The Private Family Trust Company

The most customized financial institution ever devised

No financial institution charter ever devised provides a greater level of involvement by its customers in its management or a greater range of services it’s empowered to deliver than the private family trust company (PFTC) as it stands today. That charter, and the trust laws it’s designed to take advantage of, are the conscious result of 24 years of work by a large number of dedicated people to integrate the hopes and aspirations of wealthy families for their futures with the legal environments governing their wealth, especially their wealth held in trusts.

Those family visions are wide ranging and multidimensional, covering multiple branches and generations. They address keeping the family together for generations if possible and building strong and productive family members, living lives they find happy and meaningful in light of the family’s values. But, the visions and strategies for realizing them are as various as the families they serve and require legal environments that are supportive, flexible and adaptable.

U.S. jurisdictions as they stood through the early 1990s had only begun to fashion support for those visions in their trust laws and not at all in the laws governing trust companies. But, starting in 1995, and then especially during the current decade, many state legal environments developed to fully support family visions by revolutionizing those environments in as many dimensions as required for the visions to become realities. The dimensions include trust laws, trust company laws creating trust company charters never before seen, trust company regulation and regulators supporting the mission of PFTCs and specialized courts that understand trusts and estates laws and don’t harbor biases against wealthy families. And, one more key element for creating, keeping and further evolving the legal environment has made the PFTC an ideal structure for attaining a family’s vision: private/public working groups dedicated to the task.

Family Offices on Steroids

The roles PFTCs now perform range from full trustees, with no or widely varying degrees of delegation to others, to directed and administrative trustees, and from trust advisors or protectors to providing back office and other support for family members who serve as trustees. In the leading U.S. states, these trust-related roles are fully supported by the new, progressive and continually evolving trust and trust company laws. In addition, PFTCs are increasingly providing all of the financial, family governance and family development roles of modern family offices. However a PFTC, unlike any other form of family office, can also act as a trustee and therefore manage all of a family’s wealth, if it desires. As such they’ve truly become “family offices on (legal) steroids”.

Let’s explore the dynamics that initially made the PFTC charter attractive to wealthy families and the vastly enhanced U.S. state law environments that have allowed it to thrive, with hundreds formed during the past two decades. I’ll examine how and why those developments, and the desire of sophisticated families to take advantage of them, have led to PFTCs completely integrated with the implementation of family strategic plans. That integration includes, as would be expected, providing family and family member financial, investment and risk management. But, it also includes involvement in family governance and family member development and engaging family members with each
other across the generational and branch barriers that must be spanned for families to remain unified.

Family Control

The raison d’être for families to form a PFTC is to maximize their lawful control over their wealth held in trust. A cynic might suggest families want that control just to inflate current distributions to family members, but in practice that isn’t what motivates families. What motivates them is that control gives them the capability to devise and implement a strategic plan for managing and deploying their wealth in the ways they believe give them the best opportunity to realize multigenerational hopes and aspirations.

At some point—usually while the generation that created the wealth still lives—every wealthy family hoping to stay together and preserve and grow its wealth begins seriously to think beyond how to make and enjoy that wealth. This naturally shifts their thoughts to envisioning a future that they desire for their family and to prioritizing the use of at least some of their wealth to support that vision. The inevitable next step in the process is to ponder how wealth can be managed and deployed, both short and long term, to bring about that family future.

Before any systematic articulation of a family vision comes about, it will usually have already found expression in a variety of ways, starting with the language of family trusts and other elements of family estate plans. Also, many founders of family wealth are inspired to lay down in writing a more complete vision in an informal “letter of wishes” setting forth family history, values and other elements of the family legacy and culture. Sometimes, they include in that letter their views as to the best strategies for the family to pursue after they’re gone.

Eventually, family members who want to keep the family strong and together will develop a common vision for the family and a strategic family plan for realizing it, usually called a “family constitution” or, more usefully and accurately, a “family compact.” These articulations will project out at least a couple of generations, but increasingly they seek to promote the happiness and success of multiple future generations. Invariably, they address not only the goals of the family, but also what the family believes are its best strategies for the management, expenditure and distribution of family wealth to achieve their goals.

Wealth Held in Trust

Implementing any far-reaching strategy requires family-wide control over its own wealth. Wealth held individually or jointly by family members is within family control and can be held and distributed in keeping with the family vision and strategic plan by those who created or subscribe to that plan. But, that’s far less the case for family wealth held in trust. In the United States, 50 percent to 90 percent of family wealth is typically held in trust, and families with a level near 50 percent are usually one death or one new estate plan away from nearing 90 percent.

Consequently, one or more trustees control at least a majority of almost all families’ wealth. A trustee’s control is deep, extending to all three of the most important decisions that can be made concerning trust assets:

- What form the wealth will take and how the assets kept or acquired will be managed;
- What expenditures of any kind for any purpose will be made from trust assets; and
- How trust assets will be distributed to trust beneficiaries, including charities.

As a practical matter, more control is often needed than can be obtained just by pleading with an individual or institutional trustee to support and implement the family strategic plan.
Trustees aren't, of course, free to make any decision they want regarding trust management, expenditure and distribution. They're limited by the purposes and other terms of the trust and by their fiduciary responsibilities. Notwithstanding those limitations, trustees generally have substantial discretion regarding their decisions. How they exercise that discretion determines whether trust wealth will be deployed fully reflecting the family’s values and culture and furthering its vision—or in some other way.

Unless the family controls its trustee, trust decisions in keeping with the family’s wishes will be made only if the trustee is aware of them and, when asked, the trustee chooses to comply with those wishes regarding each material decision. As a practical matter, more control is often needed than can be obtained just by pleading with an individual or institutional trustee to support and implement the family strategic plan.

**Trustee Types**

Families have only three types of trustees to choose from:

- Individuals, including of course family members;
- Financial institutions; or
- Their own family trust company.¹

The willingness and ability of the first two to comply with a family’s wishes are not only limited by trust terms and fiduciary duties but also by the trustees’ knowledge, skill, fiduciary risk tolerance and cooperativeness.

Whether trustees manifest any of these qualities in abundance depends on who the individual trustee is or, in the case of a trust institution, the trust officers and other personnel who make the decisions and the policies, procedures and federal and state regulation by which they must abide.

Even if the original individual trustees or trust personnel are willing to be cooperative, they may not be when there’s conflict within the family, litigation involving the trustee or other risks affecting the trustee. Moreover, successor trustees and new trust officers are always required at some point for long-lived trusts—often, every few years—and a successor trustee or trust officer may be less cooperative than the individual(s) originally picked by the settlor. And, even family member or trusted advisor trustees won’t always view the best interests of the beneficiaries in the same way that the broader family does, despite being privy to a family compact or other strategic plan. Furthermore, family member/trusted advisor trustees are increasingly aware of and sensitive to their personal risk as fiduciaries, affecting their decisions and willingness to serve.

Finally, not all generations or branches of a family may view trustees chosen by another generation or branch as favourably as did the patriarch or other individuals who chose them.

In contrast, the final trustee option, a perpetual PFTC, is the only one that the family can dependably control and count on to be cooperative for as long as the trusts last, generally even in times of family strife. The fact that a family-controlled PFTC best ensures that trust decisions are informed by the family’s hopes, aspirations, values and culture is, at heart, the fundamental reason why families with substantial wealth in trust create PFTCs.

**Setting the Stage**

Four major events of the late 20th century created an opportunity for the modern U.S. single family PFTC industry to emerge. The first was widespread adoption of the Uniform Prudent Investor Act (UPIA),² statutorily revolutionising U.S. trust law. The second was several key states’ authorization of dynasty trusts with perpetual lives. Third was the sponsorship and support by the Conference of State Bank Supervisors (CSBS)³ of model, non-depository (that is, non-bank) state trust company legislation that included a PFTC chapter.⁴ All three

Although long known for its innovative trust laws, Delaware hasn’t built on its trust law prowess by adopting first-rate PFTC laws or other support for PFTCs.
measures were at least in significant part responsive to the desire of wealthy families to execute on the fourth and final major development of the same period: Families making a priority of taking control of their own wealth, managing it and channeling its deployment according to their strategic plans for their families’ futures.5

The confluence of these events in the 1990s set the stage for fashioning a new PFTC as an ideal tool for a family to pursue aggressively its multigenerational hopes and aspirations by allowing them to control all of their own wealth—including the majority in the hands of trustees.

The significance of the UPIA to the development of PFTCs can’t be overstated, but that’s not because of its feature most frequently cited, namely the liberalization of the asset classes a trustee may prudently hold. Rather, it has been the UPIA’s sanctioning delegation by trustees of their responsibilities, especially investment management, even to family members and family offices.6

A second impact of the UPIA has been subtler but just as important: It set a vital precedent for statutorily revamping state trust laws to make them more flexible and responsive to modern-day realities, including the evolving needs and circumstances of settlors, beneficiaries and trustees over the long lives of trusts. The leading U.S. states for trust law have assiduously and repeatedly followed this precedent ever since, as we shall see.

Attracting PFTCs

The best PFTC states today developed pretty much the same formula for attracting and holding PFTCs and the economic and tax benefits that come with them. The formula is simple to describe and hard to implement. It requires putting and keeping in place five elements:

• Progressive trust laws;
• Progressive PFTC laws and trust company laws in general;
• A state banking regulator that, with the support of the legislative and executive branches, imposes regulatory burdens on PFTCs only proportionate to the risks of a trust company serving a single, albeit extended, family;
• A judicial system that, in at least one key county in each state, ensures that knowledgeable jurists and court administrators, without anti-wealth biases, will hear trust disputes and otherwise address trust issues requiring the court’s participation; and
• A private-public working group and other public-private cooperation by executive and legislative branches of the state with bar groups, banking associations, trust institutions and family offices dedicated to ensuring that the state’s laws, regulation of PFTCs and family trust company environment in general keep pace with the needs of wealthy families and the best new thinking about family trust companies’ roles and operations.

States fully committing to this formula for attracting wealthy families’ trusts and PFTCs have all succeeded in doing so. They are Nevada, New Hampshire, South Dakota, Tennessee and Wyoming.

The omission from this list of Delaware may be surprising to some. Although long known for its innovative trust laws,7 Delaware hasn’t built on its trust law prowess by adopting first-rate PFTC laws or other support for PFTCs. As the result, Delaware is home to less than a handful of PFTCs.8

State Execution on the Formula

South Dakota was the first state to implement the entire formula, resulting in an early surge in South Dakota9 PFTCs in the late 1990s that continues today. Wyoming was next, primarily by adding in 2003 an excellent not-so-uniform UTC10 to the authority it already provided for unregulated PFTCs.11 Alaska12 also updated its trust company, tax and trust laws by the early 2000s and attracted many trusts, but very few PFTCs because of its remoteness.

Nevada was the next state to become highly successful at attracting PFTCs—primarily unregulated ones until about 2005, but thereafter regulated ones as well. The pace of formation of both types increased with a complete rewrite of the state’s trust and trust company laws in 2009 and 2010.13 New Hampshire rewrote its trust and trust company laws even earlier, in 2007 and 2008,14 but because of an unwilling banking regulator, PFTC formations proceeded slowly until new leadership was installed in 2013.

The current roster of best PFTC states was completed in 2013 by Tennessee not only emulating the trust law progress of the other four states but also doing them one better with its own not-so-uniform UTC,15

MARCH 2017

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incorporating significant innovations not found elsewhere. Over the past 10 years, Tennessee has steadily improved its trust company laws, too. These legislative actions and strict adherence to the formula transformed Tennessee into one of the leading states in the United States for wealthy families’ trusts and PFTCs.

No doubt, Tennessee will be matched and leap-frogged by one or more other states soon, just as it matched and leap-frogged them. But, no state picks up the best of every other state’s laws. This means that a family to whom particular issues are important must examine and compare the laws of each.

The New PFTC Charter
I identified widespread adoption of a model trust company law sponsored by CSBS as the third of four events leading to today’s PFTC because it made available a non-bank trust company charter that can be formed and operated at a much lower cost than a bank charter. A bank charter not only requires burdensome and expensive deposit and lending regulations, but also attracts supervision by at least two regulators—a state or federal chartering regulator and the Federal Deposit Insurance Corporation—and often a third as well, the Federal Reserve Board. Regulated state trust companies have only one regulator: a state banking regulator.

In states also adopting the CSBS model law’s PFTC chapter, an even more lightly regulated PFTC charter became available. The best PFTC states didn’t stop with the CSBS version, though, but went on to create PFTC charters uniquely well-suited to families’ needs. The first of these were the 2007 New Hampshire and 2009 Nevada PFTC laws. They define the family clientele that a PFTC may serve far more broadly than the CSBS model does. South Dakota followed in 2010 with a regulation relaxing the burdens on a PFTC not serving the public and defining its permitted clientele similarly broadly. More recently, Tennessee, Florida and Wyoming followed suit, but curiously the last two defined the permitted clientele much more narrowly in some ways than the states preceding them.

These new laws and regulations formally recognize either two tiers of non-bank trust companies (South Dakota, New Hampshire and Tennessee) or three tiers (Nevada, Wyoming and Florida). The three tiers are:

1. Regulated commercial trust companies;
2. Regulated single family trust companies; and
3. Unregulated single family trust companies (only in three tier states).

Each tier has a distinct level of regulatory burden, based on its perceived level of risk to the public. Commercial trust companies are at the high end of burdens but still deal with far less than banks; unregulated PFTCs sit at the low end; and regulated PFTCs have a somewhat higher level of regulation than unregulated ones.

RIA Status
All state-regulated trust companies, including regulated PFTCs, benefit from the bank exemption from registration as investment advisors (RIAs) with the U.S. Securities and Exchange Commission (SEC). Unregulated PFTC status, now available in Florida, Nevada, Pennsylvania and Wyoming, provides the lowest level of regulation of any PFTC charters, but unregulated PFTCs don’t qualify for the bank exemption from SEC registration. That’s a problem because today the SEC is a far more burdensome regulator than its state banking counterparts. That problem is compounded by the fact that to avoid SEC registration, an unregulated PFTC has to limit its clientele to just those permitted by the SEC’s “family office” exemption from registration.

Families seeking the lowest level of regulation have two choices, then: (1) a regulated PFTC that meets state law limits on clientele whom a PFTC may serve, or (2) an unregulated PFTC that restricts its clientele further to meet both state PFTC and SEC family office limits. Unfortunately, the SEC’s family office exemption defines eligible clients for an exempt family office (and
therefore an exempt, unregulated PFTC) much more narrowly than a commercial, first tier regulated trust company may serve (that is, anybody) and more narrowly even than the family clientele a tier two PFTC may serve in states offering that tier, notably Nevada, New Hampshire, South Dakota and Tennessee.

Important Trust Company Laws
As I’ve detailed, limited regulatory burdens and the availability of an exemption from SEC registration are important features of a state’s PFTC charter, but there are others, including:

- strong confidentiality for applications, exams, owners, management, trusts, trustees, protectors, settlors and beneficiaries (including court proceedings);
- broad and express authority for fiduciaries to use affiliated advisors and investments, including related private investment funds;
- moderate capital requirements, mostly investable under UPIA standards; and
- interstate office and activities authority (available in most states), facilitating:
  - family convenience;
  - taking advantage of an additional state’s trust laws; and
  - hedging the risk of adverse changes in charter state laws or policies.

These are a sampling of the advantages that can accrue to PFTC-forming families from state trust company laws. As with state trust laws, new trust company laws other than these could be as or more advantageous to a particular family.

Trust Laws Important to Families
Most of the trust law provisions important to families appear in the statutes of all five leading PFTC states. Here’s a brief summary of those provisions. Note that half start with “flexibility:”

- Flexibility for settlors creating trusts:
  - statutory support for settlors’ provisions in trust instruments pre-empting common law or statutory default rules;
  - a robust UPIA and progressive UTC (for example, few mandatory default rules for trust instruments, support for appropriate asset concentrations, unhooking from other states’ UTCs and from the prior common law of the enacting state);
  - explicit directed/multi-participant trust authority and rules governing relationships among the trustees, advisors and protectors of a single trust;
  - strong authority to delegate prudently; and
  - powerful specialized trusts such as dynasty, purpose, quiet and asset protection trusts.

- Flexibility for beneficiaries:
  - explicit characterization of fiduciary standards as administrative law, making them applicable to every trust administered in the state unless the trust specifies otherwise;
  - strong decanting authority;
  - judicial/non-judicial trust reformation/modification/termination;
  - strong virtual representation; and
  - unitrust conversion and power-to-adjust authority.

- Reasonable protections for trustees without bullet-proofing them:29
  - authority (only available in Nevada so far) to notify all current beneficiaries of a plan of action that, if not objected to, can be overturned in court but not be the basis for surcharging the trustee;30 and
  - fiduciary duties of PFTCs based on the standards and practices of regulated PFTCs, not commercial trust companies (lamentably, no such provisions have been statutorily adopted today, but I expect them to be introduced).

- Tax laws:
  - no state/local trust income taxes;
  - modest state/local trust company taxes;
  - elective community property asset trusts (which results in a 100 percent step-up in the basis for federal income tax purposes at the time of first to die of a married couple; only found in Alaska,31 Tennessee32 and, as of July 1, 2016, South Dakota33); and
  - similar exemptions from state taxation of foreign trusts to those available for federal trust taxation.

Again, this is only a sample of the state trust laws that are important to most families with substantial assets
and many households. Others will be equally or more important to a particular family.

Limits on Statutes?
Unfortunately, good statutes can partially or wholly be nullified by misinterpretation by the courts or judicial lawmaking ignoring the legislative intent. For instance, some U.S. courts have attempted to read out of the law provisions of the UPIA that relax for certain investment concentrations common law diversification requirements. Consequently, the Tennessee legislature felt obliged to write these extraordinary statements into its new UTC Uniform UPIA:

PFTC roles provide the opportunity to get to know better other family members, either as colleagues or clients.

These modifications were undertaken deliberately and after significant consideration:
(1) Therefore … no consideration shall be given to the need to promote uniformity of law … among states …; and
(2) … [C]ourts shall not consult, rely on or give any persuasive value to such uniform acts … or any comments accompanying [them] …

Despite some of the trust concentration cases alluded to in which hard facts made bad law, the odds are excellent that each of the provisions summarized above will be upheld in U.S. jurisdictions (if not always properly interpreted). Unlike in other common law jurisdictions, U.S. trusts aren’t the creation of or within the sole province of chancery courts. They were statutorily created in the United States by the individual states, which provides authority for their revision by the same means.

Elements of Family Vision
I’ve referred to a family vision as the motivator for a family to create a strategic plan and a PFTC to implement it, at least with respect to trust assets. The typical family vision includes at least two elements: keeping the family together, for generations if possible; and building strong and productive family members living meaningful lives. What different families mean by these aspirations, and the strategies they believe most suited for realizing them, can vary widely. What’s true for all, though, is the belief that their aspirations can most readily be met by harnessing family wealth towards that end. That includes harnesses intended to ameliorate the harm that wealth can cause to family members.

What PFTCs Can Do
The desire to fashion those harnesses is another way of portraying the primary reason why families seek the wealth control provided by a PFTC. A list of further reasons must be entirely composed of concrete examples of what can, and in some cases must, be done by family trustees to fulfill that vision. Several important and interesting examples follow. It’s not a comprehensive list, and not all examples will apply to every family.

1. Support family cohesion. One of the elements I identified as central to almost every family vision is keeping the family together. Unfortunately, this element will usually only be supported by a non-PFTC trustee, if at all, as a mere by-product of its support of the other central element, namely building strong family members. This is because trustees typically focus only on the direct needs of individual family beneficiaries and not on those of the family they support and that supports them. Also, trusts—especially legacy trusts—generally only speak in terms of achieving their purposes through direct benefits to individuals.

A strong case can be made that family cohesion can be of significant benefit to individual family beneficiaries, if only indirectly, but that case has to be made. Non-PFTC trustees will often support cohesion with funds for family reunions, vacations or vacation homes serving multiple households. But, they’re far less likely to undertake the hard work of identifying and addressing the family histories and dynamics pushing family members apart. In contrast, the family can see that its family-controlled PFTC will have the knowledge and incentive to make the case that the family’s central goal of keeping together is within the purposes of family trusts and in the best interests of the beneficiaries.

2. Concentrate asset management in one entity.
Only through a PFTC can a family concentrate management of all of its wealth in one entity, because only the PFTC can both act as trustee of family trusts and act as investment advisor for all other family-related portfolios, if desired, without the costs, limitations and burdens of an RIA. By concentrating asset management in one entity, a family:

- Maximizes investment management efficiency;
- Avoids creating multiple and possibly inconsistent legal structures for controlling and administering family wealth; and
- Limits some of the factors that propel families towards atomization of their wealth, leading to breaking up the family, followed by poor investment performance, excess spending and an ultimate return to “shirtsleeves” by family members incapable of creating wealth on their own and/or curbing their spending.

3. Optimize risk management. Two dimensions of a regulated PFTC make it unique, in a positive way, regarding family risk management. First, although the scope and quality of a PFTC’s risk management is dictated by prudential and regulatory standards, little of what state banking regulators require actually goes beyond what’s reasonably necessary to protect family wealth, family members and others who take responsible roles in the PFTC. This means that a regulated family trust company can have a customized and very trim version of a corporate trustee risk management structure without any of the excessive burdens imposed on banks and securities firms by federal and state regulators.

The second element of regulated PFTC risk management is even more exceptional. If it has the solid but not unnecessarily burdensome risk management structure referenced above, which includes prudent standards and processes, its management will be able to make its own analysis of the benefit-to-risk ratios of the actions it proposes to take in either its trustee or corporate capacity. This means the PFTC should be able to take actions that are prudent in light of the family’s and its trusts’ multigenerational goals despite not being actions that an institutional trustee would be comfortable taking under its risk management policies.

4. Undertake informed, prudent, and perhaps essential, investment management. Using its control over family investment assets and a solid risk management structure described above, a PFTC can adopt family-directed investment management strategies allowing its management to make their own informed judgments about whether expected benefits of an investment justify its anticipatable risks. Key examples of investment strategies to which such judgments may be applied include deciding whether to keep or sell a family business; deciding whether to invest in alternative equities, including direct interests in businesses; or maintaining concentrations in particular assets or asset classes.

A family with multigenerational aspirations must get these risk–benefit decisions right. Stuart Lucas provides persuasive evidence that the investment strategies mentioned above are among the few whose projected performance after inflation, taxes, fees and, of course, distributions to beneficiaries is likely to be sufficient to meet the future needs of young and unborn generations that the family vision and dynasty trusts intend to be met.

Again, the foundation for safely investing in such assets consists of two things: (1) long time horizons for relevant investment portfolios; and (2) an excellent risk management and due diligence structure providing the necessary information and expertise to have reasonable expectations about the performance of the assets.

5. Support family governance. A PFTC’s ability to concentrate control over family assets in its trust and investment management accounts results, as intended, in substantial control by its owner, the family, over those assets and other PFTC activities. Families also control their family offices but the PFTC’s actual control over family wealth, especially as trustee, means that who controls a PFTC initially and from generation to generation is much more important than who controls the family office.

Consequently the right people in the family must always control the PFTC if it’s going to pursue the family’s goals successfully. Identifying those people and their successors, hopefully current and future family leaders, is a big part of family governance. Implementing a leadership and succession plan is simplified by a PFTC because of its control over the majority of family assets. Thus, when a PFTC is trustee of all or most family trust wealth, it always plays a significant role in at least two of the most important family governance functions,
control of wealth and family wealth and leadership succession.

The PFTC can also use its expertise to provide substantial fact gathering and other support for four other major functions of family governance that are usually the responsibility of a family council or similar body that controls the PFTC: family decision making; creation of the strategic plan; confirming whether the plan is being implemented and well; and revising the strategic plan as necessary from time to time.

6. Encourage family member engagement and development. Virtually every family vision, whether expressly embodied in trusts or not, calls for supporting the development of each family member with family resources. As it happens, to determine whether and when trust distributions may be appropriate, a trustee must determine the needs, desires and resources of trust beneficiaries. Doing that right requires the trustee to fashion a trusting relationship with each beneficiary. In a PFTC, these are jobs for the distributions committee with the assistance of trust officers. Many PFTC families have come to realize that the distributions committee’s relationship with beneficiaries and its knowledge about them make that body an excellent resource for coordinating family member development.

Another important element required for achieving a family vision, which a good relationship between a trustee and each family beneficiary can facilitate, is promoting engagement and acceptance between generations. The chief obstacle to engagement and acceptance is distrust, which creates a chasm between generations, deepened by the new generation’s culture typically veering off from that of the older generations. By recognizing that their obligation to trust beneficiaries is at least as great as to settlors, PFTC personnel can play a significant role in bridging this chasm with trust. Families can enhance that role by adding to trust officers’ missions the function of helping beneficiaries to identify and pursue their personal and career development goals.

All of the trustee roles reviewed in this part promote the integration of the needs, desires, goals, values and culture of members of each generation with family-wide goals, values and culture. None of those benefits can be counted on from an institutional trustee or even individual trustees.

A final role that PFTCs play in family member development as well as family cohesion is to involve family members in the many positions within a trust company and its committees that can be filled by individuals with varying levels of knowledge, skill and maturity, and give them the opportunity to develop their capabilities and accept increasing responsibilities. The PFTC versions of positions within a family business are more likely to introduce young family members to the realities of personal balance sheets and income and expense statement management and long-term personal financial planning. PFTC roles also provide the opportunity to get to know better other family members, either as colleagues or clients.

Fundamental Changes

In my 43 years of practicing law, I never experienced as concerted an effort by so many people, generally without compensation, to bring about fundamental changes in the laws and the regulators and courts that administer them as those that now form the foundation of the modern PFTC. The entire effort was based on the principle that families know better than anyone else what they want and need from their trusts, the assets they choose to put in them and their trustees.

Therefore the greatest benefit that a PFTC can provide to wealthy families isn’t from a limited number of channels that someone else viewed as “safe” or “best,” such as the immutable UTC defaults adopted by most states. Rather, it’s found in legal environments in as many states as possible that are supportive, flexible and adaptable, thereby providing as broad a range of options as a family and its advisors can envision.

This has been achieved and hopefully will persist in states with robust private-public working groups committed to always providing a home for families’ trusts and PFTCs through frequent, sensitive and knowledgeable enhancements as families’ visions and circumstances evolve.

Endnotes

1. To some degree, directed trustees provide another dimension to the individual and institutional trustee options. Any useful discussion of directed trusts is beyond the scope of this article except to note that such a trust can be well suited to providing family control over a specific trust, especially one with special assets such as a business. But, when the number of those trusts or assets is large, they may be difficult to manage without creating a family trust protector advisor company. See John Duncan and Anita Sarafa, “Achieve the Promise—and Limit the Risk—of Multi-Participant Trusts,” 26
ACTEC LIT 769 (2011).
2. In full, the Uniform Prudent Investor Act of 1994 (UPIA).
3. The members are all 50 state banking regulators and the Washington, D.C. and territorial banking regulators.
4. “CSBS, Statutory Options for Multistate Trust Activities,” 1995, principally drafted by John P.C. Duncan. Adding the “Private Family Trust Company (PFTC)” chapter was the primary “fee” for our draftsmanship. Ironically, that “add-in” chapter, where adopted, has been an even greater spur to economic development in several states than the commercial trust company chapters.
5. Both the recognition by wealthy families of their need and opportunity to take control of their own wealth and the recognition that the PFTC could become a powerful tool for doing so owe a great deal to the early and continuing advocacy of James E. (Jay) Hughes, Jr. as well as the Family Office Exchange and its founder, Sara S. Hamilton.
6. UPIA Section 9.
8. Only four in the 34 years since it adopted its commercial “limited purpose trust company” law that they have to organize under. Del. Code Ann., Title 5, Ch. 7, Subchapter V, Section 773 and following (2016).
9. SD Codified Laws, Title 51A, Ch. 51A-6A (2015); see also “Fiduciaries and Trusts” at SD Codified Laws, Title 55, Sections 1–16 (2015).
11. Wyoming Chartered Family Trust Company Act, Wyo. Stat. Section 13-5-201 and following (2015). An unregulated state trust company doesn’t solicit or serve the public and therefore isn’t chartered or supervised by state banking regulators. It isn’t required to apply for a charter, has no exams and no material trust company regulations, supervision and annual fees. Such companies are only permitted by four U.S. states: Florida, Nevada, Pennsylvania and Wyoming.
17. To take advantage of more than one state’s laws or for convenience, a family can consider chartering in one state and adding an office in another if permitted by both states’ trust company laws.
18. 12 USCIA Section 266.
19. See supra notes 13 and 14, respectively, above.
25. 15 USCA Section 80b-2.
26. Pennsylvania has no family trust company act, and its trust and non-bank trust company laws haven’t kept pace with the leading states discussed here.
27. See supra note 11.
29. Even family trust companies as trustees shouldn’t be too insulated from the consequences of their mistakes: The risks to the family of a trustee that can act with impunity are too great.
30. See Nev. Rev. Stat. Ann. Section 164.725 (2015). This is an example of a provision that benefits beneficiaries as well as trustees in a PFTC environment, because most, if not all, beneficiaries will desire what the PFTC is proposing as trustee of a family trust.
33. South Dakota Codified Laws Ch. 55-17 “Special Spousal Trusts” effective July 1, 2016, Sections 29-42 of South Dakota Session Law 231 (2016).
36. By setting the standards and practices of regulated PFTCs, state banking regulators have also set de facto standards that need to be adopted by unregulated PFTCs if they wish to avoid being held liable for mistakes that could have been avoided by adhering to those standards.
37. This doesn’t include anti-money laundering laws or securities laws (for example, disclosure rules) and other federally imposed regulations that lay substantial burdens on all financial institutions without providing any risk management benefits. Most such laws define a “financial institution” broadly enough to include family offices that are not PFTCs and only serve one family.
38. See, for example, the online commentary by Stuart E. Lucas, at http://wealthstrategistpartners.com/assets/images/documents/The_50_Percent_Rule_(CFA)_April_2014.pdf. See also Stuart E. Lucas, Wealth: Grow It and Protect It, FT Press (2012).