Greenway Capital Advisors, LLC

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Potential Drawbacks of a Private Trust Company

A private trust company, also known as a family trust company or an exempt trust company, is an entity authorized to act as a fiduciary for a single family, and it is prohibited from conducting business with the general public. One of the primary reasons that wealthy families form private trust companies is the ability of the family to actively participate in the management of wealth held inside of irrevocable trusts. This is accomplished by having family members serve on the Investment Committee of a private trust company.

Every decision in life requires an assessment of the pros and cons, and whether or not to form a private trust company is no exception. In that regard, some of the potential drawbacks of a private trust company are the following:

1. **Capital Requirement.** One of the prerequisites for a private trust company to obtain a charter or license is to meet the minimum capital requirement of the state where it is being formed. The minimum capital requirement varies from state to state, and it generally ranges from $200,000 to $1,000,000. State banking commissioners typically have the discretion to require additional capital when they deem it necessary. Besides meeting a minimum capital requirement, there will be upfront legal fees and application fees as part of the chartering or licensing process.
2. **Required Information Disclosure.** As part of the process of applying for a trust charter or license, certain information will have to be divulged about family members and non-family members who will be principal owners, board members, or officers of the private trust company. This generally includes biographical and financial information along with background checks. Fortunately, most states provide for confidential treatment of this type of information.
3. **Distance from State of Residency.** Only a handful of states support and encourage the private trust company business. As a result, the odds are that a private trust company will be formed in a state other than the home state where a family resides or conducts the bulk of its business. Because of this, a family may desire that its private trust company establish a physical presence in the family's home state without applying for a trust charter or license. This will require seeking approval from the home state. In that regard, some states require reciprocity as a prerequisite for an out-of-state trust company to establish a physical presence. That is, reciprocity states will look to the state where the private trust company is located to determine if it grants trust companies chartered or licensed in other states similar treatment in establishing a physical presence.
4. **Threat of Additional Regulation.** States have made great progress in viewing private trust companies differently and favorably. However, there is always the possibility that this could change, particularly if issues arise from private trust companies not operating in a sound fiduciary manner.

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