

How to use an ICC to protect family-owned shipping ventures

Insights - 24/05/2024

There are various structuring options available for businesses or high net worth families to protect their investments, assets, and wealth, including layering various options into one structure.

Ogier Global recently worked with a family commercial shipping business, where each vessel is managed by a third party and leased to a company. The brief was to provide a robust structure for succession planning, professionalisation, and to protect the group from any future creditors and/or litigation in relation to individual vessels.

The team provided a number of structuring options, including using an incorporated cell company (ICC) owned by a Jersey or Guernsey private trust company (PTC) or private trust foundation (PTF). To provide further security within this structure, each vessel would be owned by an incorporated cell.

In this article, Ogier's Aviation and Marine team outline the different structures used within this structure and the key benefits for individuals and businesses in the sector.

| Private trust company

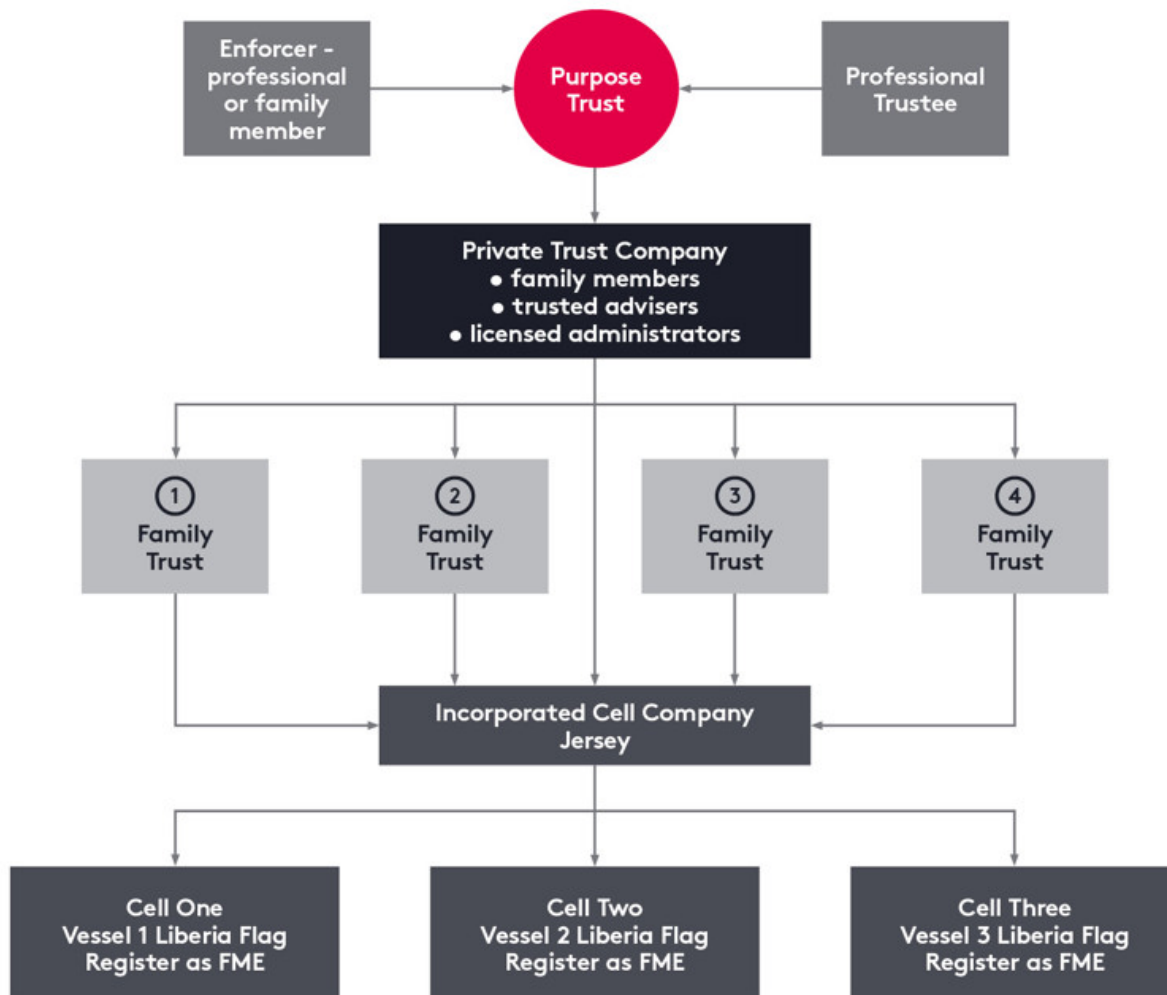
A private trust company is a useful vehicle for a family to ensure bespoke trustee services and, as a bonus, it can act as a family governance tool.

A PTC structure:

- provides a succession planning framework that enables high net worth individuals to transfer their assets in a structured way to the next generation
- allows high net worth families to keep control even in family conflict situations, such as divorce or the death of a family member

- can bring family members into the decision-making process. Family members can either sit on the board of the PTC or be part of advisory committees

In practice, PTCs are often administered by professional trustees to ensure compliance with legal and regulatory requirements applicable in the respective jurisdiction in which the PTC is incorporated. Jersey, Guernsey, the British Virgin Islands, Cayman Islands, Singapore, and the United Arab Emirates are all popular jurisdictions for establishing PTCs.

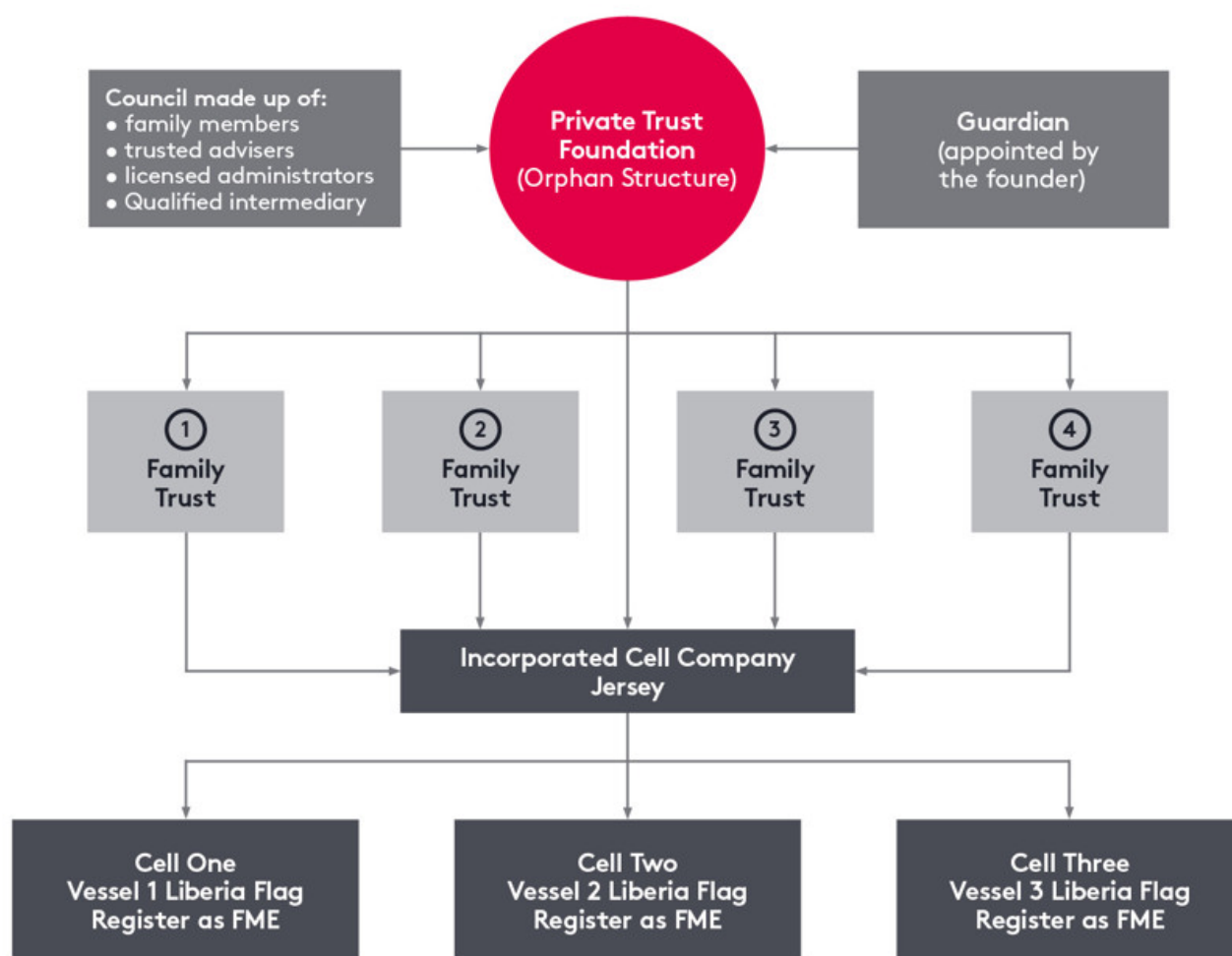


Private trust foundation

An alternative option is for a foundation to act as a trustee rather than a PTC. This method enables the founder, family members, and advisers to be involved directly as trustee, similar to the PTC structure, but without the additional layer being required to hold the PTC shares.

As a legal person of full corporate capacity, a PTF could act and exercise all the powers and would be bound to the obligations of a trustee in the same manner as any trustee which is a company. However, unlike a company, a foundation has no members or shareholders and is therefore already an orphaned structure, independent of the founder and its officials.

For an overview of the uses of foundations and the differences between Jersey and Guernsey,



Incorporated cell company and incorporated cells

The segregation of assets afforded by an ICC structure means that a creditor who deals with a cell company in respect of a particular cell only has a right of recourse to the assets of that cell only. Unless the constitutional documents provide otherwise, the creditor has no right of recourse to the assets of any other cell or the cell company's other assets. Each cell has its own separate legal identity, though the cells can also form part of the ICC.

For this family commercial shipping business client, an ICC provides a perfect solution as the primary concern was to protect the group as a whole from being attacked by creditors, litigators, or other threats in matters relating to one vessel.

Key points to note on using an ICC structure

- Each incorporated cell has the same secretary and registered office as its ICC

- An incorporated cell is not a subsidiary of the ICC. Various secretarial functions required by statute must be carried out by the ICC and the shares in each incorporated cell will not generally be held by the ICC but by the intended owner of the assets to be held in that incorporated cell
- The ICC is not intended to be the parent of the incorporated cell
- The ICC may provide a more robust structure where the segregation of assets and liabilities is in question. For example, in insolvency situations in jurisdictions outside of Jersey
- Shipping companies use financial derivatives, such as freight futures and options, to hedge against price fluctuations in freight rates, bunker fuel costs, and FX rates. Financial institutions will look at an incorporated cell as an individual company but take comfort from the ICC ownership
- For restructuring purposes, a company can convert to a cell company and vice versa, and a company can convert into a cell of an ICC or a cell can convert into a separate company. A cell can also be transferred from one ICC to another. Subject to reciprocal arrangements in other jurisdictions, a cell company can be migrated out of Jersey and a non-Jersey company or cell company can be migrated into Jersey as a cell company subject to meeting the requirements of the Companies law
- As a cell of an ICC company is a company, each cell deals with third parties in the same manner as a normal company
- Cell companies are ordinarily required to appoint a Jersey regulated entity to administer and /or provide secretarial services to the company
- A framework can be established which includes all the participants in the structure (for example, administrators, yacht managers, lessees) and model agreements entered into governing the contractual role of those participants
- Regulatory consent can be obtained in advance for the structure. Then as new cells are added, the level of regulatory scrutiny required is reduced as the fundamental structure has already been agreed. A new cell can then be created at a fraction of the cost and time it takes to establish an additional structure
- Unlike many jurisdictions, Jersey does not limit the use of cell companies by statute. Cell companies in Jersey should not be used for ordinary trading activities, but is otherwise very flexible
- The key differentiator between an ICC structure and an ordinary group structure with a Holdco at the top is that while the ICC has significant control over the cells it creates, it is unlikely to own the cells. The ICC may be owned by a PTC or PTF
- The presence of family members on the board of PTC or PTF will depend on tax advice

| Flagging

For the marine sector, it is important to note that international law requires all ships to register in a flag state. A flag of convenience is the process of documenting a ship in a country other than the country of ownership and confers the nationality of the flag state to the registered ship. Each ship registry has its own rules regarding the types of vessels they will accept for registration under their flag of convenience.

There are several reasons for shipowners to choose to register their ships with different flag states. Some have more favourable taxation regimes or offer financial incentives, and others may have more relaxed regulatory regimes which might be advantageous for ships engaged in certain types of trading. Some flag states are more reputable than others which can be important for vessels engaged in international trade.

Open ship registries permit foreign ownership. The top three are Panama, Liberia, and the Marshall Islands. The 'owning foreign business entity' registers as a Foreign Maritime Entity (**FME**) with the open ship registry.

The incorporated cell complies with the requirements to register as an FME, these are:

- the foreign entity must have legal existence in its underlying jurisdiction
- the foreign entity must have the power to own a vessel
- and, the foreign entity must have the capacity to sue and be sued in its own name

Additionally, the FME must remain in good standing in its underlying jurisdiction and the flag state.

For more information on PTCs, PTFS, ICCs and incorporated cells, contact a member of Ogier's [Aviation and Marine team](#).

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