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# **International Wealth Planners**

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**Geneva**

Henry Fea, Charles Russell LLP



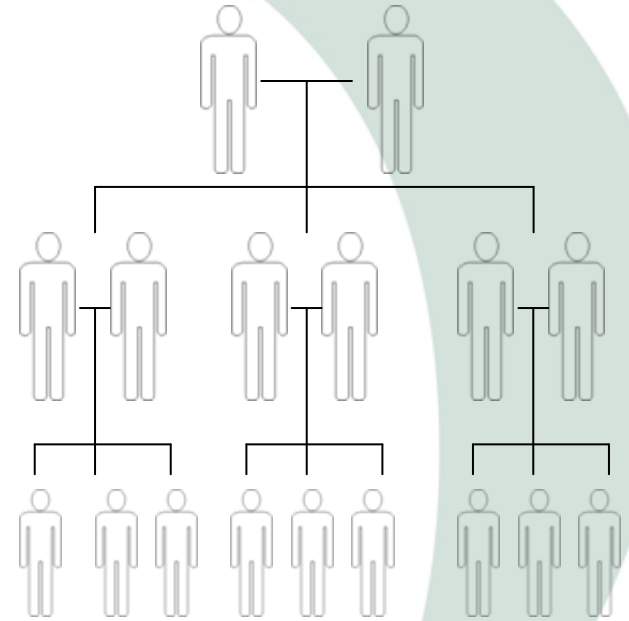
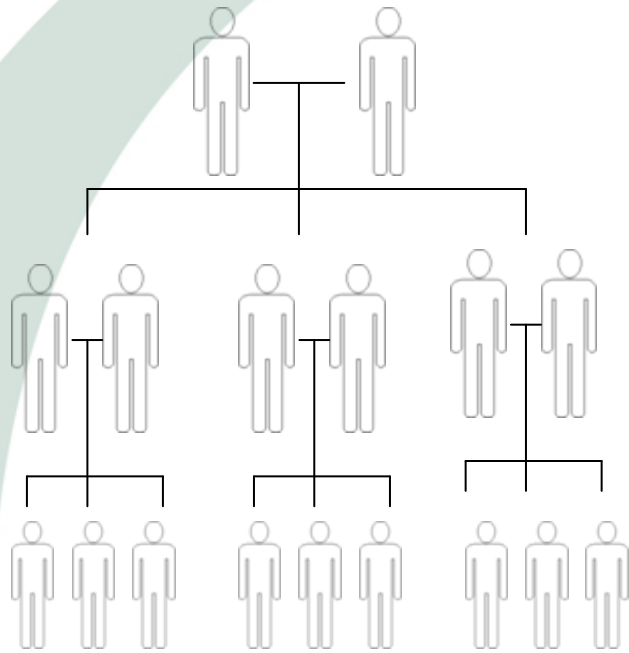
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# FAMILY GOVERNANCE



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## WHY IS A FAMILY GOVERNANCE STRUCTURE NECESSARY?





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## WHAT DO WE MEAN BY “FAMILY GOVERNANCE”?

- Corporate Governance
- Pivotal role played by family + family dynamics = need for family governance
- Family/family and family/business



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## WHAT AREAS WILL BE ADDRESSED?

- Areas of sensitivity/vulnerability, including:
  - Management – current and succession (and NB tax)
  - Ownership – current and succession
  - Conflicts of interest
  - Dividend policy
  - Relationship between family and non-family executives/employees, and their rewards
  - Communication with family members (and in-laws?) not working in business
  - Non-executive directors



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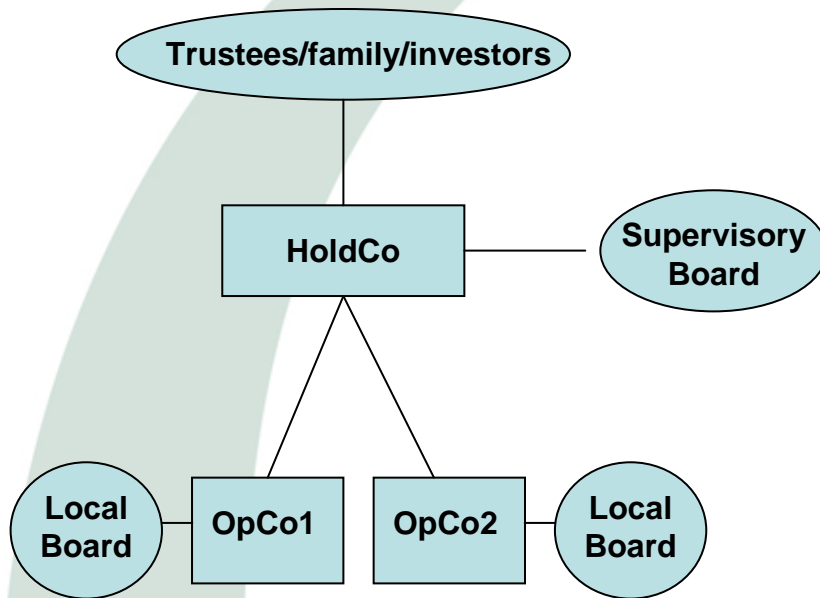
## WHAT STRUCTURE SHOULD FAMILY GOVERNANCE TAKE?

- Depends on a number of factors, including:
  - Nature of business(es)
  - Number of family generations
  - Number and spread of family members
  - Extent of non-family involvement in management
  - Extent of trust and/or non-family ownership



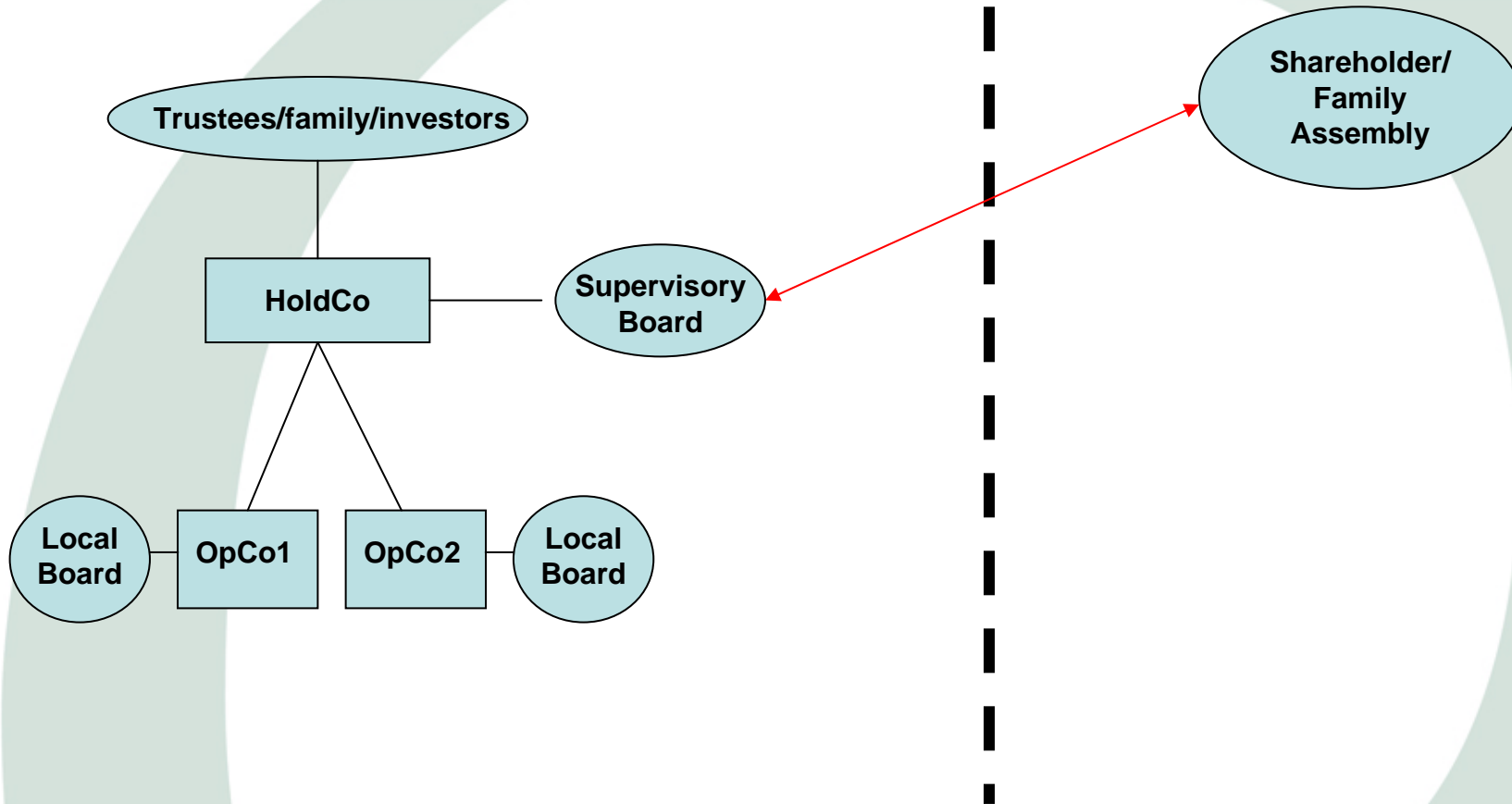
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## FAMILY GOVERNANCE STRUCTURE (1)





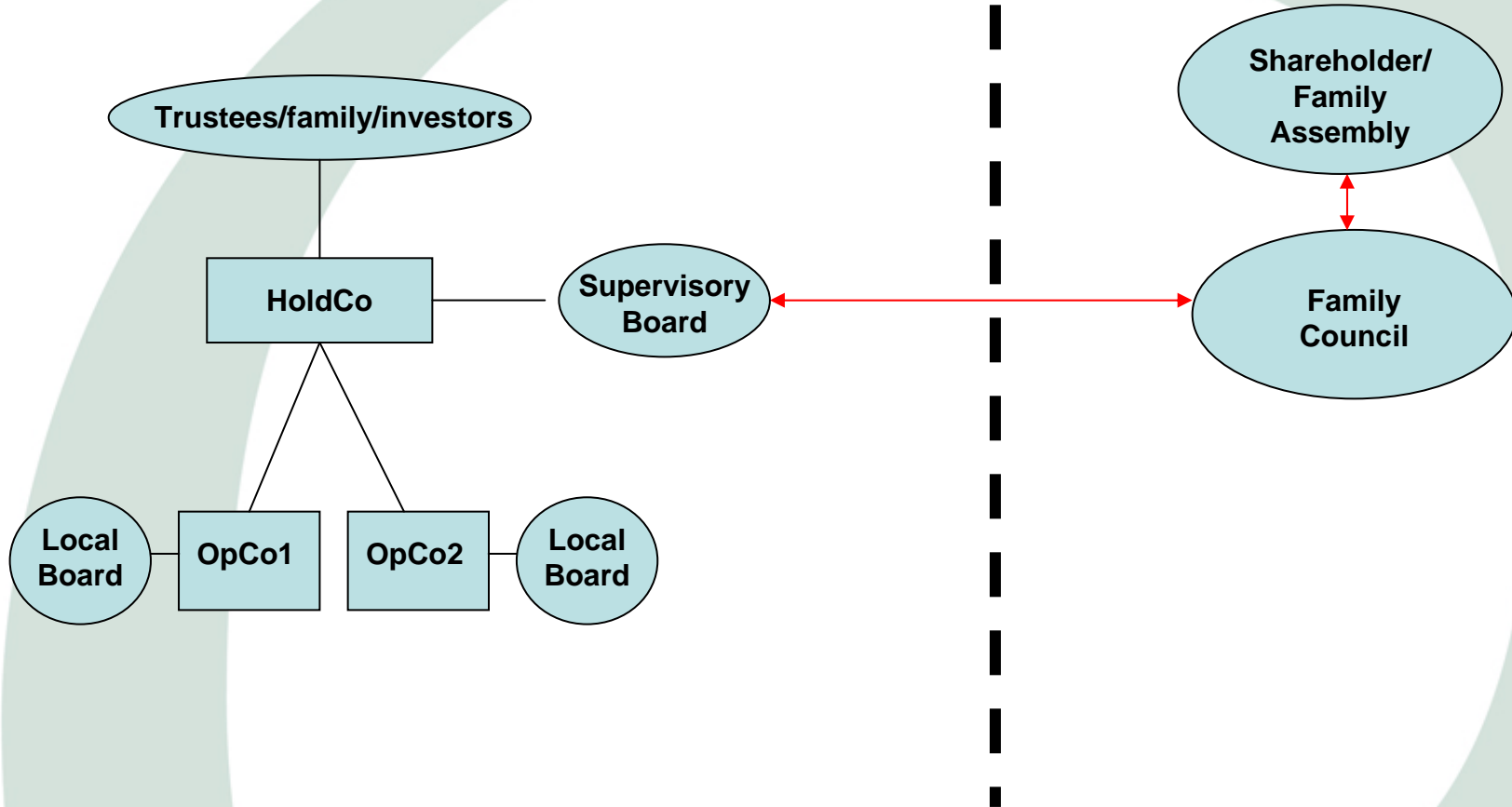
## FAMILY GOVERNANCE STRUCTURE (2)





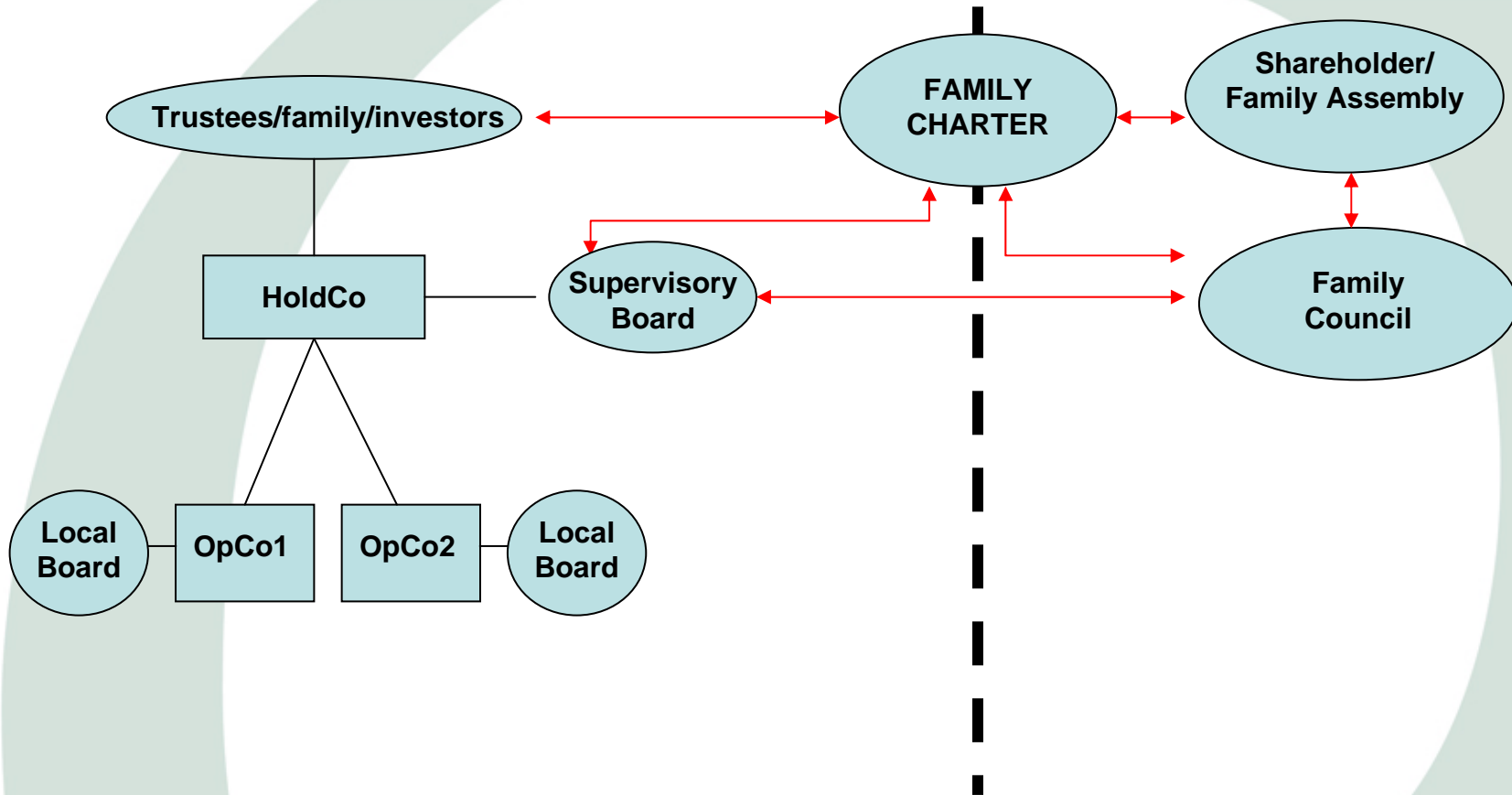


## FAMILY GOVERNANCE STRUCTURE (3)



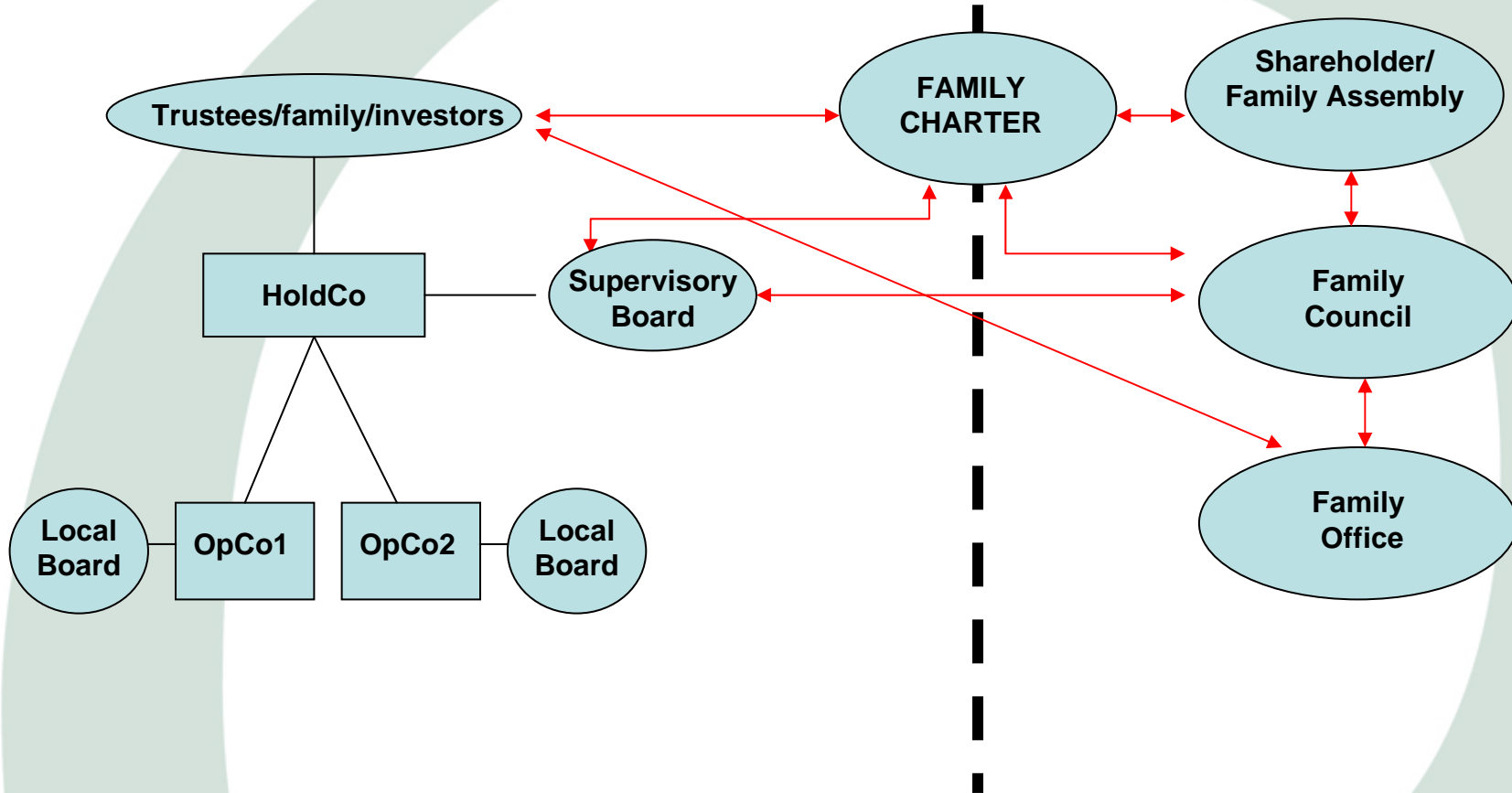


## FAMILY GOVERNANCE STRUCTURE (4)





## FAMILY GOVERNANCE STRUCTURE (5)



## FAMILY COUNCIL - COMPOSITION

- Composition – representation of:
  - Different generations
  - Different branches of the family
  - Those who work in business and those who do not
  - In-laws??
- Election process – formal or informal



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## FAMILY COUNCIL – KEY FUNCTIONS (1)

- Key functions include:
  - Agreeing family policies with Supervisory Board
  - Agreeing long-term goals for business
  - Ensuring business run in accordance with these
  - Preparing Family Charter, and considering amendments
  - Maintaining communication with Supervisory Board on key issues
  - Building a relationship between family and non-family executives



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## FAMILY COUNCIL – KEY FUNCTIONS (2)

- Helping to build family unity
- Establishing rules of engagement between family and business
- Providing information to family about business progress
- Devising educational and training programmes for next generation
- Identifying family stars of future
- Organising Family Assembly



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## DECISION MAKING BY THE FAMILY COUNCIL

- Consensus
- Failing which, voting:
  - One member/one vote?
  - In line with shares legally/beneficially owned?
- What support is required:
  - Simple majority?
  - >75% of members?



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## FAMILY CHARTER – WHAT IS IT?

- “Route map” for family and business:
  - How family wishes business to be run
  - Family’s goals and long-term strategy for business
  - Family’s relationship with business
  - Family’s relationship with each other in context of business





## WHAT IS IN A FAMILY CHARTER? (1)

- As much or as little as family wants
- Structure of Family Charter could be:
  1. Parties
  2. Family, business and its future
    - family's long-term goals/business strategy
    - ethical guidelines and CSR policy
  3. Corporate and family governance issues, including
    - membership and proceedings of Family Council and Family Assembly
    - “reserved matters” on which Supervisory Board must consult Family Council
    - communicating with family members



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## WHAT IS IN A FAMILY CHARTER? (2)

4. Dividends- company's policy
5. Share ownership and sales- family's policy
6. The next generation- educating, involving and providing careers for them
7. Employment
8. Dispute resolution



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## WHAT IS IN A FAMILY CHARTER? (3)

9. Any charitable foundation- establishment and operation
10. Any enterprise fund- support for family members not employed in the business
11. Reviewing and amending Charter
12. Extent to which Charter is legally binding



## CONCLUSION

- It has limitations:
  - cannot change human nature!
  - all family members must “buy in” to proposals
- Means of confronting difficult issues, particularly succession
- Occasional pain (and expense) worth it for creating a unified family with a clearly managed business
- Reduces risk of (and fall-out from) emotionally and financially damaging family disputes



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# PRIVATE TRUST COMPANIES

## CHARACTERISTICS

- What is a PTC?
- Constitutional points
  - permitted activities
  - governance
- Perpetuity/continuity
  - shares or guarantee?



## USES OF PTCS

- More control for the family
- The ability to bring in younger generations at management level
- Involving professional advisors or a family office with particular knowledge of the family's affairs
- Less reliance on a professional trust company
- Confidentiality
- Administrative convenience
- Less responsibility for professional trustees
  - Where private trading company shares are owned in trust
  - Where there are other speculative assets
  - Where the family circumstances could lead to conflict?

## STRUCTURES

- Company limited by shares or by guarantee
- Shares owned by
  - Family members personally *but*
    - Probate issues?
    - Management/control issues
  - A purpose trust (or VISTA or STAR trust) *but*
    - Added layer of complexity/cost
    - Requirement for an Enforcer
  - A Foundation *but*
    - A beneficiary may be required
- Bahamian executive entities



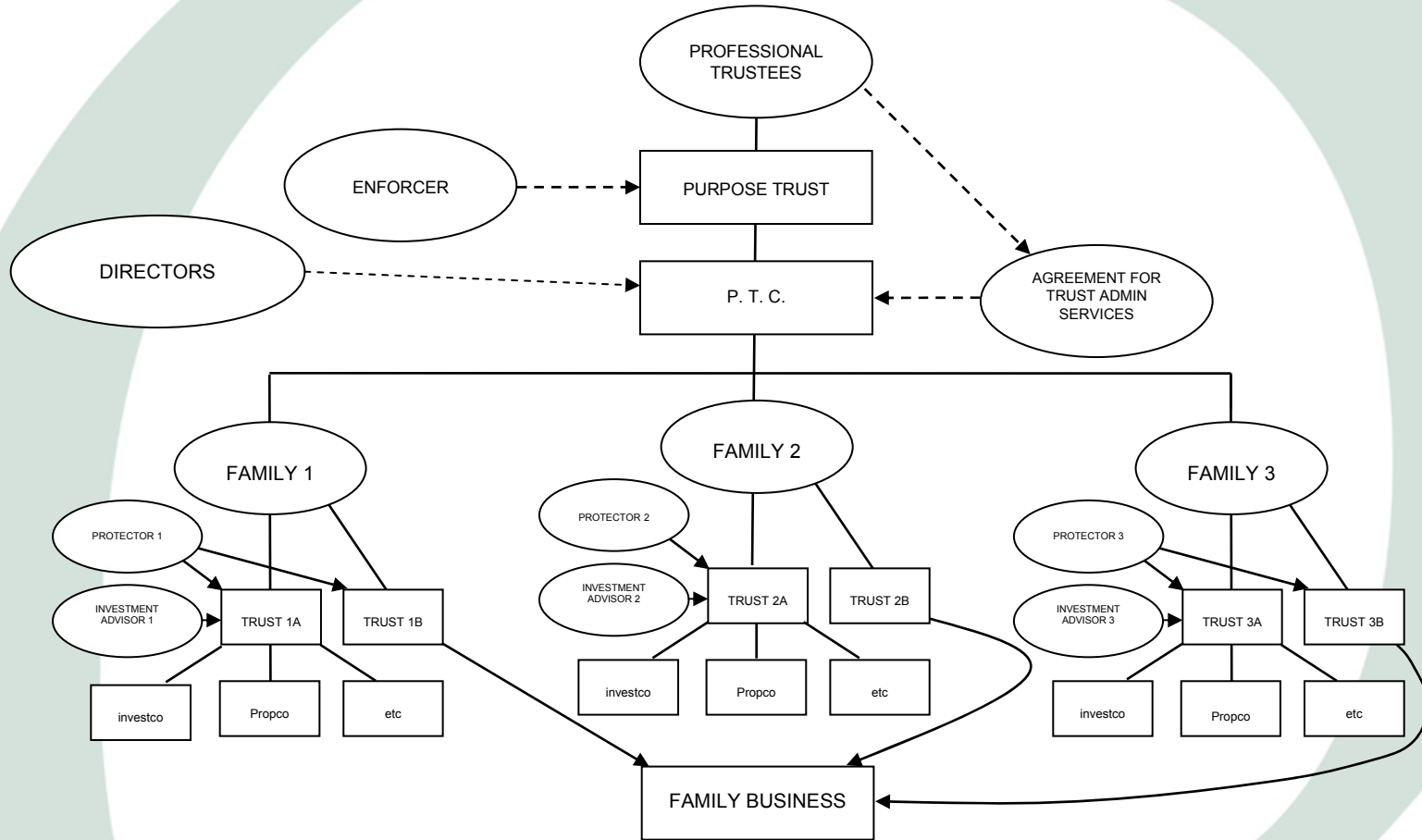


## Bahamian Executive Entity

- A possible solution?
- Act as enforcer, protector, or shareholder in PTC
- Potential to act as trustee
- Self-owned, perpetual entity with a restricted purpose
- No shareholder, no enforcer, no beneficiaries
- Confidentiality of officers



# EXAMPLE





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## POSSIBLE PROBLEMS

- Too much control in the hands of the Settlor may mean that the trusts will be treated as a sham
- Too much control with directors or shadow directors in a high tax jurisdiction may mean that the trusts become resident there too
- Decision makers may be too close to some branches of the family to reach independent conclusions
- Unless an administration agreement is entered into with a professional trustee, there is a risk that the trust may not be run properly so decisions could be challenged more easily

## WHAT ARE THE ALTERNATIVES?

- A professional trust company
  - Security, continuity, knowledge of trust administration
  - Cost, lack of knowledge of family & its assets
- Individuals
  - Intimate knowledge of family & its business
  - Succession, possible bias
- A Foundation
  - Continuity
  - Lack of transparency and accountability

## JURISDICTIONS

- Different jurisdictions may have different regulatory requirements
  - Most do not require the same type of licence for a PTC as for a commercial trust company
  - Most do not require a large minimum paid up capital
  - Most do require that copies of the trust instruments are kept in the jurisdiction
  - Some require a local qualified person on the Board or some other local involvement
- Traditional jurisdictions include Cayman, BVI, Bermuda, Jersey, Guernsey
- Balance between cost and reputation

## CONCLUSIONS

- PTCs offer flexibility, control, continuity
- Little regulatory red tape in most jurisdictions
- Costs have come down
- Paper trails and a disciplined approach to trust administration are essential
- Should everyone have one?



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SOME ENGLISH TAX MATTERS – RESIDENCE,  
DOMICILE AND RND STATUS

## 1. RNDs - Residence

- Law unclear and HMRC unhelpful
- Statutory test next year
- Full time workers abroad – 10 day test
- Key is when become resident



## Domicile

- Actual and deemed
- Marriage pre-1974

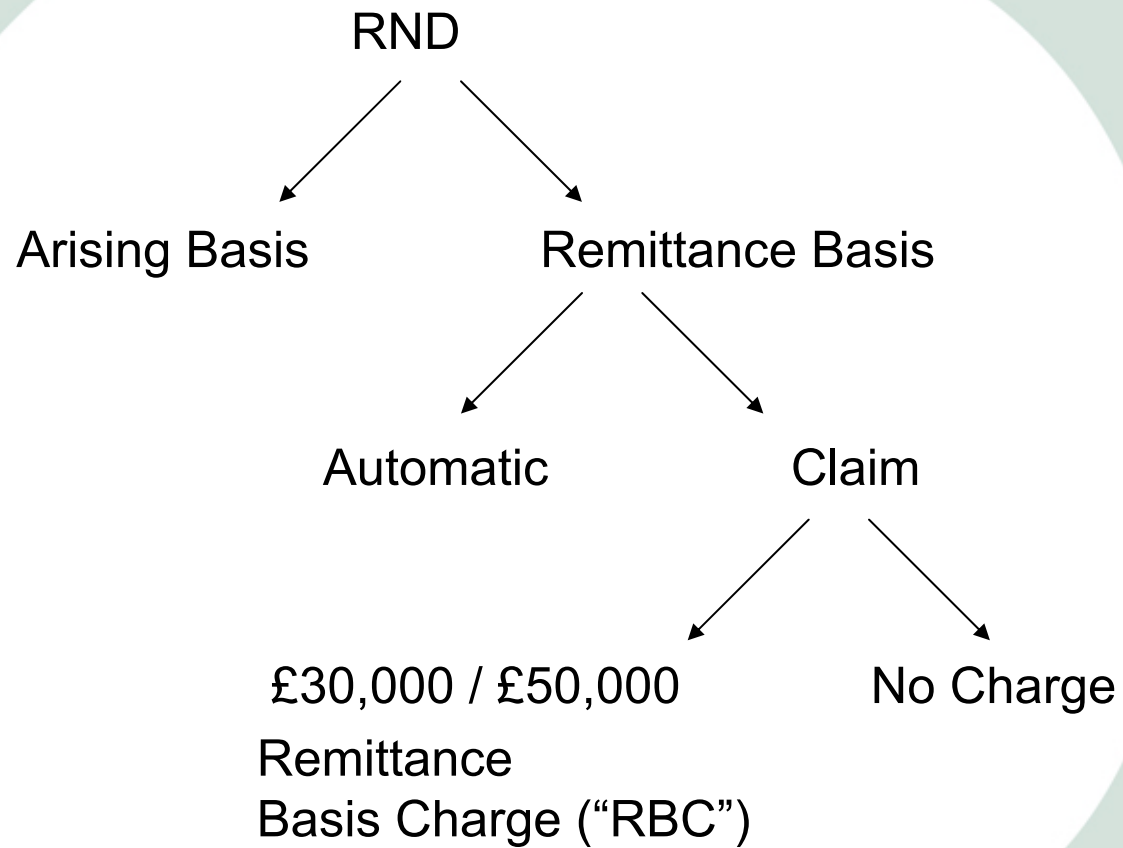


## UK Tax rates and Reliefs

- Income Tax
  - Tax-free allowance = £7,475 (aged <65)
  - £0 - £35,000 = 20%
  - £35,001 - £150,000 = 40%
  - > £150,000 = 50% (“temporary” measure)
- Capital Gains Tax
  - Exempt amount = £10,600
  - Added to income
  - £0 - £35,000 = 18%
  - > £35,000 = 28%
- Inheritance Tax
  - £0 - £325,000 = 0%
  - > £325,000 = 40%



## Basis of Taxation



## Arising Basis vs Remittance Basis

- Worldwide income / gains taxed on arising basis unless remittance basis user
- “Automatic” – limited circumstances
- Otherwise must claim remittance basis
- Rules won't change before 2015

## Claiming Remittance Basis

- £30,000 RBC:
  - resident for at least seven out of nine previous tax years and
  - aged over 18 in all/part of tax year
- From April 2012 £50,000 RBC if resident for 12 years
- Effect on RND of paying RBC :
  - liable to tax on foreign income/gains remitted to UK
  - lose personal allowances and CGT annual exemption

## “Nominating” Income or Gains

- When paying RBC must “nominate” income / gains
- DON'T remit from nominated income / gains
- Set up separate offshore interest-earning bank account with £1,000
  - limits disclosure
  - reduces risk of inadvertent remittances
  - BUT not suitable if want full credit under double tax treaty

## Basic Planning (1) – general

- Claim remittance basis
- Keep assets and income abroad
- Ensure investments are foreign by using:
  - Offshore trusts / companies
  - Offshore reporting funds
- Segregate capital and income
- Only remit “clean” capital

## Basic Planning (2) – short stay RNDs

- Don't claim remittance basis
- Avoid income / gains through:
  - Offshore life policies
  - Non-reporting offshore funds





## Basic Planning (3) – UK Property structures

Benefit	Own name	Offshore Company	Offshore Trust + Offshore Company
Simplicity/low cost	✓	x	x
Confidentiality	x	✓	✓
No will/probate	x	✓	✓
No inheritance tax	x	✓	✓
No capital gains tax	✓	x (if UK res shareholders)	x (if UK res beneficiary)
No income tax “benefit in kind”	✓	x	x (but low risk)

## 2. IHT Matters

- Non-dom/deemed dom – only UK situs assets taxable
- UK dom/deemed dom – worldwide assets taxable
- Deemed dom = UK resident for 17/20 years (NB 15-16 years in practice)
- (Almost) complete testamentary freedom for UK domiciliary

## IHT Mitigation

- Don't own UK assets at death:
  - Sell and keep proceeds abroad
  - Give away and survive 7 years
- Reduce taxable value by borrowing
- Spouse exemption (NB £55,000 limit from dom to non-dom spouse)
- Transferable nil rate band
- Reliefs including business property relief
- Authorised unit trust / OEIC
- Remove asset from UK
- Life assurance to fund IHT

## Client checklist

- Financial / investment advice
- Immigration advice (if non-EU)
- Pre-arrival tax planning and implementation
- Property finding / purchasing
- Wills and Estate planning
- Powers of attorney
- Family matters (pre-nuptial agreements etc)
- Family Office
- Probate



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