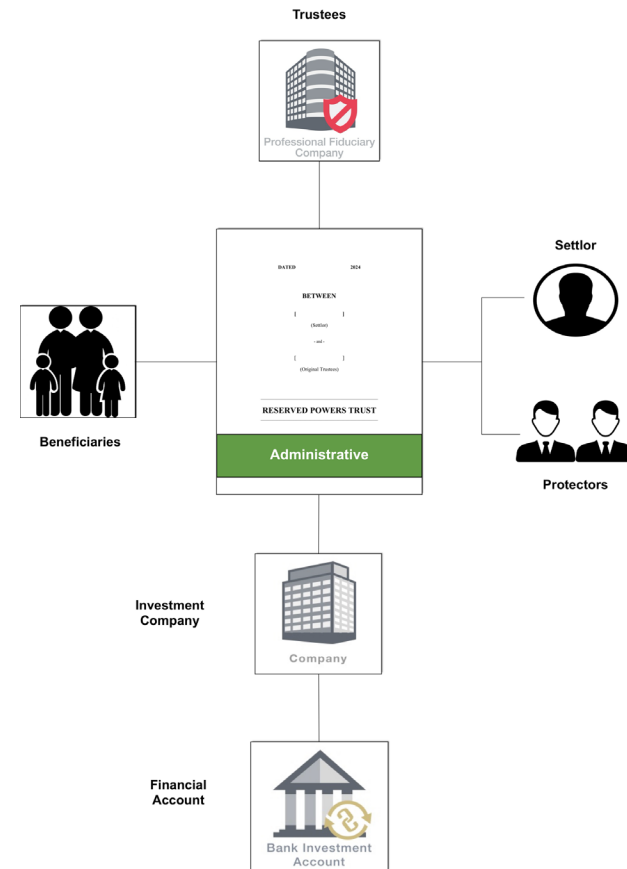
- Standard Trust Provisions:
 - Settlor Death or Incapacity
- Typical Drafting **Failure**:
 - Settlor Unaccountable
 - Settlor Incarcerated
 - Settlor Duress
- Substitute Provisions:
 - Automatic Settlor Retirement
 - “Fit-and-Propor” Successor Protector
 - Restricted Investment Scope
 - Investment Company “Fit-and-Propor” Successor Directors ➡



CRS Misreporting

CRS Misreporting

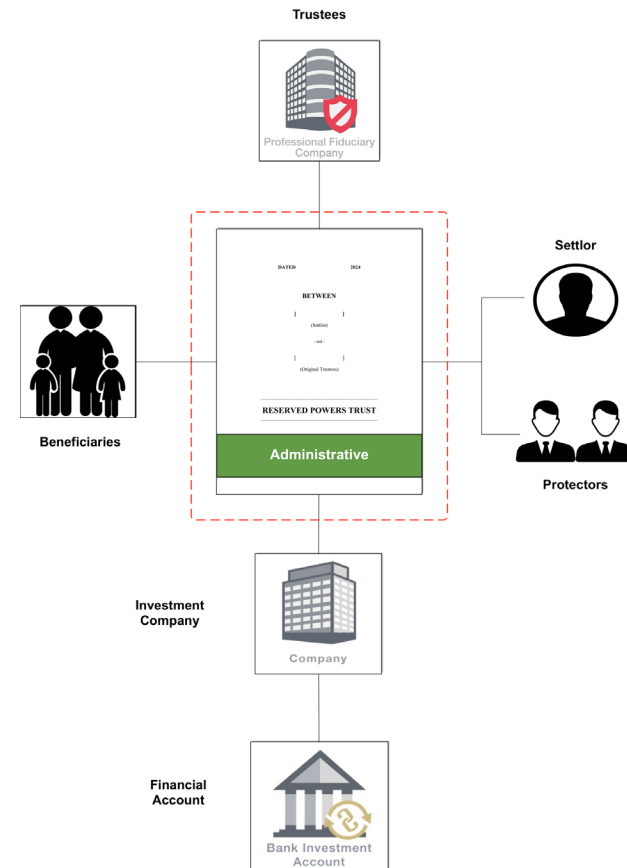
Investment Entity Trust



CRS Misreporting

Investment Entity Trust

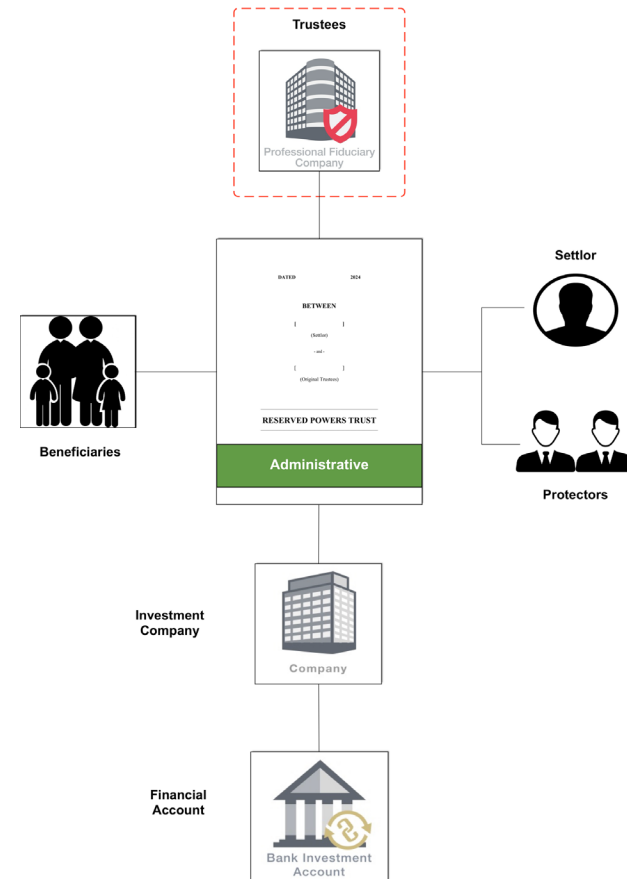
- Part B “**Managed Entity**” Test:
 - Trust Holds Financial Assets
 - Gross Income (>50%) Investing, Reinvesting or Trading Financial Assets
 - Managed by Financial Institution →



CRS Misreporting

Investment Entity Trust

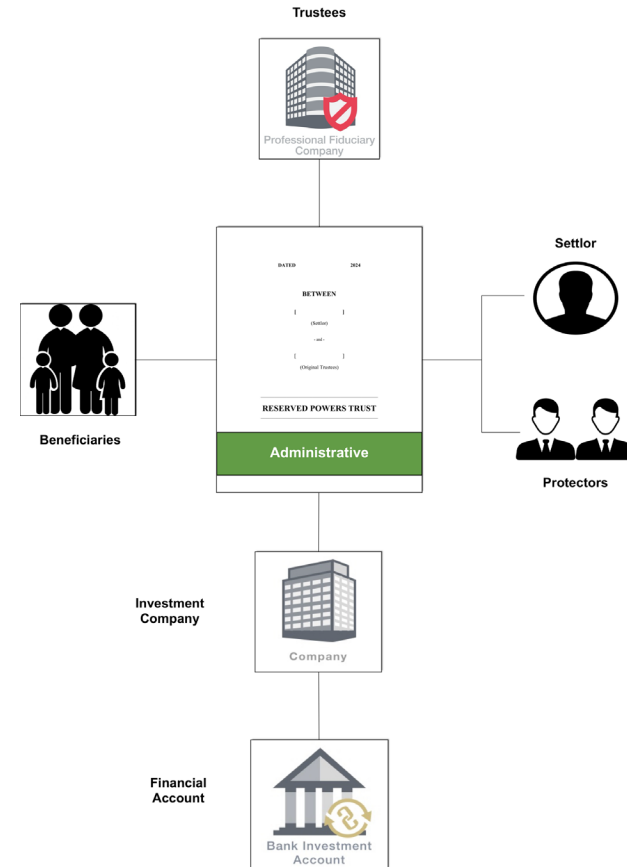
- Part A “**Managing Entity**” Test:
 - Entity conducts investment business (investing, administering or managing Financial Assets or money)
 - Gross (>50%) income attributable to investment business ➡



CRS Misreporting

Common Errors

- No Trust Income (run-dry-structure)
- Reserved Investment Power vs. “Managed By Test”
- Review whether Trust Deed contains modern “Pervasive Investment Power” or simple “Power to Issue Investment Directions” from time to time
- Pervasive Investment Power: Trustee has no Investment Powers while Settlor / Protector in Office ➡



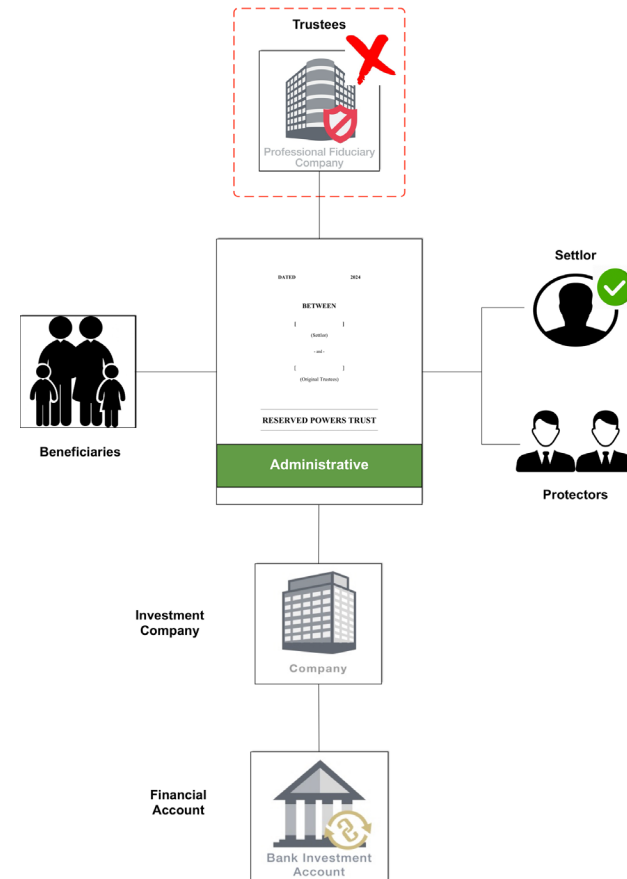
Pervasive Investment Power

subparagraph A(6)(a). An Entity is “managed by” another Entity if the managing Entity performs, either directly or through another service provider, any of the activities or operations described in subparagraph A(6)(a) on behalf of the managed Entity. However, an Entity does not manage another Entity if it does not have discretionary authority to manage the Entity’s assets (in whole or part). Where an Entity is managed by a mix of Financial Institutions,

Pervasive Investment Power

Common Errors

- Managing Entity (Trustee):
 - No discretionary authority to manage assets of the Trust – Administrative Power
 - Reserved Power Holder not an “Entity”
 - No other Financial Institution discretionarily managing assets of Trust
 - Underlying Investment Company, Separate Entity. ➡




Summary

- Bartlett Protections – Work in Progress
- Reckless Investment Decisions may be tantamount to Dishonesty – Seek Directions
- Overloaded Reserved Powers may invalidate the Trust, avoid HK and SG Trust Law if extensive Reserved Powers (US FGTs?)
- Use of Offshore Trust Laws may Result in Assignable Trust Assets – Asset Protection Implications
- Totally review CRS reporting of Reserved Investment Power Trusts - High Levels of Misreporting ➡

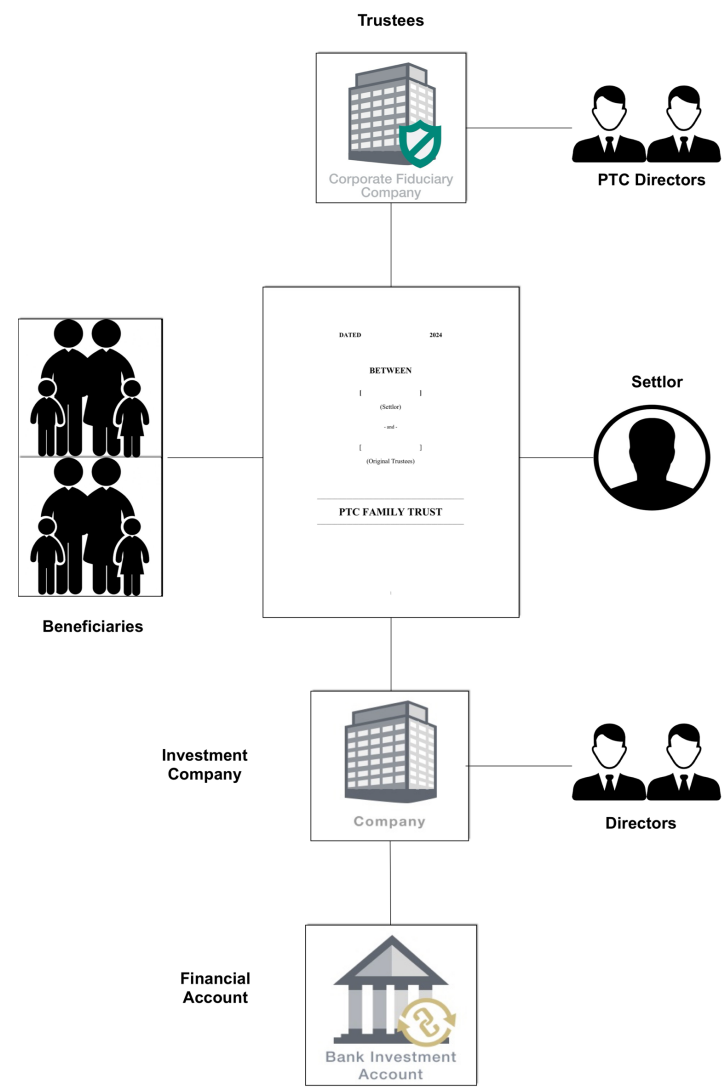
Family Office

Agenda

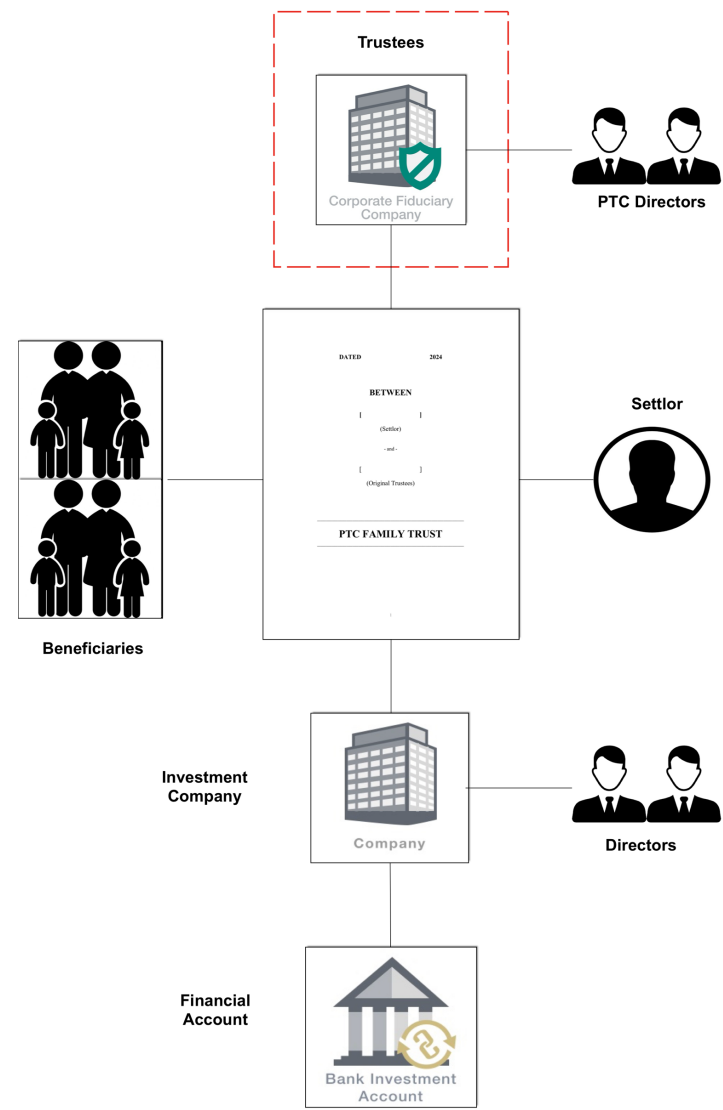
- Private Trust Company Structure
- Guarantee PTC vs. Purpose Trust
- Governance Structure
- Director “Dog Leg” Claims
- PTC Structure – Integrity
- CRS Reporting 



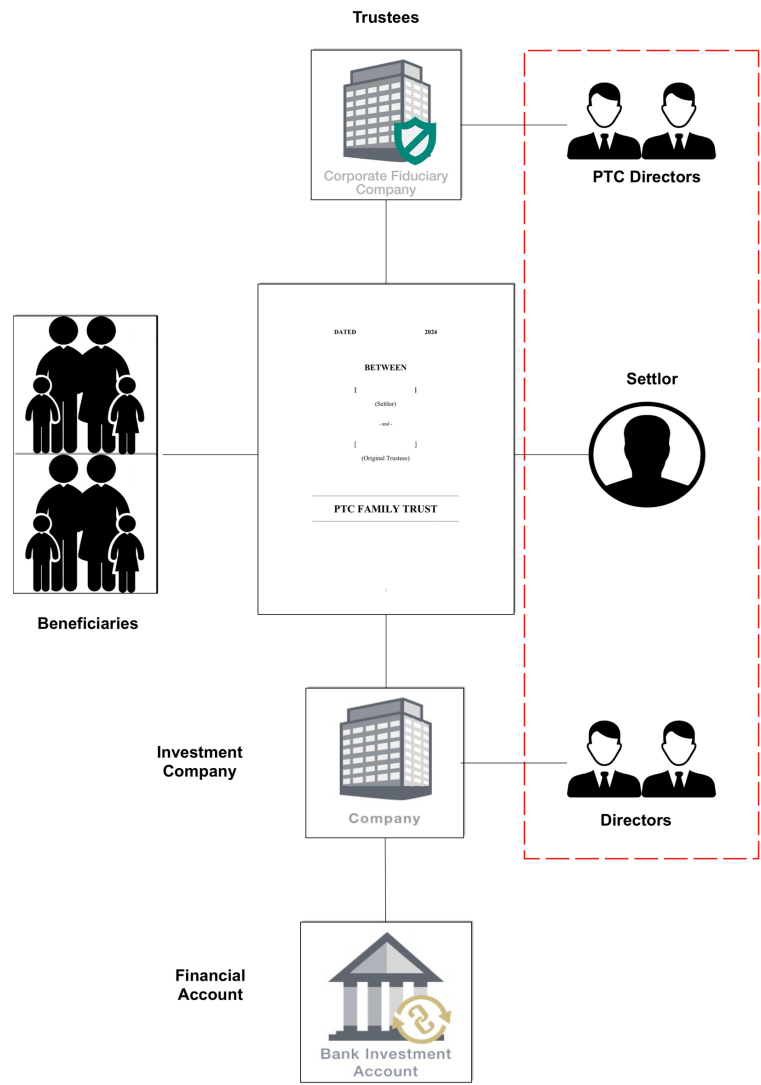
PTC Structure



PTC Trustee



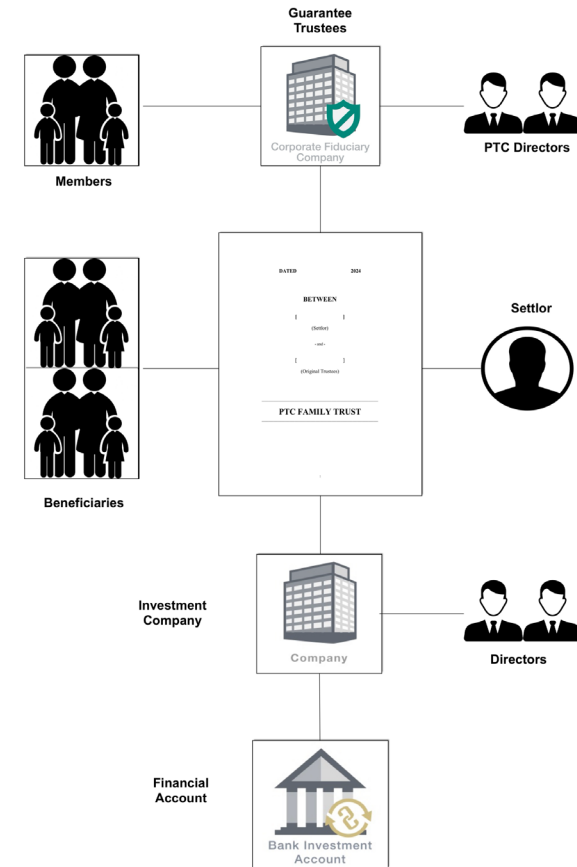
Governance Framework



Purpose Trust vs. Guarantee PTC

Purpose Trust vs. Guarantee PTC

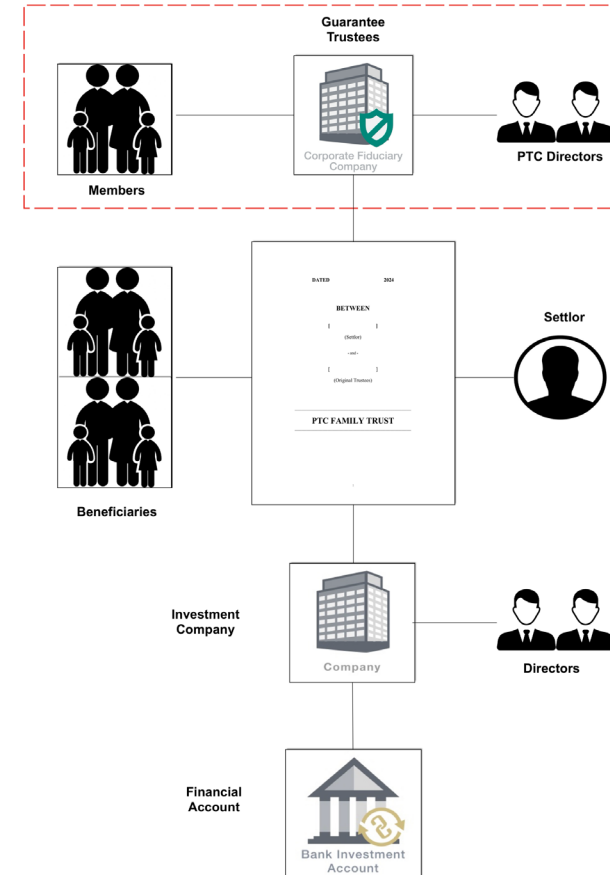
Guarantee Company



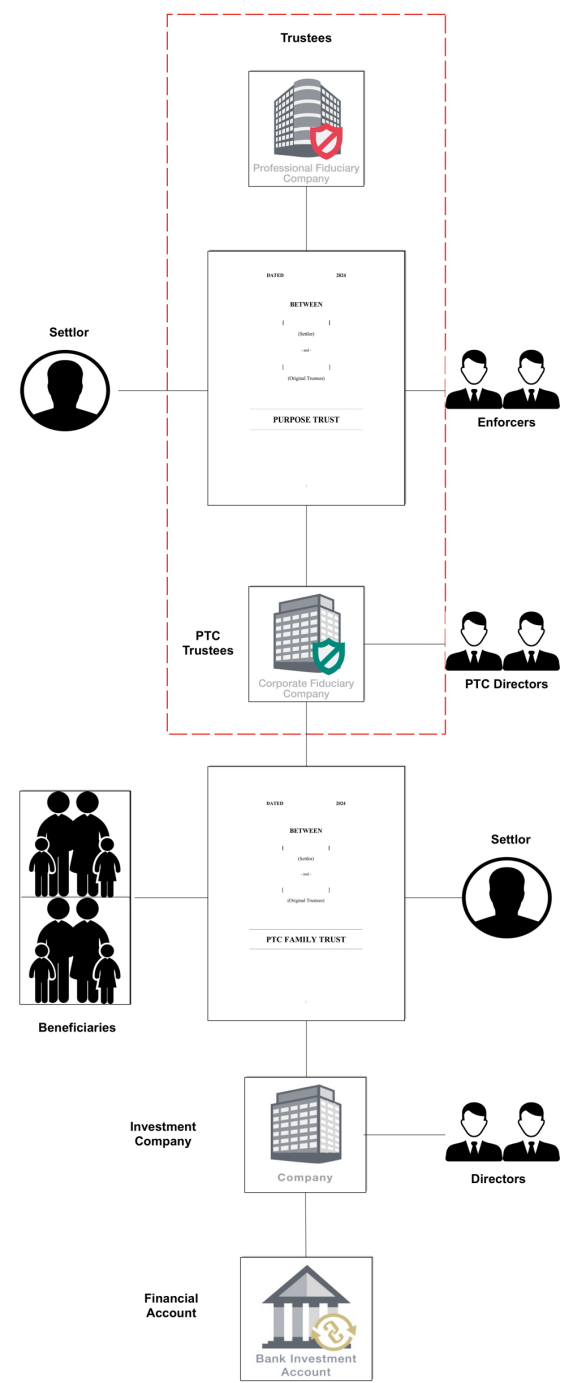
Purpose Trust vs. Guarantee PTC

Guarantee Company

- No Shareholders, No Share Capital
- No Shareholder Succession or Probate
- Guarantee Members
- Guarantee Nominal Sum –Liability Protection
- Member Governance and Control
- Simple and Cost Effective
- Public Document
- Cannot Entrench Constitutional Provisions ➡



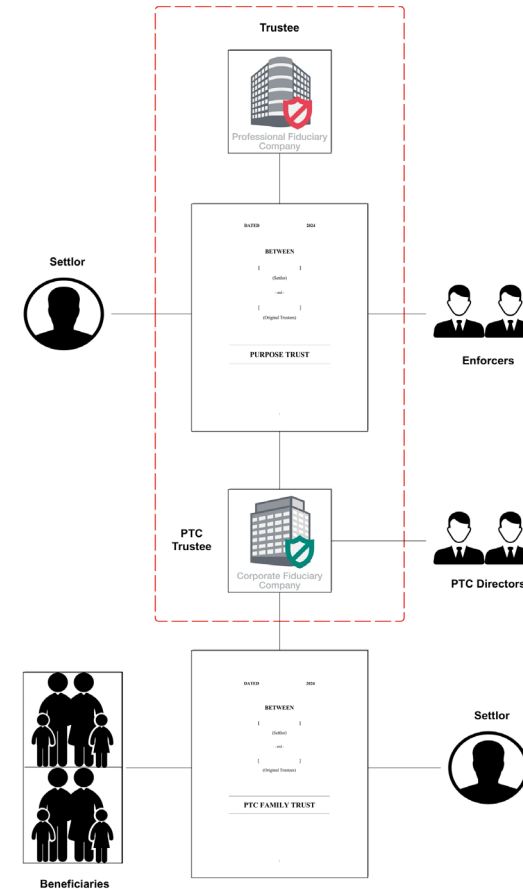
Purpose Trust PTC Structure



Purpose Trust vs. Guarantee PTC

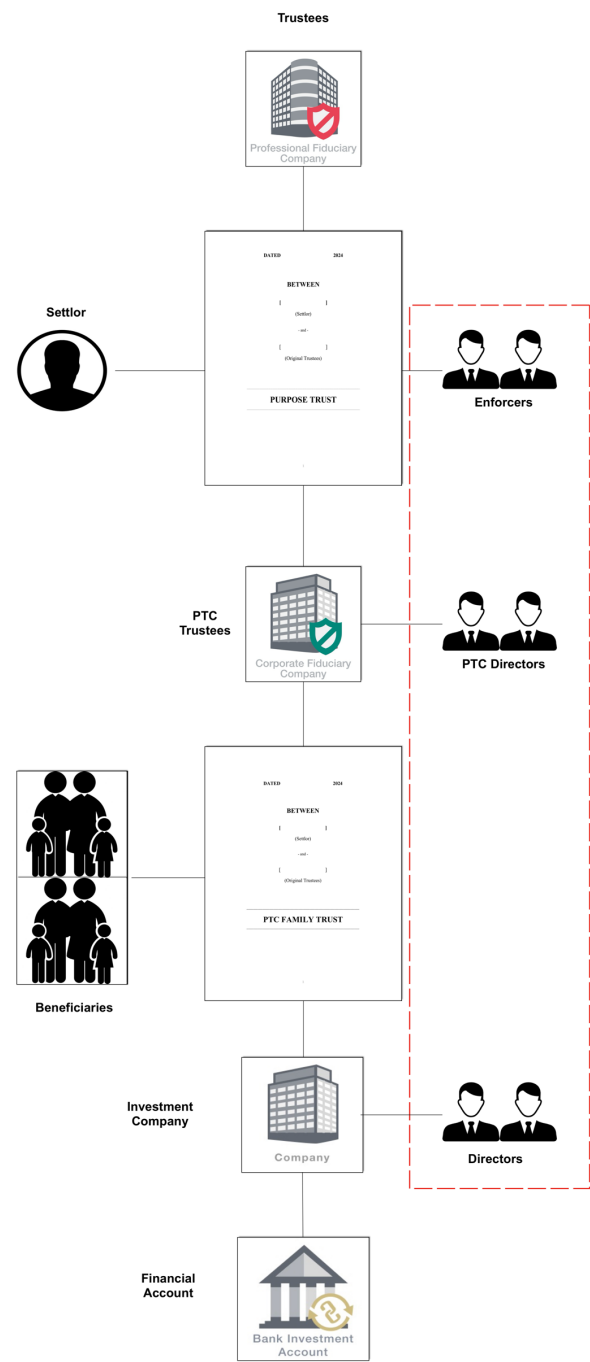
Purpose Trust

- “Orphan” PTC Shares – No Probate
- Purpose Trust – Corporate Governance Rules (PTC Director Rules)
- Entrenched and Enforced
- Private (Purpose Trust Deed)
- Complex and Costly
- Multi-Jurisdictional ➡



Governance Structure

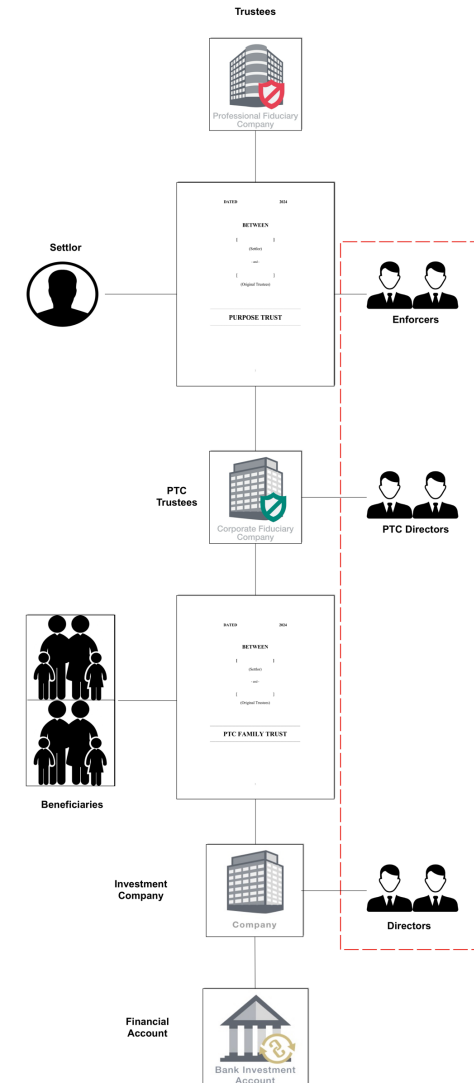
PTC Governance Structure



PTC Governance Structure

Enforcer Governance:

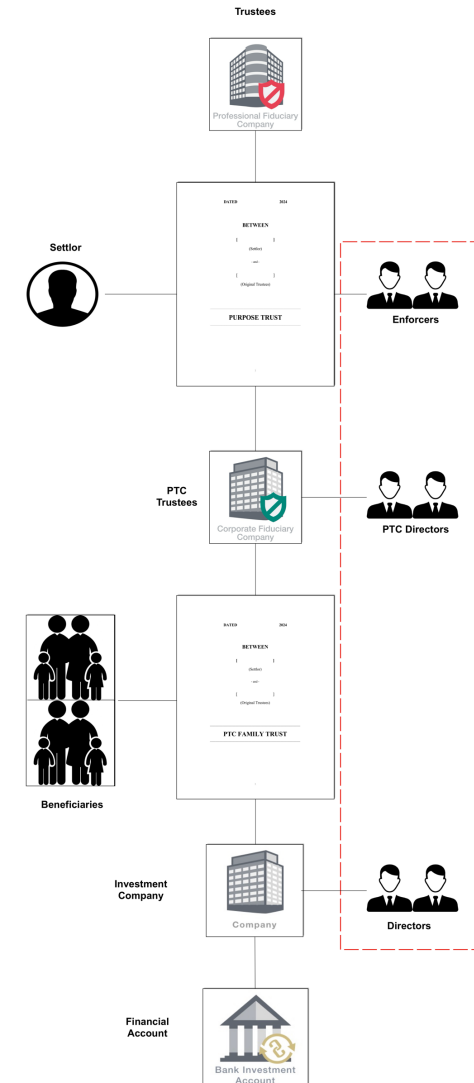
- Source: Purpose Trust Deed
- Appointment
- Removal
- Renumeration
- Professional Enforcer
- Fixed vs. Discretionary Governance Rules
- Enforcer Governance Role ➡



PTC Governance Structure

PTC Director Governance:

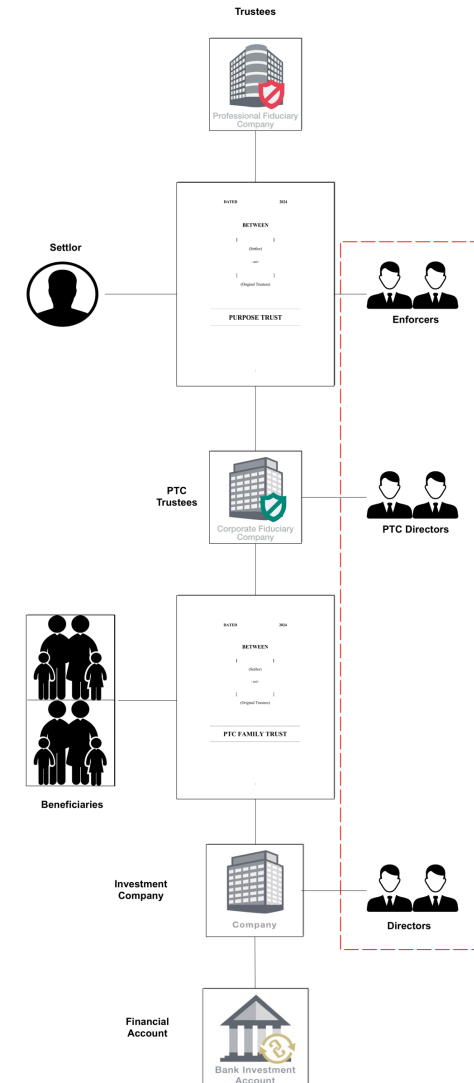
- Source: Purpose Trust Deed / PTC M&As
- Director Appointment
- Director Removal
- Director Renumeration
- Independent PTC Director Criteria, Board Composition
- Fixed vs. Discretionary Governance Rules ➡



PTC Governance Structure

Investment Co Director Governance:

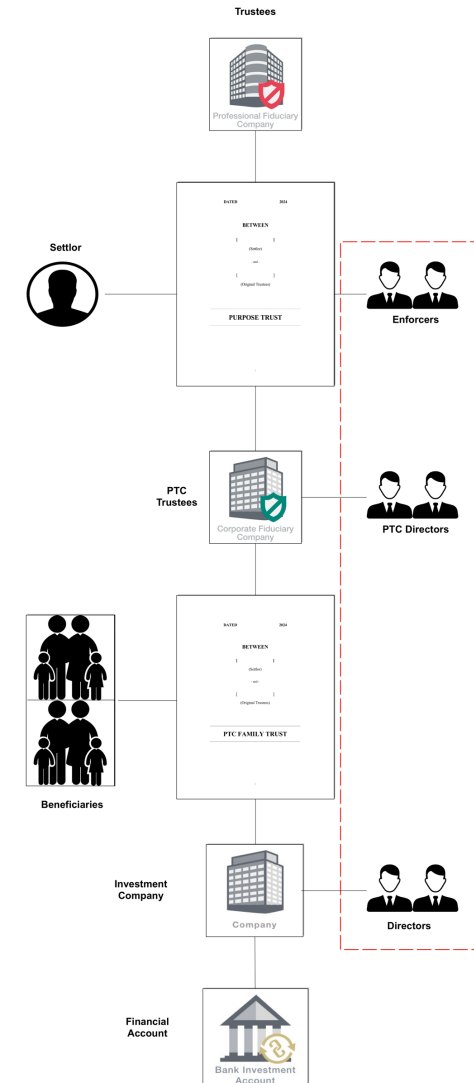
- Source: Family Trust / Invest Co M&As
- Director Appointment
- Director Removal
- Director Renumeration
- Independent Director Criteria, Board Composition
- Fixed vs. Discretionary Governance Rules ➡



PTC Governance Structure

Co-Governance Rules:

- Source: Family Trust / Invest Co M&As
- PTC Trustee Consent:
- Investment Policy Statement
- Private Equity Investments
- Swaps, futures, forwards, derivative contracts
- Significant Borrowing / Lending
- Significant Disposal
- Connected Party Transaction
- Significant Litigation
- Dividend Policy / Distribution ➡

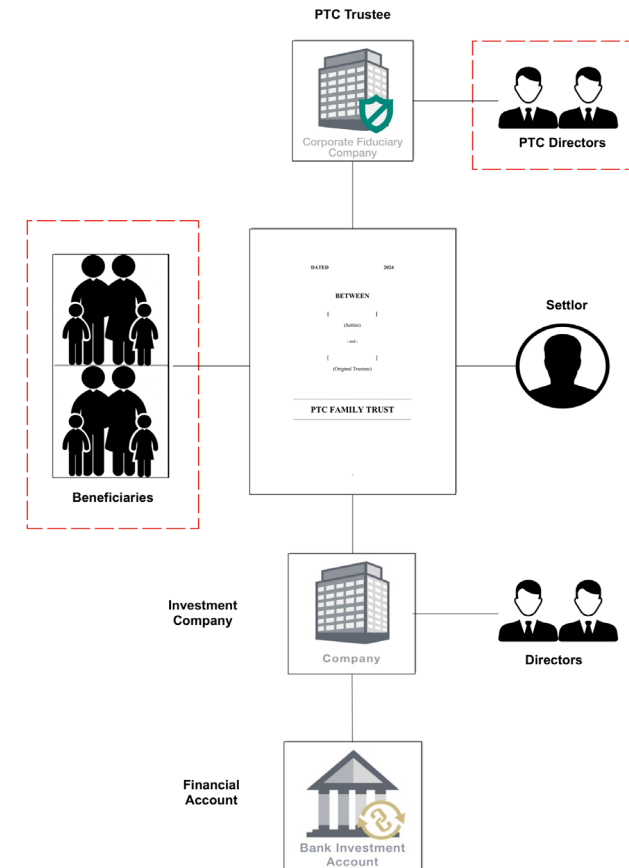


‘Dog Leg’ Liability

PTC Director Liability

Dog Leg Claim:

- A “dog leg” claim is an indirect claim brought by beneficiaries against the directors of a PTC.
- The idea is that the PTC itself may have a claim against its own directors for breach of fiduciary duty or negligence, and the beneficiaries are asserting that this claim should be enforced indirectly to recover damages for the trust or the beneficiaries.
- Courts are reluctant to allow “dog leg” claims because they can undermine the independence of the PTC and complicate the legal relationship between the trustee, the directors, and the beneficiaries.
- *McGaughey v Universities Superannuation Scheme Ltd* [2023] (para 90):

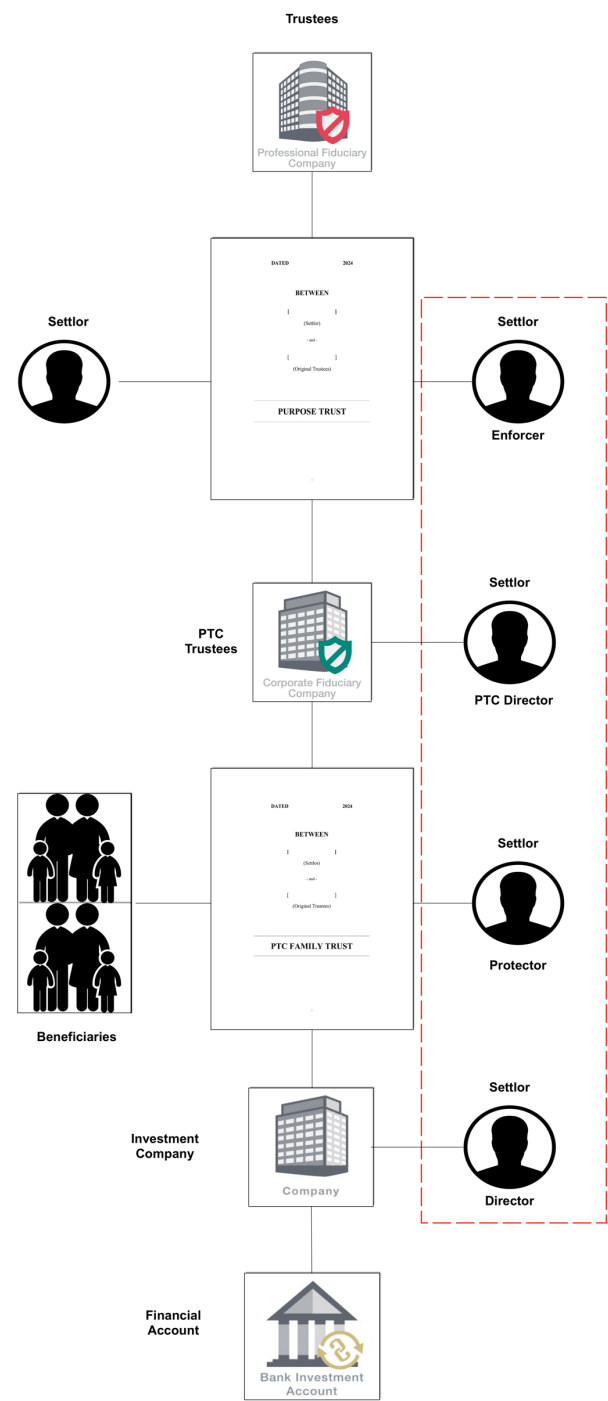


McGaughey v Universities Superannuation Scheme Limited [2023] EWCA Civ 873

90. Dog-leg claims are dependent, therefore, upon whether the chose in action in relation to the breaches of duty by the directors is held by the trustee company on trust for the beneficiaries. Whether such a claim is arguable will turn upon the facts of the case. But as *Lewin* explains at 43-067, where the trustee company is a one trust, no asset company, created solely for the purpose of administering the trust in question, it is not unarguable that the company's claims against the directors may be held on trust, opening up the possibility of a dog-leg claim.

PTC Structure Integrity

PTC Governance Structure



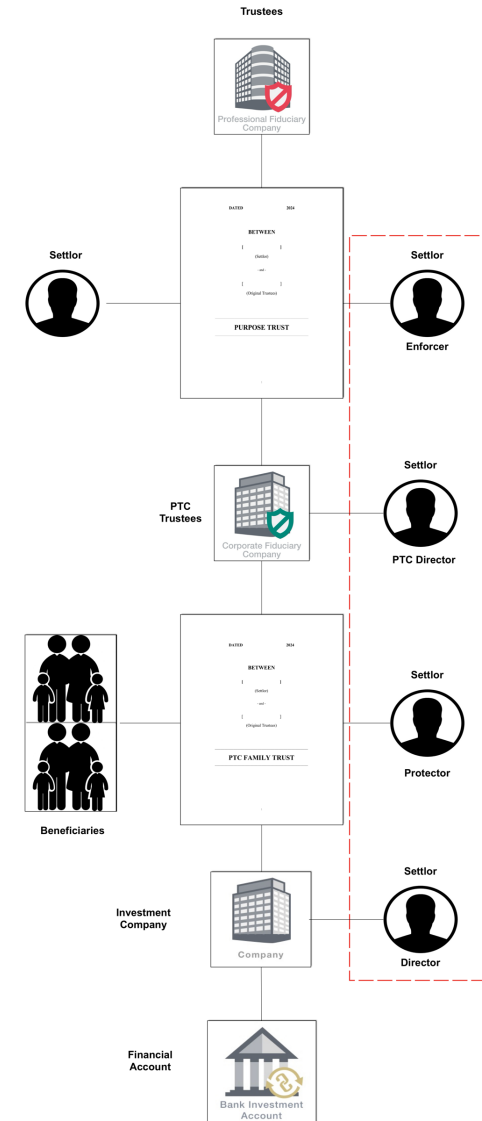
Integrity

Invalid Illusory Trust

- Pugachev
- Webb
- Zhang Lan

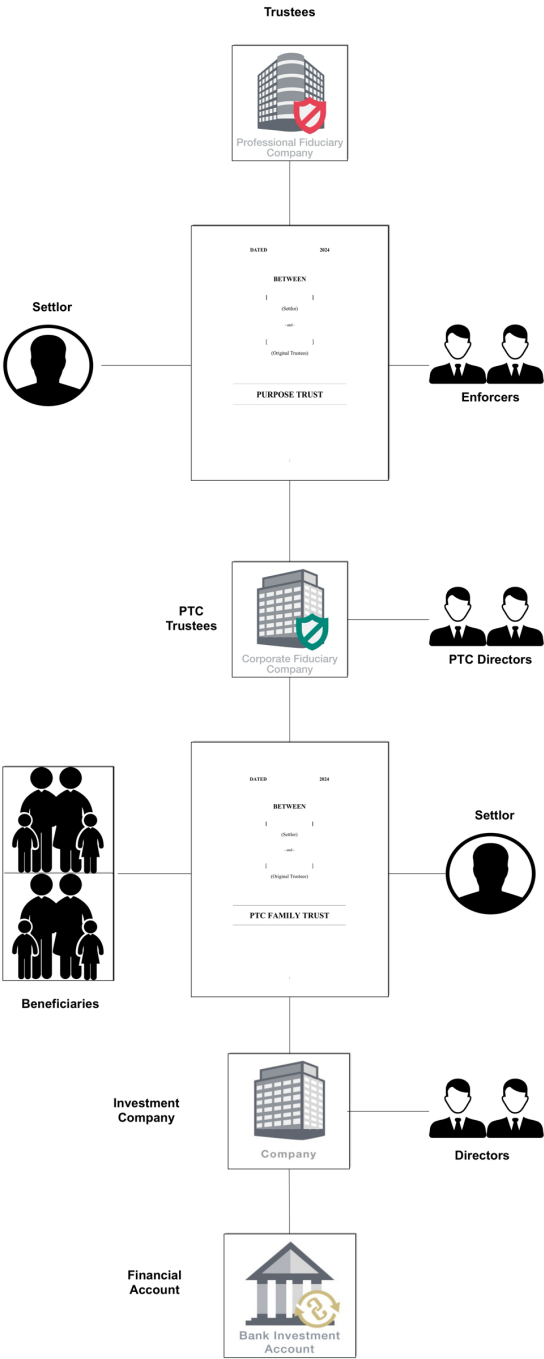
Assignable Interest

- Clayton

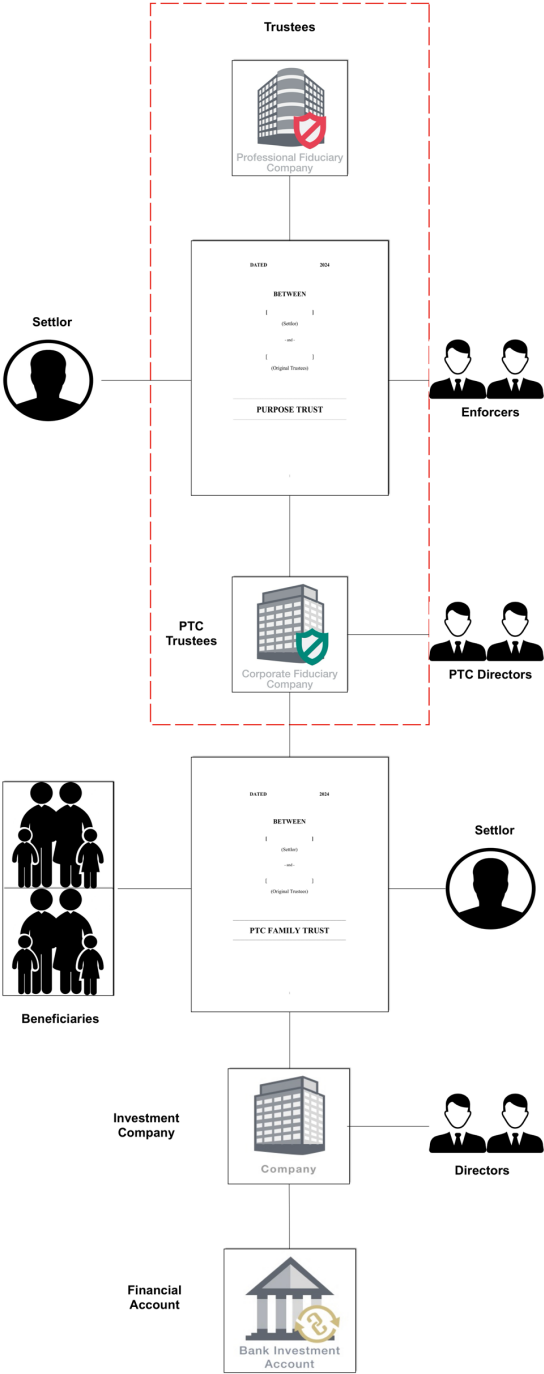


CRS Reporting

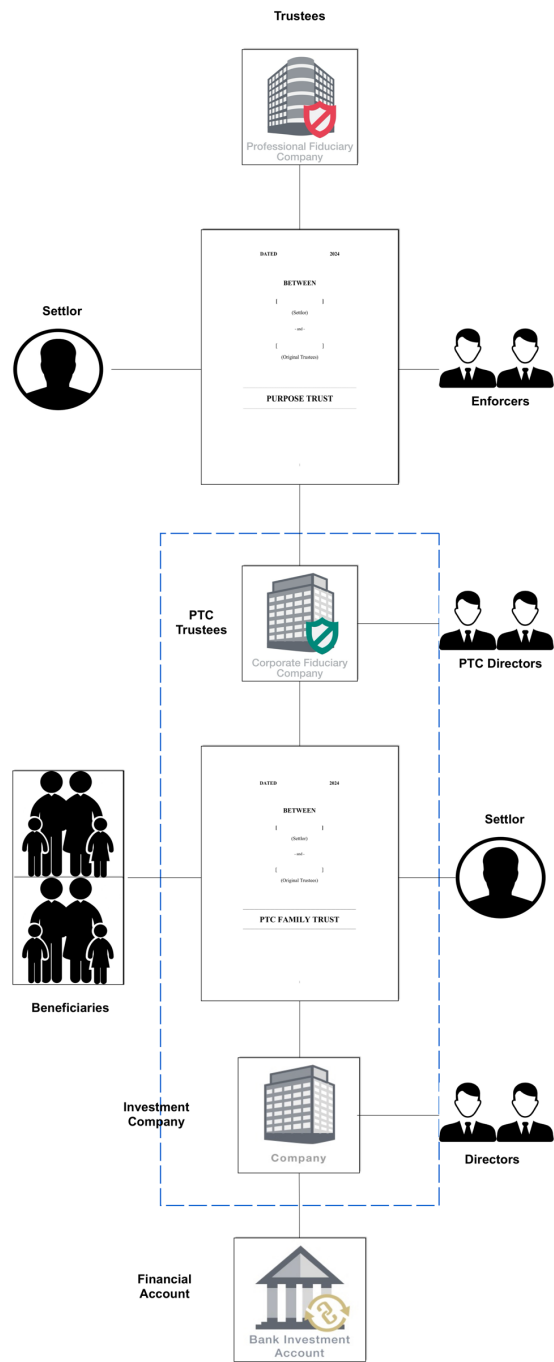
CRS Analysis



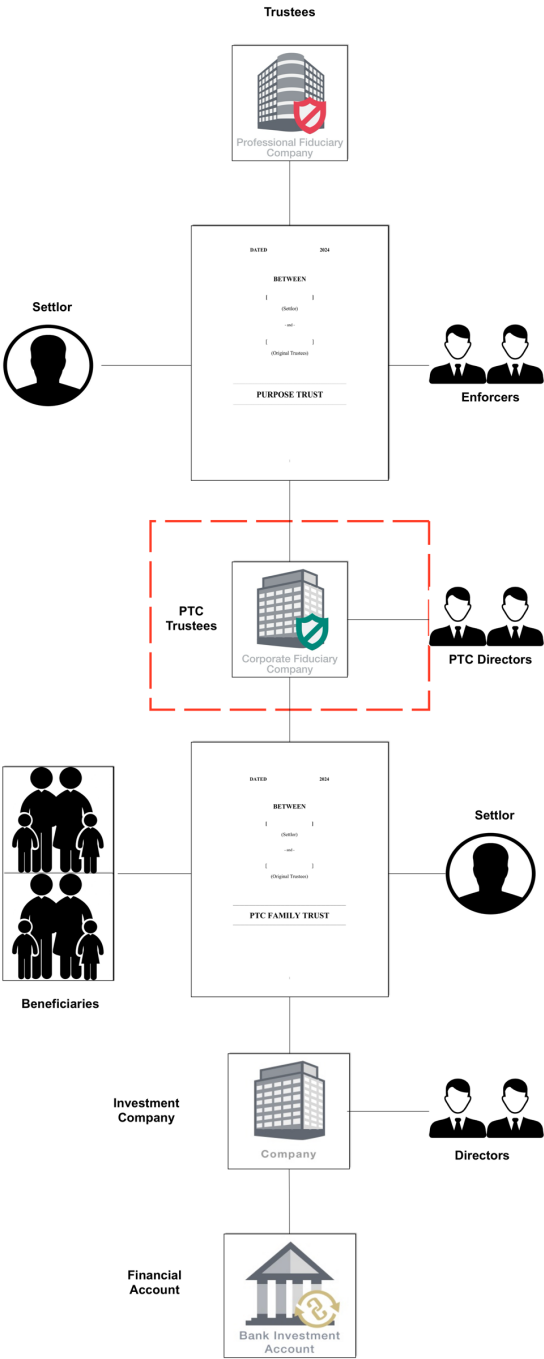
Purpose Trust Analysis



Family Trust Analysis



PTC Central Analysis



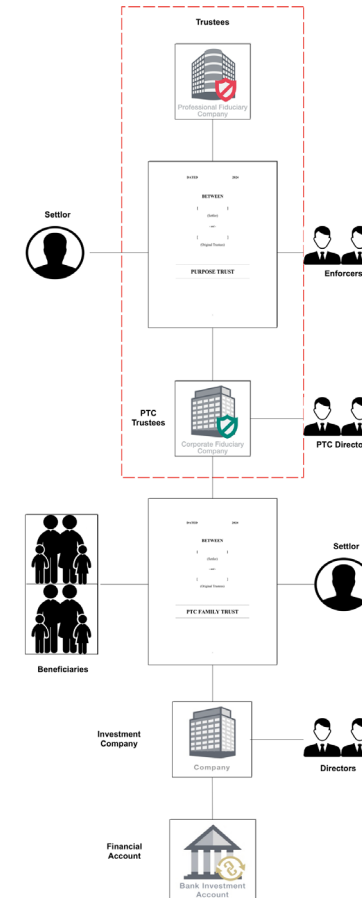
Purpose Trust

Key Considerations

- Managed Type B Investment Entity Trust:
 - Holds Financial Assets
 - >50 Gross Investment Income
 - Managed by Financial Institution (Licensed Trustee)

Principal Test Failure:

- No Gross Income
- Purpose to “Hold” Shares PTC
- No Discretionary Authority to Manage Assets of Trust
- PTC “Trading” Subsidiary (Deemed Active NFE Trust – Section VIII, D, 9 (d) CRS / Section VIII, A, 6 CRS) ➡



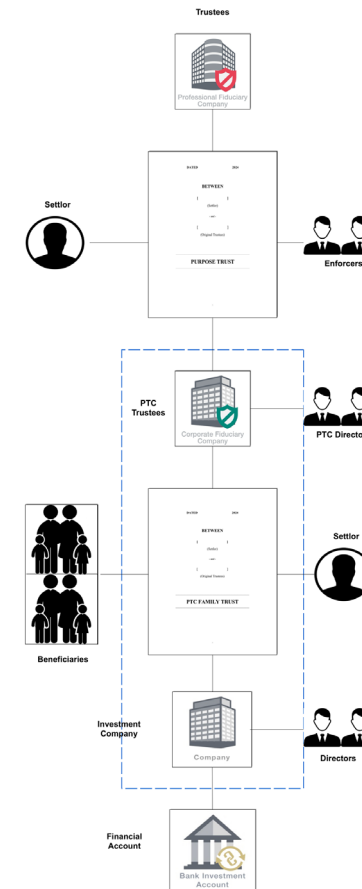
Family Trust

Key Considerations

- Managed Type B Investment Entity Trust:
 - Holds Financial Assets
 - >50% Gross Investment Income
 - Managed by “Financial Institution”
- PTC “Managing Entity”
 - Conducts Investment Activities
 - >50% Gross Income Attributed to Conducting Investment Activities

Principal Test Failure:

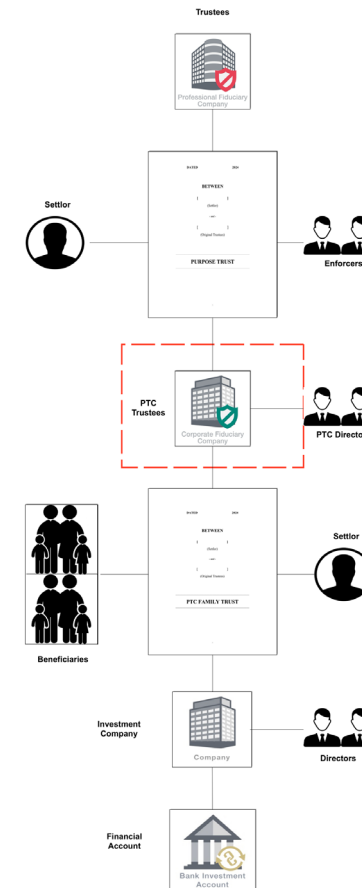
- No Income
- Pervasive Reserved Investment Power to Settlor (Protector) Not “Managed By”



PTC Status

Key Consideration

- If PTC satisfies “Type A Managing Entity” status (Financial Institution) Purpose Trust cannot be a Deemed Active NFE (Subsidiary PTC qualify as Financial Institution CRS Section VIII, D, 9, (d)).
- If PTC does not satisfy “Managing Entity” status (Not Financial Institution) Purpose Trust may be a Deemed Active NFE. ➡



Summary

- Where a multi-generation family require complex representative governance rules a PTC/Purpose Structure is appropriate
- Governance rules are designed to cover four key areas: **control, participation, benefit** and **abuse**
- The courts generally resist Dog-Leg claims, but in an appropriate case (SPV PTC) they may finally enforce a direct beneficiary claim against PTC Directors
- PTCs are not a substitute for Reserved Investment Power Trusts, a Settlor Controlled PTC is an Illusory Trust Risk
- CRS Reporting is complex and requires each level of a PTC structure to be separately assessed and then interrelated ➡



Key Lessons

- Two separate client segments: Mainland Chinese and Hong Kong Business Families
- Requires Two Different Approaches and Two Different Solutions
- Investment Trusts – Aggressive Reserved Powers, No Effective “Plan B”
- Family Office Trusts – Inadequate Governance Framework
- Investment and Family Office Segments will Continue to Grow, We have much Work to Do! ➡





Investment Office vs. Family Office

Zac Lucas, Partner
Spencer West LLP

