私人信託公司

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目的與架構

私人信託公司（PTC）是為擔任單一家族各項信託的受託人而成立的公司。其股份通常由目的信託、基金會或由專業受託人擔任受託人的控股信託持有，董事會則由家族成員、信任的顧問及獨立董事組成。PTC讓家族可以參與信託的決策，包括分配，而無須把權力保留予財產授予人本人。PTC董事會以受託人身份行使這些權力，並對受益人負有受信責任，令家族在問責框架內發揮影響力。

其優點在於管治與延續。出任董事會成員的家族成員可學習受託事務，並為接替創辦人作好準備。熟悉家族的顧問可獲委任。由於家族控制自己的受託人，專業信託公司的擁有權變更不再威脅整個架構。其缺點則是成本與責任。PTC需要自行舉行董事會會議、備存會議紀錄、編製帳目及處理合規事宜；身為家族成員的董事，亦可能要就專業受託人本可避免的違反信託行為承擔個人責任。

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豁免及其條件

新加坡法律准許設立PTC並豁免其領牌，因此PTC無須向MAS登記。然而，它必須委聘一家持牌信託公司處理其打擊洗錢合規事宜。MAS清楚說明這項條件：私人信託公司"must engage a licensed trust company to meet AML/CFT requirements"。[1]

這項條件界定了新加坡模式。家族保留受託人的決策權，而受監管機構則負責進行客戶盡職審查、監察交易及舉報可疑情況。監管透過為PTC提供服務的持牌信託公司間接延伸至PTC。這個模式與澤西及根西的做法相似，當地獲豁免的PTC由持牌受信機構管理。香港沒有專門框架，因此香港家族通常在其他司法管轄區設立PTC。[2]

誰持有PTC？

PTC的擁有權引起一個新加坡法律無法單獨解決的問題。如家族直接持有股份，這些股份便構成家族成員個人資產及遺產的一部分，令PTC暴露於其債權人的申索及繼承糾紛之中。常見的解決方法是設立非慈善目的信託或基金會，專為擁有PTC而持有其股份。新加坡法律既不准許非慈善目的信託，亦不准許私人基金會。因此，家族透過澤西、根西、開曼群島或英屬維爾京群島的目的信託，或透過根據列支敦士登、澤西或巴拿馬法律設立的基金會，持有其新加坡PTC。

結果是一個上層在離岸、營運層在新加坡的架構。執業者認為這種架構可行，但會增加成本，亦需要另一批顧問。這亦意味著，向監管機構、銀行或法院解釋新加坡架構時，未必總能只援引新加坡法律。上文引述的批評者認為，目的信託的缺位，是新加坡至今仍未成為一個完整信託中心的主要原因。

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甚麼情況下適合設立PTC

PTC適合資產龐大而複雜的家族，典型情況是擁有一盤營運業務、多項信託，以及願意參與管治的親屬。如家族資產只是由多個銀行戶口組成的投資組合，PTC便不太適合，因為由持牌信託公司擔任受託人，能以較低成本提供同樣的保障。實務上，新加坡許多PTC與一家管理信託投資的單一家族辦公室並存。本部分第III章探討的家族辦公室制度，往往要求以基金載體持有這些投資，而這個載體愈來愈多是可變資本公司。

註釋

1. Bedell Cristin, "Jurisdictional Comparison"（2020年8月），前引，第(17)項：Trust Companies (Exemptions) Regulations及Trust Companies Act；無須向MAS登記，但PTC必須委聘一家持牌信託公司提供打擊洗錢服務。MAS, "Licensed Trust Companies"，前引。 ↩
2. Bedell Cristin, "Jurisdictional Comparison"（2020年8月），前引，第(17)及(21)項：獲豁免的澤西PTC必須由獲發牌經營信託公司業務的人士管理；獲豁免的根西PTC必須由根據Fiduciaries Law獲發牌的公司管理；香港沒有專門立法，香港架構的PTC通常在其他離岸司法管轄區設立。 ↩

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