私人信托公司

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

目的与结构

私人信托公司（PTC）是为担任单一家族信托的受托人而设立的公司。其股份通常由一项目的信托、一家基金会或一项由专业受托人管理的控股信托持有，其董事会则由家族成员、可信赖的顾问和独立董事组成。PTC使家族得以参与有关信托的决策（包括分配），而无须由委托人本人保留权力。PTC董事会以受托人身份行使这些权力，并对受益人负有受信义务，使家族在问责框架内发挥影响力。

其优势在于治理和延续性。在董事会任职的家族成员可以学习受托事务，为接替创始人做好准备。了解家族的顾问可获委任。由于家族控制着自己的受托人，专业信托公司的所有权变更不再威胁整个结构。其缺点在于成本和责任。PTC需要自己的董事会会议、会议记录、账目和合规工作；而身为家族成员的董事，可能须对专业受托人本可避免的违反信托行为承担个人责任。

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豁免及其条件

新加坡法律允许设立PTC并豁免其持牌，因此PTC无须在MAS登记。但它必须委托一家持牌信托公司履行其反洗钱合规职责。MAS对这一条件表述得十分清楚：私人信托公司“必须委托一家持牌信托公司以满足AML/CFT要求”。[1]

这一条件界定了新加坡模式。家族保留受托决策权，由一家受监管机构进行客户尽职调查、监控交易并报告可疑情况。监管通过为PTC提供服务的持牌信托公司间接延伸至PTC。该模式与泽西和根西的做法相似，在那里，获豁免的PTC由一家持牌受信机构管理。香港没有专门框架，因此香港家族通常在其他司法管辖区设立其PTC。[2]

由谁持有PTC?

PTC的所有权引出了一个新加坡法律无法单独解决的问题。如果家族直接持有股份，这些股份便构成家族成员个人资产和遗产的一部分，使PTC暴露于其债权人和继承纠纷之下。通常的解决办法，是由一项非慈善目的信托或一家基金会持有股份，其唯一目的就是拥有PTC。新加坡法律既不允许设立非慈善目的信托，也不允许设立私人基金会。因此，家族通过泽西、根西、开曼群岛或英属维尔京群岛的目的信托，或通过依列支敦士登、泽西或巴拿马法律设立的基金会，来持有其新加坡PTC。

其结果是一种顶层在离岸、运营层在新加坡的结构。执业者认为这种结构切实可行，尽管它增加了成本，还需要第二套顾问。这也意味着，一个新加坡结构并不总能仅凭新加坡法律向监管机构、银行或法院解释清楚。前文所引的批评者认为，缺乏目的信托是新加坡至今尚未凭自身成为完整信托中心的主要原因。

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何时适合选择PTC

PTC适合资产庞大而复杂的家族，这类家族通常拥有一家经营中的企业、数项信托，以及愿意参与治理的亲属。对于资产仅由一组银行账户构成的家族，PTC则不太适合；对他们而言，由持牌信托公司担任受托人能以更低成本提供同样的保护。在实践中，新加坡许多PTC都与一家管理信托投资的单一家族办公室并存。本部分第III章考察的家族办公室制度，往往要求为这些投资设立一个基金载体。这一载体越来越多地采用可变资本公司的形式。

注释

1. Bedell Cristin, "Jurisdictional Comparison"（2020年8月），同上，第(17)项：Trust Companies (Exemptions) Regulations和Trust Companies Act；无须在MAS登记，但PTC必须委托一家持牌信托公司提供反洗钱服务。MAS, "Licensed Trust Companies"，同上。 ↩
2. Bedell Cristin, "Jurisdictional Comparison"（2020年8月），同上，第(17)和(21)项：获豁免的泽西PTC必须由获发牌经营信托公司业务的人士管理；获豁免的根西PTC必须由根据Fiduciaries Law获发牌的公司管理；香港没有专门立法，香港结构的PTC通常设立于其他离岸司法管辖区。 ↩

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com

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