



**PRIVATE TRUST COMPANIES**  
*embedded in*  
***Family Governance***

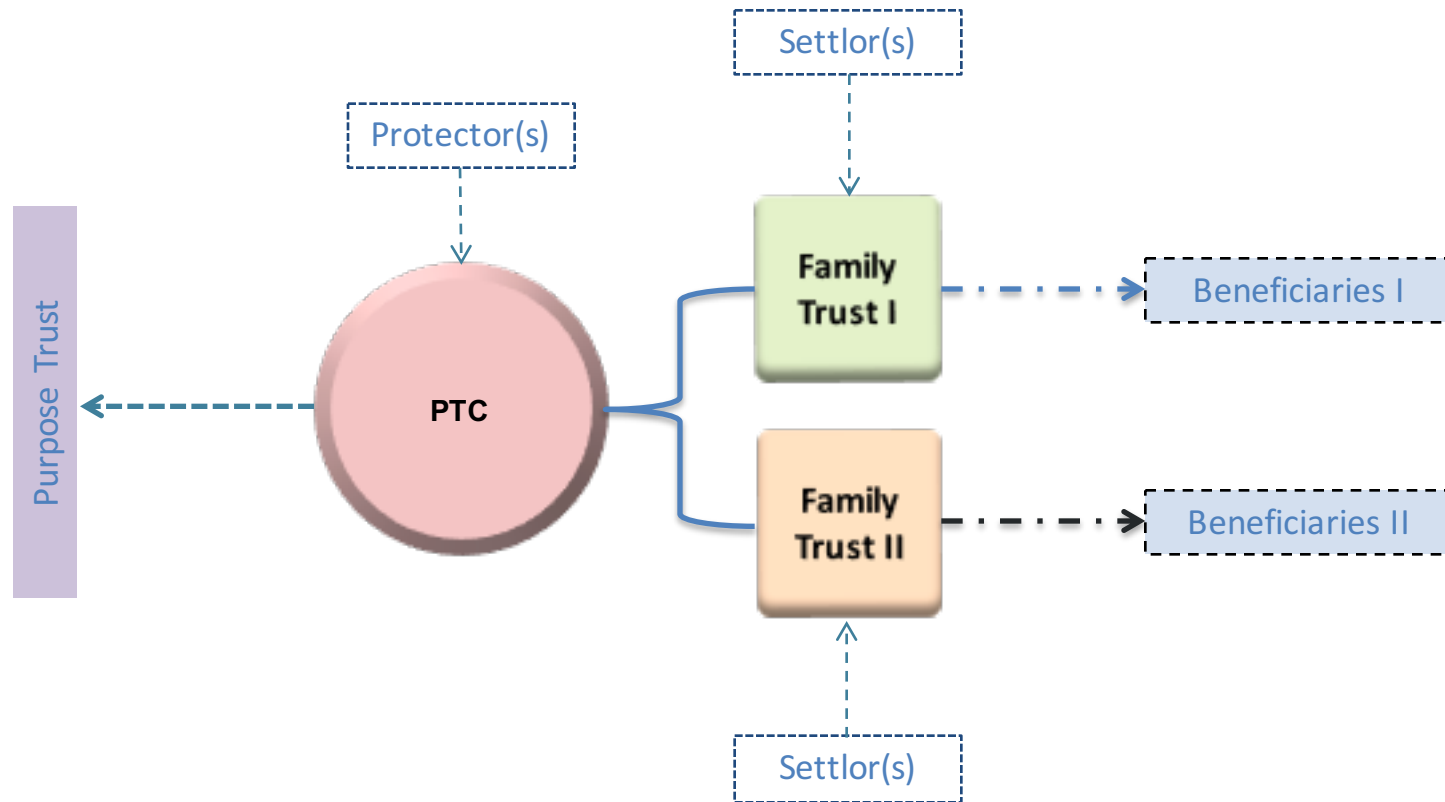
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Liechtenstein Trust Conference - April 12, 2016



- Guided by the desire to control the family’s wealth beyond the use of individual trusts
- Embedded in a Family Governance Structure it can play a vital role in providing for a professional *decision-making process* and a sustainable *wealth preservation*
- Legal entity whose sole purpose is to act as Trustee for one or few trusts of a family („connected trusts“)
- It’s unusual for a PTC to act for more than one family (hence „private“), thus it doesn’t publicly solicit trust business
- Generally set up in a form of a limited liability company, although in some jurisdictions the use of a Foundation/Anstalt is admissible (e.g. Jersey, FL)
- Typically, but not necessarily, the shares of the PTC are owned by a *Purpose Trust*
- PTCs have to be tailor-made – **there is no boilerplate solution!**

# Private Trust Company Structure



- Finding an individual trustee who is deeply trusted and knowledgeable about a family and its values, objectives and ethics is challenging
- Keeping the „*Family’s DNA*“ safeguarded and memorized over time
- **Examples:** Concentrated stock positions, interests in family business enterprises, copyrights/trademarks, riskier assets
- It might be easier to deal with the deficit of proper investment diversification and the holding of assets which a commercial trustee hesitates to accept
- Direct involvement of family members or trusted advisors enables a quicker decision-making-process, and thus provides for an additional element of control, and enhanced governance
- Does not compromise the validity of the Trust and its residency for tax purposes, and can provide for long-term tax planning and asset protection advantages
- Enhanced privacy probable, **BUT** speak about FATCA, CRS and BEPS at the outset!



- Here lies the true beauty of the PTC, as it allows the family to select the Board Members by appointing specialists with special skills and trust experience
- Perfect alignment with the adopted and individual Family Governance Policies, i.e. the integration of the Family Council (or another decision making body) into the PTC
- Inclusion of non-family experts and trusted advisors to adopt a more independent and holistic decision making process of greater quality is absolute key!
- The succession of the PTC Board can be properly planned and the director's position is not subjected to the ever so often disrupting changes within a professional trust company
- PTC Board succession may be addressed in a separate agreement between the PTC and its owner, and not in the Articles

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- As Trustee the PTC has a fiduciary duty to the beneficiaries, whereas its Directors have a fiduciary duty to the PTC itself.
  - This „independence“ provides for an unbiased approach towards dealing with beneficiaries‘ interests
  - Including Beneficiaries as Directors must be well-considered, due to control issues and potential conflict of interests
  - The liability of the PTC Directors will be subject to respective company law principles, as the duties of the directors are owed to the PTC and not to the trust – breach of contract is more easier to identify than a breach of trust
  - Protectorship provisions: Some practitioners prefer to include people who would act as Protectors on the Board of the PTC – I prefer to adopt a clear segregation of functions and would rather include these trusted persons at the level of the Purpose Trust



**"My dear George, you failed as a salesman and got fired as the head of marketing, you've been a lousy accountant and a failure at human resources. Well, to make it short - welcome to the supervisory board!"**



- The Settlor typically appoints a professional (institutional) trust company to administer the PTC on behalf of „the Family“
- In some jurisdictions the law even requires the administration of the PTC to be carried out by a registered body
- Such an appointment creates a *contractual relationship* between the Administrator and the PTC, thus making it easier to remove an Administrator
- Service Agreement for regulating the relationship between the PTC and the Administrator (e.g. to ensure proper record keeping and accounting)
- Trust Administrator's role/duties needs to be clearly defined, i.e. Trustee vs. Administrator, even more so should the institutional trust company provide Director to the PTC





- The three certainties of intent, subject and object remain absolute prerequisites
- The more control a Settlor will be granted within the instrument of trust the larger the risk of a voidable or invalid trust
- Consequently, using e.g. a Reserved-Powers Trust („Settlor-Directed Trust“) might appear easier to constitute, but may result in being re-characterized as a mere nominee arrangement depending on nature and extent of reserved powers
- Adopting a **sound and balanced governance system** within the PTC will often mitigate the adverse consequences of Settlor directed structures and enhance the overall acceptance of the PTC
- The Trustees of the Purpose Trust should involve PTC Directors who have vast experience in managing trusts, and preferably complimentary skills
- PTC Directors need to be also carefully selected, also considering the aspects of effective place of management



- The Trustee of the Purpose Trust as owner of the PTC shares has the power to appoint and remove the PTC Directors
- Consequently, the Trustee of the „Owners Trust“ will have a direct impact on the family governance system
- Purpose trusts can only be established in jurisdictions where relevant legislation applies. As the PTC may be created as an integral part of the family governance structure, perpetuity periods ought to be considered
- Establishing an agreement between the Purpose Trust and the PTC, might provide additional confidentiality (e.g. succession issues) for matters that one wishes to exclude from a public document (company articles)
- *Alternative:* Transfer of PTC-shares to Protectors *directly* (inheritance needs to be addressed), or *indirectly* (i.e. Protectors as Trustees of the Purpose Trust)  
Downside: individuals become incapacitated or decease without leaving clear instructions/guidance

- Regulatory and licensing requirements vary depending on the jurisdiction (see Appendix)
- In some jurisdictions the PTC needs to obtain its own licence, or may operate under the licence of a licensed trust company
- A reference in the company’s memorandum, or adding the description “*Private Trust Company*” or “*PTC*” to the company’s name might be essential (e.g. BVI)
- **Liechtenstein:** PGR Art. 897 states that a legal entity can act as a Trustee, whereas the requirement of appointing a resident person/entity was abolished in 2013 (PGR Art. 905) – no specific regulation for PTC necessary (BuA 42/2013)
  - Licensing is granted in accordance with the revised 2013 Professional Trustees Act (“TrHG”), in Art. 3 Abs. 1 lit. a (unchanged)
  - The purpose of serving a limited class of persons must be stipulated in the company’s memorandum
  - In absence of a commercial business purpose the FL-Government has clarified that PTCs would not require a license (BuA 42/2013)

- Commercial purpose (*“Geschäftsmässigkeit”*), requires:

- independent, revenue seeking activity
- regular activity
- for a valuable consideration

As the PTC doesn't meet the above criteria, it's not regarded as a trust company in accordance with the Professional Trustees Act (*“TrHG”*)

- The mere fact that the Directors will receive a compensation for serving on the Board of a PTC will generally not affect this notion
- Anti-Avoidance Measures:
  - At least one Director of the PTC must hold a license in accordance to the Professional Trustees Act (*“TrHG”*) – contradiction?
  - The above license requirement ensures applicability of the Due Diligence Act (Art. 3 Abs. 1 lit. k *“SPG”*)

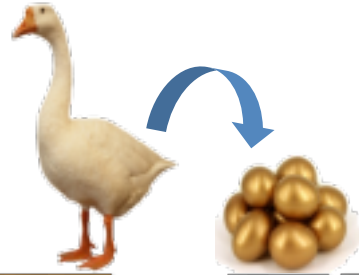


*“... though private and focused on the well-being of a single family, a PTC is a business operating within the highly complicated and regulated world of finance. It needs to be managed as a business with appropriate counsel and oversight if it is to achieve its desired objectives.”* - Hartley Goldstone. “Family Trusts.” (2015)

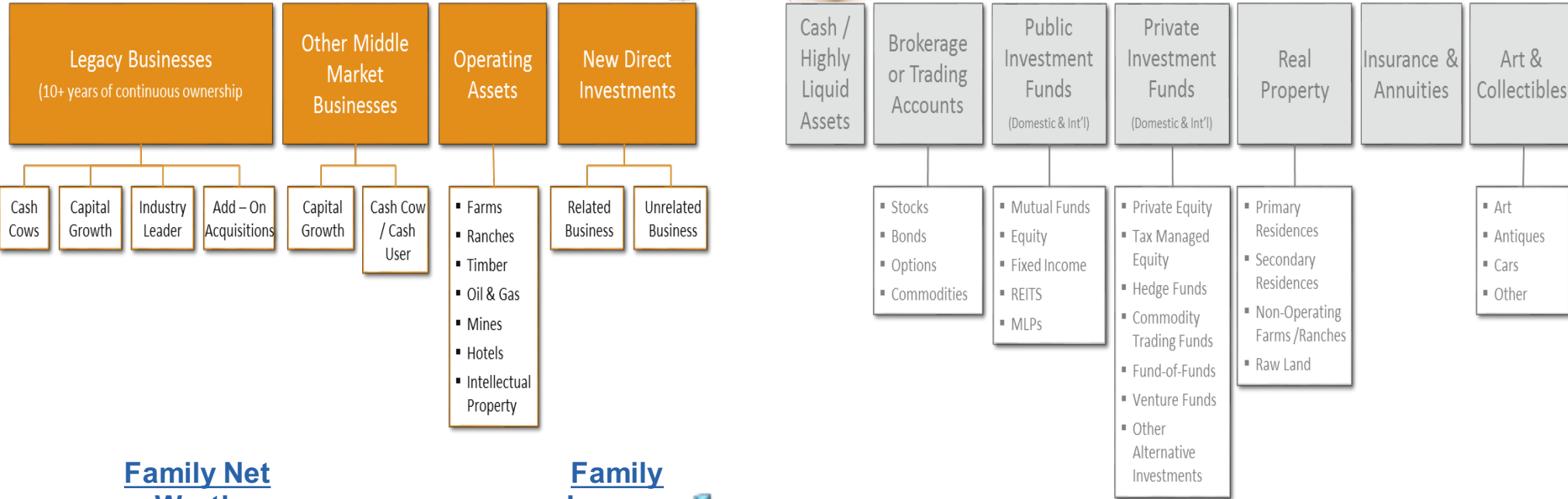


# Total Family Wealth

## Operating Businesses



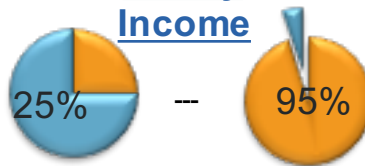
## Other Investments



### Family Net Worth



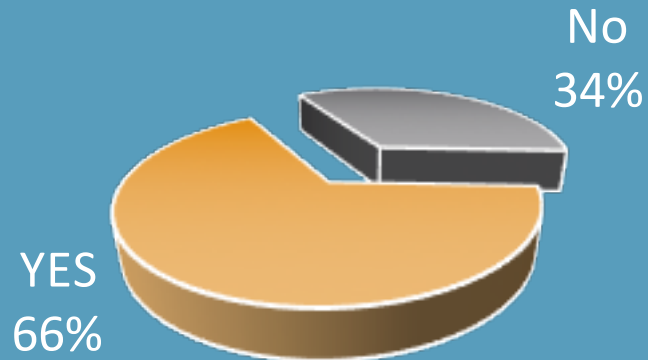
### Family Income



Source: Moosmann/Bly in: Governance and Generational Transition Processes, 2016

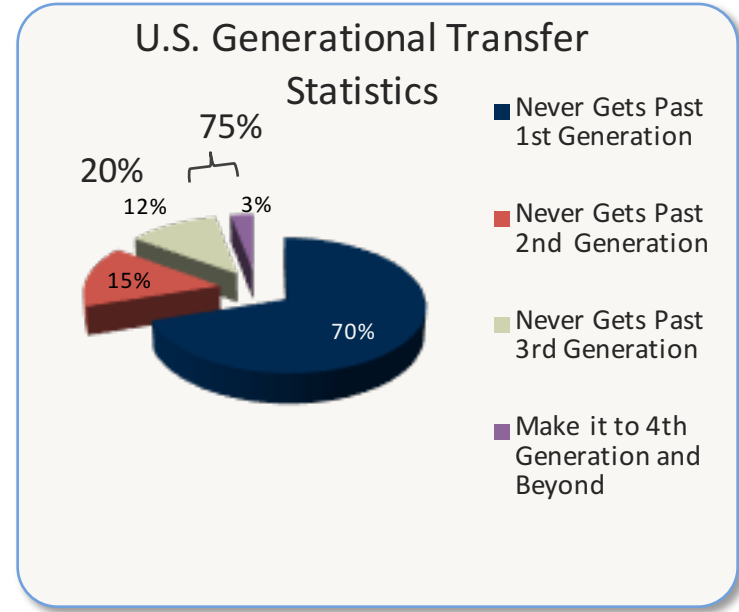


## Plan to Keep Ownership in the Family for the Next Generation



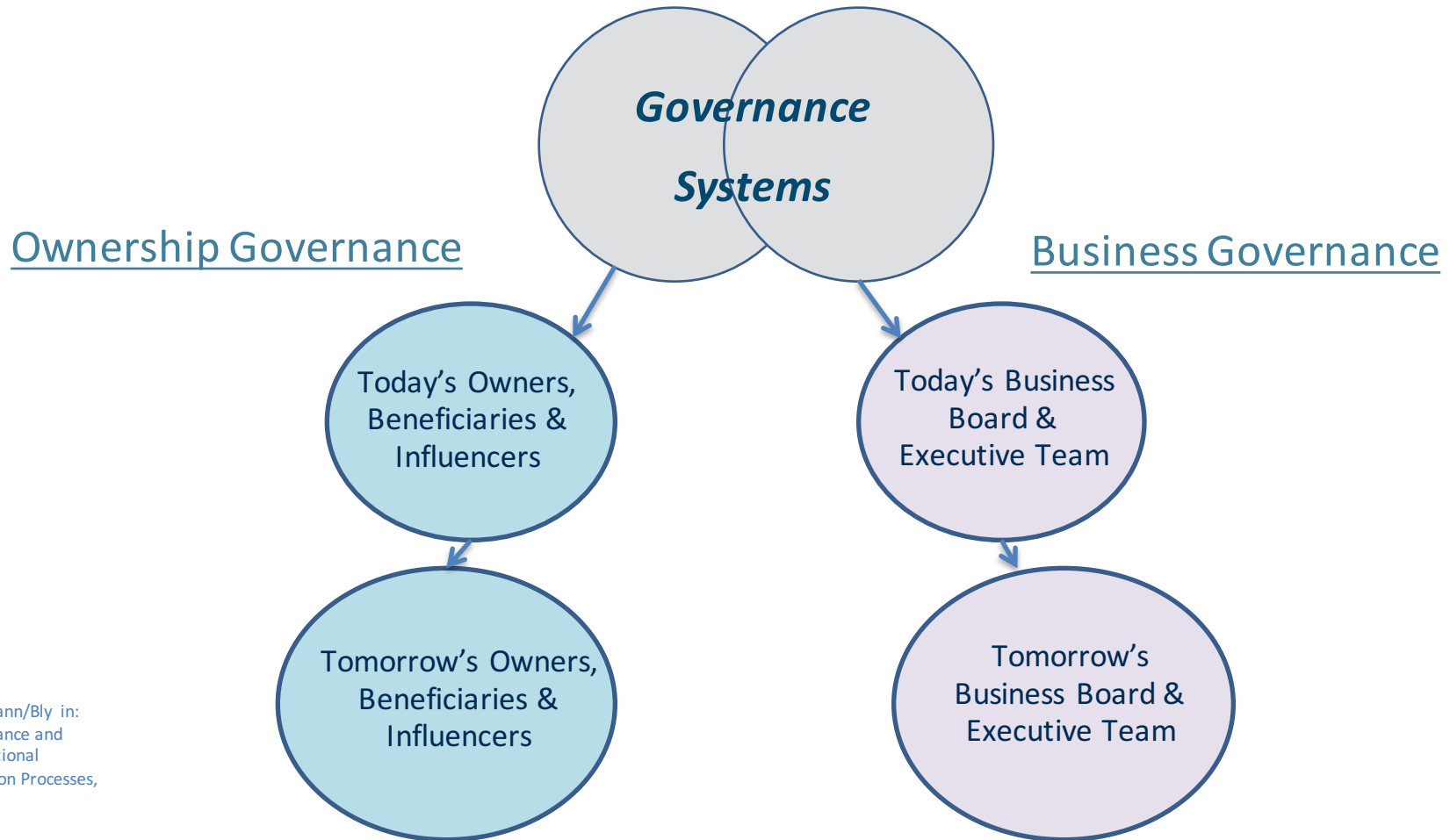
Source: Mass Mutual survey of 3,000 family business CEO's

On average, **50%** of Generational Transition Plans Fail





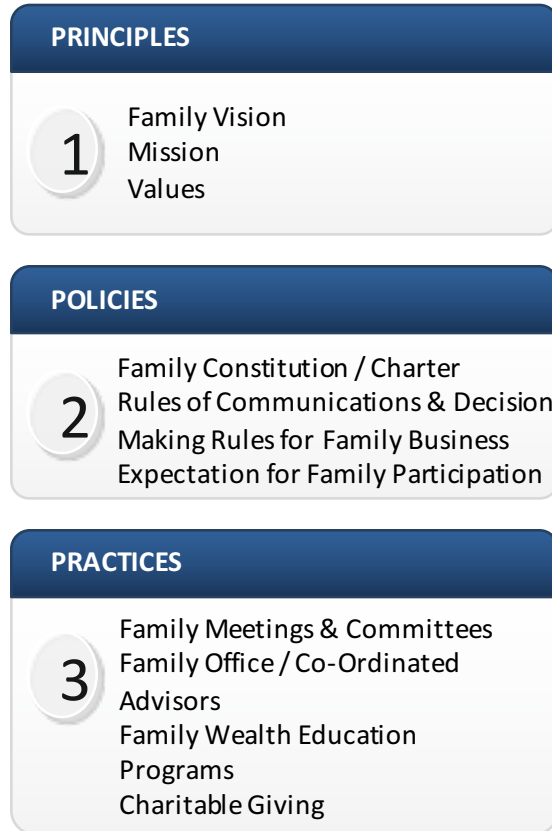
# Most Successful Multi-Generational Family Business Enterprises Develop Parallel Governance Systems



Source:  
Moosmann/Bly in:  
Governance and  
Generational  
Transition Processes,  
2016

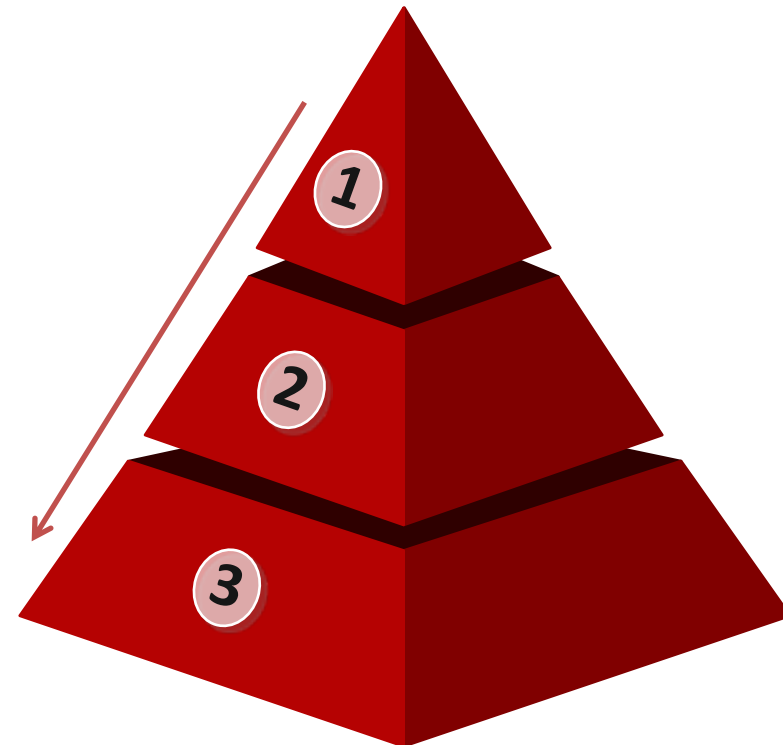


# Triangle of the Components of a Family Governance System

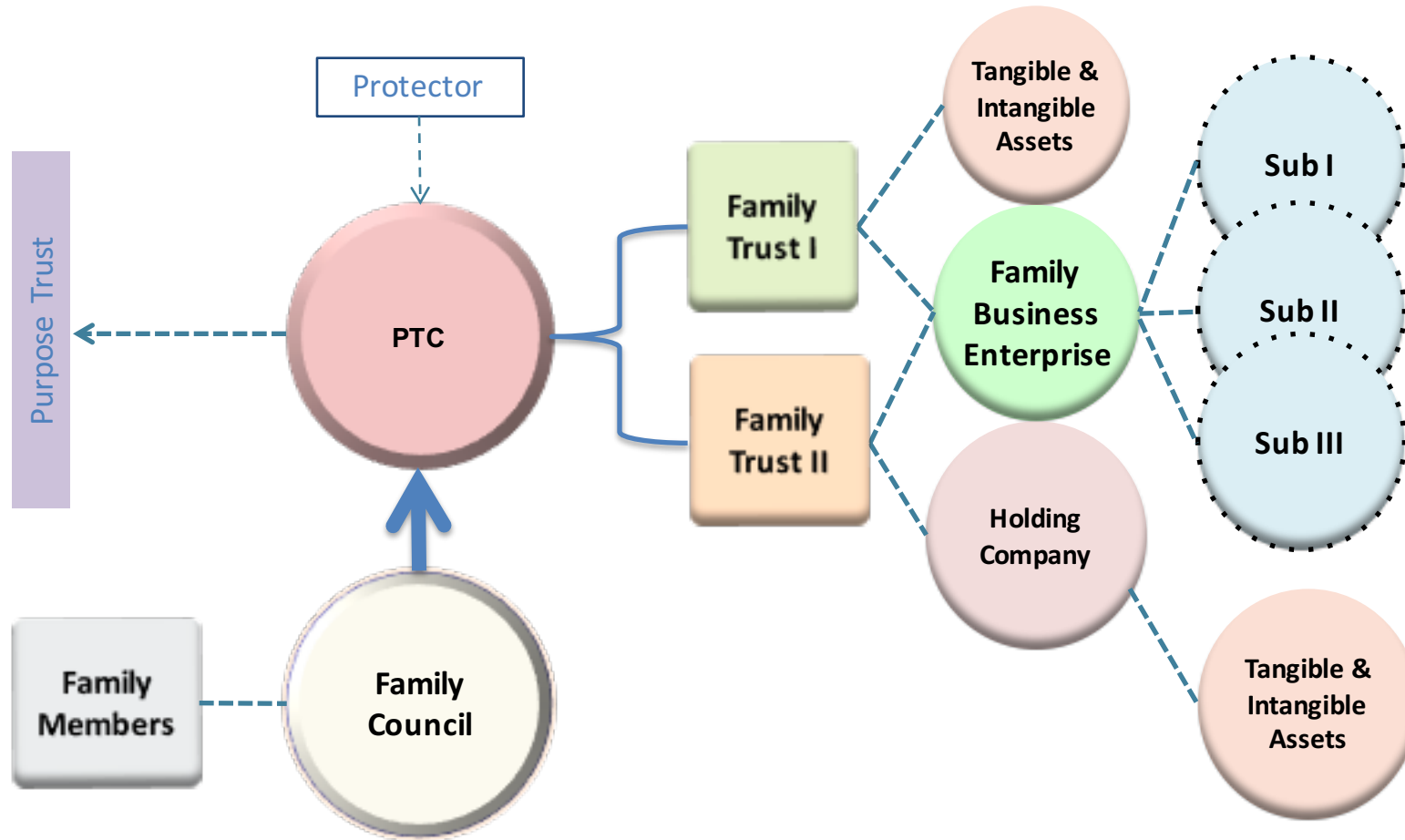


Description  
and  
Regulation

Support and  
Implementat  
ion



Source: P. Angus; Family Governance: A Primer for Philanthropic Families, 2004





*“The purpose of family governance is to ensure that a family consciously deals with the responsibility attached to family wealth, (...). Like corporate governance, family governance provides a framework for managing the family and its wealth in a valued-based and sustainable manner.”*

- Prince Michael von und zu Liechtenstein; “Possible Uses of Liechtenstein Wealth Preservation Structures”, p.47 (2014)